

What Federal Contractors Should Know About DPAS

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Presented By
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What Federal Contractors Should Know About DPAS

INTRODUCTIONS

Mark A. Amadeo

- Over 20 years experience as government counsel & law firm counsel
- LL.M. Georgetown University Law Center; J.D. University of Wisconsin Law School; B.A. Boston College
- Founder & Managing Partner of Amadeo Law Firm, PLLC
- Focus on Government Contracting & Technology
 - Review/negotiation: FAR/DFARS Compliance
 - Pre & Post Award Teaming, JV's & Subcontracts
 - Technology: IP Preservation & Commercialization



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Defense Production Act of 1950

- **President – contracts that promote national defense take priority over all other contracts**
- **E.O. 13603 – delegated to**
 - Dept. of Agriculture-food, plant, livestock**
 - Dept. of Energy-energy**
 - Dept. of Health & Human Services-health**
 - Dept. of Transportation-civil transportation**
 - Dept. of Defense (Army Corps of Engin.)-water**
 - Dept of Commerce-EVERYTHING ELSE**



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E.O. 13603

Federal Priorities and Allocations System (FPAS)

- **Agriculture Priorities and Allocation System-USDA (ALPAS) - 7 CFR Part 789**
- **Energy Priorities and Allocation System-DOE (EPAS) – 10 CFR Part 217**
- **Health Resource Priorities and Allocation System-HHS (HRPAS) - 45 CFR Part 101**
- **Transportation Priorities and Allocation System-DOT (TPAS) – 49 CFR Part 33**
- **Defense Priorities and Allocation System-DOC (DPAS) – 15 CFR Part 700**



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E.O. 13603

Federal Priorities and Allocation System (FPAS)

6 Authorized agencies may redelegate to other agencies – materials, services and facilities deemed necessary by

- **DoD & related to military production, construction & use**
- **DOE & related to energy production, distribution, & use**
- **DHS & related to other national defense – civilian defense, continuity of government**



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Why It's Important

- **Work flow**
- **Profit Margins**
- **Subcontracts**



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DPAS Regulations

15 CFR 700

- **Administered by DoC's Bureau of Industry and Security**
- **Schedule I – Delegate agencies & their programs**
 - **Department of Defense**
 - **Department of Energy**
 - **Department of Commerce**
 - **Department of Homeland Security**
 - **General Services Administration**
- **Priority Ratings**



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How The Priority Ratings Work

Two Parts To A Priority Rating

- **Rating Symbol**
- **Program Identification**



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How The Priority Ratings Work

Two Rating Symbols

- **DX**
- **DO**

Priority Levels

- **DX Orders = DX Orders**
- **DX Orders > DO Orders**
- **DO Orders = DO Orders**
- **DO Orders > Unrated Orders**



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How The Priority Ratings Work

Program Identification – Schedule I

Program identification symbol	Approved program	Agency(ies)
A1	Aircraft	Department of Defense.
A2	Missiles	Department of Defense.
A3	Ships	Department of Defense.
A4	Tank - Automotive	Department of Defense.
A5	Weapons	Department of Defense.
A6	Ammunition	Department of Defense.
A7	Electronic and communications equipment	Department of Defense.

Example – radar equipment: DX-A7 or DO-A7



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4 Requirements For All Rated Orders

- **Priority symbol & program identification**
- **Required delivery date**
- **Written signature or digital signature or name**
- **Statement(s) – *“This is a rated order certified for national defense use and you are required to follow all provisions of the Defense Priorities and Allocations System regulations.”***
- **Emergency preparedness – *“This is a rated order for the purpose or emergency preparedness. It must be accepted or rejected within [time limit].”***



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Acceptance and Rejection of Rated Orders

Mandatory Acceptance

- **Must accept any rated order not subject to optional or mandatory rejection – even if already have unrated orders**
- **Cannot discriminate against rated orders**



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Acceptance and Rejection of Rated Orders

Optional Rejection

- **Ordering entity won't meet regular terms**
- **Item/service not supplied by contractor**
- **Item used but not sold in last 2 years – but if sold must accept order up to amount sold**
- **Ordering entity makes item/performs service**
- **Would violate Dept. of Commerce rule**



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Acceptance and Rejection of Rated Orders

Mandatory Rejection

- **Unable to fill order by delivery date**
- **DO Order – will interfere with DO/DX Order**
- **DX Order – will interfere with DX Order**
- **Equally rated orders received on same date – accept fillable orders based on delivery date, reject others**

If any of these apply – must offer to accept earliest delivery date possible



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Acceptance and Rejection of Rated Orders

Deadlines For Notifying Customer In Writing

- **DO Order – within 15 working days**
- **DX Order – within 10 working days**
- **Emergency preparedness – within time specified in order - but**
 - **If existing hazard – should have at least 6 hours**
 - **If imminent hazard – should have at least 12 hours**

****All rejections must state the reasons for the rejection**



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Placing Rated Orders

Contractors that receive rated orders

- **MUST place rated orders with suppliers for items needed to fill the rated order**

Absent an exception, priority ratings must be the same along the supply chain

Contractors can only place priority ratings if they

- **Receive a rated order; or**
- **Are authorized by DoC or Delegate Agency; or**
- **Are otherwise permitted by DPAS regulations**



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Preferential Scheduling

Contractors that receive rated orders

- **MUST schedule operations – including acquisition of items needed – to satisfy on time**

When necessary, rated orders must be given preference in order of their priority and over unrated orders

- **Even if this requires diversion of items processed or ready to be delivered against unrated orders**



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Special Priorities Assistance

Criteria for request – must be

- **Timely**
- **For an item urgently needed**
- **Made after reasonable effort to solve problem**

Examples

- **Difficulty getting timely delivery**
- **Cannot find supplier**
- **Resolve production/delivery order conflicts**



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Legal Issues

Liability Protection

- **Contractor will not be liable for act or failure to act because of compliance with DPAS**

Willful violation of DPA or DPAS

- **Is a crime – fine, imprisonment or both**



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Questions?

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