

## 28.101-3 Authority of an attorney-in-fact for a bid bond.

(a) Any person signing a *bid bond* as an *attorney-in-fact* shall include with the *bid bond* evidence of authority to bind the *surety*.

(b) An original, or a photocopy or facsimile of an original, *power of attorney* is sufficient evidence of such authority.

(c) For purposes of this section, electronic, mechanically-applied and printed *signatures*, seals and dates on the *power of attorney* shall be considered original *signatures*, seals and dates, without regard to the order in which they were affixed.

(d) The *contracting officer* shall-

(1) Treat the failure to provide a signed and dated *power of attorney* at the time of *bid* opening as a matter of responsiveness; and

(2) Treat questions regarding the authenticity and enforceability of the *power of attorney* at the time of *bid* opening as a matter of responsibility. These questions are handled after *bid* opening.

(e)

(1) If the *contracting officer* contacts the *surety* to validate the *power of attorney*, the *contracting officer* shall document the file providing, at a minimum, the following information:

(i) Name of person contacted.

(ii) Date and time of contact.

(iii) Response of the *surety*.

(2) If, upon investigation, the *surety* declares the *power of attorney* to have been valid at the time of *bid* opening, the *contracting officer* may require correction of any technical error.

(3) If the *surety* declares the *power of attorney* to have been invalid, the *contracting officer* shall not allow the *bidder* to substitute a replacement *power of attorney* or a replacement *surety*.

(f) Determinations of non-responsibility based on the unacceptability of a *power of attorney* are not subject to the Certificate of Competency process of subpart 19.6 if the *surety* has disavowed the validity of the *power of attorney*.

**Parent topic:** 28.101 Bid guarantees.