

TYPED NAME IS ACCEPTABLE AS SIGNATURE FOR CONTRACT DISPUTES ACT

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A recent decision of the Armed Services Board of Contract Appeals (“Board”) held that as long as a mark (such as a typed signature) purporting to act as a signature may be traced back to the individual making it, it counts as a signature for the purposes of the Contract Disputes Act (“CDA”) certification, whether it is signed in ink, through a digital signature application, or is a typed name. *Kamaludin Slyman CSC*, ASBCA No. 62006 et. al. Four of the six Board judges concurred in the result, with three stating that the certification in this case was defective but curable, and one judge agreeing with the result but disagreeing with certain reasoning.

Kamaludin leased certain heavy equipment to U.S. forces in Afghanistan. After submitting a claim for \$155,500 with a handwritten signature, Kamaludin subsequently certified the claim in an email which contained only a typed signature of “Kamaludin Slyman.” The box identifying Kamaludin on the first page of the contract included the same email address as the certification email. The question in the case was “what makes a valid signature” on the certification so as to give the Board jurisdiction? (The claim exceeded \$100,000 and had to be certified in order to meet the CDA definition of “claim.”)

The Board considered the definition at FAR 2.101, which states that a signature is the “discrete verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols”. Taking that as a starting point, the Board extracted two elements and added one more, stating “In the past we have looked at this definition as having two components: whether the symbol purporting to be the signature is ‘discrete’ and whether it is ‘verifiable,’ with verifiable being the more critical of the two terms [citation omitted]. Here we think it may also be helpful to consider a third element: whether the symbol indicates the present intention to authenticate the writing to which it is affixed.”

Discrete Symbol: The Board found “discrete” was something that was separate and distinct.

Verifiable: The Board found that “verifiable” means that a mark can be tied to an individual, fulfilling the purposes of the CDA, which is to deter fraud so that the claimant can be identified as the signer, and be held accountable for it. This is the conclusion regardless of whatever form the “signature” takes.

Present Intention to Authenticate: This is generally read as a party’s affixing its name at the end of a document. The Board noted the electronic Signatures in Global and National Commerce Act, 15 USC §§ 7001-7006 (“ESIGN Act”), recognizes a typed name as an intent to authenticate, but did not apply ESIGN. However it stated that the “world in which the ESIGN Act applies to most commercial transactions is a world in which the use of a name at the end of an email conveys the intent to authenticate the writing therein”

Does the Typed Name at the end of the Email Count as a Signature For CDA claim certification:

The Board noted that a typed name, without more, does nothing to verify the identity of the person submitting it. However, the email with the certification came from an email correspondence which demonstrates that the document came from the sender's email address. The Board noted that other courts have routinely found an email address, combined with other indicia within the email, to be sufficient to authenticate the email for admission as evidence. *United States v. Siddiqui*, 235 F.3d 1318 (11th Cir. 2000), and other cases. The Board held that it was satisfied that the typed name at the end of the email from the same email address with which the government corresponded with the claims "is a discrete and verifiable mark made with the intent to authenticate the certification and [the Board has] no basis to suppose that any other individual would have reason to falsify the signature. Thus [the Board treats] it as [it] would a handwritten mark purporting to be a signature or a digital signature-no better no worse: absent the later production of evidence proving otherwise..."

The takeaway: An email containing a typed (but not signed) signature of a person authorized to bind a company, and coming from the same email address used to correspond with the government about the claim, will be counted as a proper certification email.

However, this writer strongly recommends that an email of this nature include either (1) an electronic signature; or (2) a manually signed pdf copy of the email or (3) a copy of the original email with original signature that is sent via regular postal mail to the Contracting Officer. Although the Board appears to have liberalized the signature requirement, caution by a contractor can often eliminate costly procedural litigation.

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