

September 15, 2006

Donald Basham, P.E.
Chief, Engineering & Construction
U.S. Army Corps of Engineers
441 G Street, NW, Room 3H92
Washington, DC 20314

Dear Mr. Basham:

I am contacting you as a follow-up to our meeting on July 12, 2006 regarding USACE's position on the acceptable form of powers of attorneys (POAs) accompanying performance and payment bonds. At the July 12 meeting, I, along with representatives from AGC of America, the Surety & Fidelity Association of America, and the American Insurance Association, met with you to bring to your attention instances in which different USACE regional offices were requiring "wet" or ink signatures on POAs for final bonds--that is, performance and payment bonds. As you know, the FAR Council issued new guidance in the form of a FAR change that permits electronic, printed and mechanically-applied signatures on POAs accompanying bid bonds. The FAR change did not address POAs for final bonds, however.

At the July 12 meeting, we respectfully requested USACE consideration for using the FAR change as the standard for POAs accompanying final bonds. You indicated that you would survey the different USACE offices to ascertain the consistency, or lack thereof, of treatment with respect to POAs. You also asked that we keep you informed of other instances in which USACE offices required "wet" powers. To that end, I have learned of another recent instance in which "wet" POAs were required for bid bonds; it appears that it was a bid requirement on a project being bid in August 2006 under the control of the Nashville office. The bid solicitation even included reference to the "All Seasons" Comptroller General decision, which, in fact, was the impetus for the FAR change permitting electronic, printed and mechanically-applied signatures on POAs accompanying bid bonds.

I also have learned of instances on USACE projects in New Orleans in which POAs are being rejected simply because the POA contains the seal of a notary whose commission, although valid as of the date of the signing of the POA by the authorized surety company representative, has subsequently expired as of the date of the issuance of the signed POA by the agent. The notary's commission must be valid when the notary acknowledges the signature of the authorized surety company representative, but the notary's commission has no bearing upon the duration of the surety's authorization of the agent to act on its behalf.

NASBP again appreciates the opportunity to bring to your attention the disparate treatment of POAs by different USACE offices. We look forward to receiving information concerning the results of your survey and appreciate the time and attention that you have spent on this matter. Please do not hesitate to contact me at 202-464-1173 should you have questions or require further information.

Sincerely,

Mark McCallum
General Counsel & Director of Government Relations