

April 2, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives
1705 Longworth House Office Building
Washington, D.C. 20515

The Honorable Charles E. Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, DC 20515

Re: Need for Emergency Action Regarding the Acceptance of Electronic Bonds, including Use of Electronic Signatures, Electronic Seals, and Electronic Powers of Attorney, Accompanying Federal Contracts due to the COVID-19 Pandemic Crisis

Dear Congressional Leaders:

To ensure that construction services, accompanying performance guarantees and all commercial surety guarantees continue to be provided without significant disruption or impediment during the current COVID-19 crisis, the undersigned organizations, representing the surety industry and the construction community, respectfully request specific and immediate guidance be formulated and issued by federal agencies accepting electronic execution and submission of all surety bond documents for federal construction contracts and for all commercial surety transactions. It is vitally important to the efficient provision of construction services to address needed federal infrastructure and to the wellbeing of the surety and construction communities that procurements continue unimpeded during this time of crisis by mandating acceptance of electronic execution and submission of bond documents, including bid bonds and supporting documents, such as powers of attorney. Commercial bonds have an equally important impact and provide financial security for millions of consumers across the country in every state through, for example, reclamation bonds, license and permit bonds, and utility bonds.

Currently, many federal agencies require surety documents to have "wet ink signatures" on surety bonds and embossed corporate seals on original, printed documents. During this time when most employees of surety businesses are working remotely from their homes, a requirement of physical presence of multiple persons is unworkable and would likely violate current federal and state emergency orders. Stay at home orders and adherence to health directives and guidelines make it virtually impossible for bond producers, acting as attorneys-in-

fact for surety companies, and their contractor or commercial business clients to sign the surety documents in person.

Consequently, we request, due to the current pandemic, federal procuring agencies expressly mandate acceptance of electronically executed and issued surety bonds and powers of attorneys, with e-corporate seals. We also urge suspension of the need for notarization, where required, of such documents during this crisis period, as it requires in-person presence. Remote online notarization (RON) is not a workable alternative because 1) many states do not yet allow it; 2) most of RON is not a widely available option; and (3) where RON is deemed legally acceptable in a minority of states it requires prior certification of the notary. This request is also being sent to relevant federal agencies, along with a Request for Emergency Action Memo.

The Office of Management and Budget Office (OMB) issued memo *M-20-16*, requiring heads of federal departments and agencies to change operations and services, particularly where people congregate – with exceptions for the protection of public health and safety, including law enforcement and criminal-justice functions. The acceptance of electronic bond documents can be derived from the following point included in *M-20-16*, “Consider streamlining regulations and approval processes for critical services....”

Furthermore, nearly 20 years ago, the General Services Administration (GSA) began using electronic digital signature technology powered by Access Certificates for Electronic Services (ACES). According to GSA, the Electronic Signatures in Global and National Commerce Act brings the full effect of legal authority for electronic signatures to interstate and foreign transactions, specifically stating "a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form."

For the reasons set forth above, the signed organizations believe it is imperative for the federal government to act quickly and to mandate all procuring agencies accept electronically executed and transmitted bond documents. Doing so will facilitate and expedite the critical contracting process for necessary construction services during this extraordinary period.

If your office would like further information, the surety industry has produced an Emergency Request that was provided to relevant federal agencies on this subject matter. Please contact Larry LeClair, lleclair@naspb.org, or Dalton DeFendis, ddefendis@surety.org, for a copy of the Emergency Request or for any other questions you may have. We appreciate your immediate attention to this urgent and critical request.

Respectfully the undersigned associations,

American Property and Casualty Insurance Association
American Subcontractors Association
Associated General Contractors of America
National Association of Surety Bond Producers
National Electrical Contractors Association
The Sheet Metal and Air Conditioning Contractors' National Association
The Surety & Fidelity Association of America
Women Construction Owners & Executives