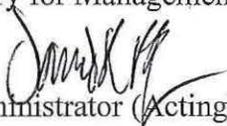




FEMA

JAN 29 2016

MEMORANDUM FOR: Commissioner, U.S. Customs and Border Protection
Assistant Secretary, U.S. Immigration and Customs
Enforcement
Administrator, Transportation Security Administration
Director, U.S. Secret Service
Director, Federal Law Enforcement Training Center
Under Secretary for Management

FROM: David Bibo 
Associate Administrator (Acting)
Office of Policy and Program Analysis (OPPA)
Federal Emergency Management Agency (FEMA)

SUBJECT: Delegation of Defense Production Act (DPA) Authority

In coordination with the DHS Chief Procurement Officer, the FEMA Administrator issued a Delegation of Defense Production Act (DPA) Authority to your Component on January 4, 2016.

This Presidential authority provides the government with quicker and easier access to private sector resource by giving the government preferential treatment over other existing commitments, and provides breach of contract protection in the event a contractor needs to shift production and/or delivery schedules to meet the government's requirements. By placing the government first in line for critical goods and services, resource shortfalls can be better adjudicated to meet the most pressing national defense concerns. In the context of the DPA, national defense is defined as, but not limited to, emergency preparedness, response and recovery activities; homeland security, law enforcement, and counter terrorism activities; and critical infrastructure protection and restoration activities.

The enclosed package provides implementing guidance and materials on the use of the authority within your Component, and is intended to help facilitate the sub-delegation of this authority to appropriate subordinates with oversight of national defense programs. My office had been designated to manage DPA oversight for DHS. We ask that you appoint a staff level POC (GS14/15) to serve as a DPA liaison (aka DHS Component FPAS Officer) to our office. Please provide your POC information to Mark Fleming at mark.fleming@fema.dhs.gov or by phone at 202-870-7484.

If you have any questions or need additional information, please feel free to contact Mark, or me directly at (202) 212-4771 or david.bibo@fema.dhs.gov.

Implementing Guidance for Delegation of Authority Under Defense Priorities and Allocations System (DPAS) Delegation 4

1. Background: At the request of the DHS Chief Procurement Officer, the FEMA Administrator issued a Defense Priorities and Allocations System (DPAS) Delegation of Authority to your Component (Attachment 1). This delegation of authority enables your Component to place priority ratings on contracts and orders in support of DHS Approved Programs (Attachment 2). This document serves to provide guidance, procedures, and reference material for implementing the DPAS authority within your Component.

2. DPAS Authority and Procedures: In DPAS Delegation 4 (Attachment 3), the Department of Commerce has delegated to the Secretary of Homeland Security authority to place DPAS rated orders for industrial resources¹. The Secretary's DPAS authority, including re-delegation of this authority to the heads of other DHS Components, has been delegated to the Administrator of FEMA. Standards and procedures for use of this authority are provided in the DPAS regulations [15 CFR Part 700] and DPAS Delegation 4, as well as in this guidance document. DHS personnel involved in use of the priorities authority are responsible for understanding DPAS standards and procedures.

3. Use of the DPAS Delegation 4 Authority: DPAS priority ratings are used to ensure on-time performance of contracts and orders in support of DHS Approved Programs. A DPAS priority rating should be viewed as a form of insurance that comes into play when preferential treatment by a contractor is required to meet contracted delivery dates. Like insurance, it can be used to mitigate potential risks to contract performance. Use of the priorities authority should be treated, primarily, as a preparedness measure and should not be reserved exclusively for responding to identified supply problems or for compelling acceptance of a contract.

4. Limitations on Use of DPAS Delegation 4 Authority: This authority may only be used in support of DHS Approved Programs. This authority may not be used to support acquisition of the following:

- Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;
- All forms of energy;
- Health resources;
- All forms of civil transportation;
- Water resources; and
- Any items to be used primarily for administrative purposes, such as for personnel or financial management.

¹ Industrial resources means all materials, services and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 13603.

