
ELECTRONIC SIGNATURES

Are Electronic and Handwritten Signatures Interchangeable?

INTRODUCTION

Although electronic signatures are generally accepted as part of commerce and contracting today, some uncertainty remains about questions of validity, and what form of electronic signature is acceptable. While the FAR expressly approves electronic signatures as a valid form of approval and authentication of a document, the Armed Service Board of Contract Appeals (“ASBCA”) has vaguely clarified that **certain forms of electronic signatures are not valid signatures** at all.

ELECTRONIC SIGNATURES GENERALLY

In the United States, the broad definition of **what qualifies** as an electronic signature was set out in the Uniform Electronic Transactions Act (“UETA”) in 1999. Under UETA, the term means “an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”

The laws on electronic signatures define “whether it is a signature,” but do not necessarily answer the question: **“is it YOUR signature?”** Therefore, disputes commonly arise as to whether an electronic signature is a valid signature. If a signature on a contract is contested, the signature must meet certain criteria before a court or board will uphold it as being valid.

In Federal contracting, for example, FAR 2.101 defines “signature” as “...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.**”

THIS IS NOT A VALID SIGNATURE AT ALL

One example that illustrates when an attempted electronic signature is **not a valid signature** is the appeal of *Teknocraft, Inc.*, ASBCA No. 55438, 2008 WL 1765781 (Apr. 3, 2008). In *Teknocraft*, the contractor submitted a claim for what it argued was a change when the Government directed an X-ray machine to be used as part of an inspection. The claim for \$284,992 was submitted via email, including the required “Certification of Claim” (which requires a signature to attest that

the “the certifier is duly authorized to certify the claim on behalf of the contractor,” as previously [discussed here](#)).

Neither the Claim nor Certification bore a handwritten signature. Instead, Teknocrat’s certifier typed the designation “//signed//” as both parties had done in previous email correspondence. Accordingly, the signature block read:

//signed//
John Doe
President
Teknocrat, Inc.

The CO then rejected the claim for lack of proper certification, citing that the certification was not signed. On appeal, Teknocrat argued that the certification was properly executed because it was sent on company letterhead, contained the word “//signed//,” and identified the name of the certifier.

The Board disagreed, however, holding that although FAR 2.101 allows for ‘electronic symbols,’ Teknocrat’s notation was “generic” and not “sufficiently distinguishable to authenticate” the identification of the true signor. Based on this finding, the Board dismissed Teknocrat’s claim for lack of jurisdiction.

In a similar case, the ASBCA recently dismissed a claim for lack of jurisdiction when the contractor submitted a certification of claim bearing only the company’s **stamp** and the typed name of its general manager, instead of a traditional signature. See *Tokyo Company*, ASBCA No. 59059, 14-1 BCA ¶ 35590.

These cases highlight the fact that not all electronic signatures will be sufficient to pass the validity test.

CONCLUSION

With the ever-increasing use of electronic correspondence in Government contracting, the decisions cited above should serve as a reminder that claim certifications and other contracting documents must be submitted with an [emphasis on detail](#).

While electronic signatures may be used on these important documents, contractors should take extra care to ensure that their representatives use distinguishable symbols that allow the Government to authenticate who is actually signing the document.

While the ASBCA’s only guidance on this issue is a couple of vague examples of what does not constitute a valid electronic signature, it has given no examples of what a valid electronic

signature looks like. This leaves a lot of room for doubt and error, which is never a good thing when a \$100,000-plus claim is on the line.

With that said, the only way to avoid ambiguity and guarantee that a certification is properly authenticated is to sign the old fashioned way – **with a pen!**

In the end, you will be glad you made the call; by the way, it's a FREE CALL.

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Author's note: The information contained in this article is for general informational purposes only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation. – Taylor Benson, Esq., Asst General Counsel