Common Use Items – Except for procurement supporting emergency preparedness, response, and recovery activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. § 5195 et seq.], rated orders may not be used to support procurement of any item that: (1) is commonly available in commercial markets for general consumption; and (2) does not require major modification when purchased for Approved Program use, unless it is determined that the item cannot be procured in sufficient quantity without using a rated order to avoid a delay in meeting program requirements. Prior to placing a rated order for a common use item, the contracting officer should document in the contract file efforts to determine that the item is not available in sufficient quantity from various providers to meet the government’s delivery requirements.

5. Federal Priorities and Allocations System: DPAS is the primary component of the Federal Priorities and Allocations System (FPAS). FPAS is composed of the priorities and allocations regulations issued by the Federal departments that are delegated DPA priorities and allocations authority by the President in E.O. 13603 (referred to as “Resource Departments”).² DPAS priority ratings may not be used to support procurement of resources that fall outside DPAS jurisdiction. However, authority can be requested from the other Resource Departments, as needed to support DHS requirements. Such requests must be prepared and signed by a DHS Component FPAS Officer and forwarded to the DHS FPAS Coordinator (within FEMA OPPA).

6. DHS FPAS Coordinator: A member in the DPA Program Division staff within FEMA OPPA has been designated to serve as the DHS FPAS Coordinator. The duties of the DHS FPAS Coordinator include:

- Serving as the intermediary between DHS and other Federal departments and agencies with respect to FPAS activities and issues;
- Providing guidance and procedures for execution of the DPA Title I priorities authority and functions that have been delegated to the DHS Secretary;
- Developing FPAS training material for DHS personnel involved in FPAS activities;
- Reviewing, validating, and submitting requests for FPAS priority rating authority to appropriate Resource Departments;
- Attempting to resolve FPAS issues and requests for Special Priorities Assistance (SPA) that cannot be resolved by the DHS Lead FPAS Officer, and validating and forwarding unresolved SPA requests to the appropriate Resource Department;
- Notifying Resource Departments of any alleged violations of the priorities provisions of FPAS regulations;
- Supporting efforts to coordinate with and identify for Resource Departments which program requirements to prioritize on the basis of operational urgency, in accordance with Section 201(c) of E.O. 13603; and
- Preparing and submitting FPAS reports to Resource Departments, as required by documents authorizing DHS use of the DPA priorities authority.

² The priorities and allocations authority is delegated by the President to the following agency heads: (1) the Secretary of Agriculture with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer; (2) the Secretary of Energy with respect to all forms of energy; (3) the Secretary of Health and Human Services with respect to health resources; (4) the Secretary of Transportation with respect to all forms of civil transportation; (5) the Secretary of Defense with respect to water resources; and (6) the Secretary of Commerce with respect to all other materials, services, and facilities, including construction materials.

7. DHS Lead FPAS Officer: A member in the DPA Program Division staff within FEMA OPPA has been designated to serve as the DHS Lead FPAS Officer. The duties of the DHS Lead FPAS Officer include:

- Providing oversight for DHS use of rated orders in support of DHS Approved Programs;
- Ensuring that DHS personnel involved in placing and managing rated orders are properly trained and capable of performing required actions;
- Notifying the DHS FPAS Coordinator of any alleged violations of FPAS regulations;
- Attempting to resolve any conflicts among DHS Components involving use of priority ratings;
- Assisting DHS Component FPAS Officers in developing and submitting requests for priority rating authority to the DHS FPAS Coordinator;
- Attempting to resolve requests for SPA that cannot be resolved at the DHS Component level;
- Validating and forwarding unresolved requests for SPA to the DHS FPAS Coordinator; and
- Preparing and submitting quarterly priority rating usage reports to the DHS FPAS Coordinator.

8. Re-delegation of DPAS Delegation 4 Authority within DHS Components: The delegation of DPAS Delegation 4 authority from the FEMA Administrator to the heads of DHS Components authorizes re-delegation in writing to appropriate subordinates. To support effective coordination of the use of this authority, it is recommended that, at a minimum, each DHS Component Head re-delegate to the Component's Head of Contracting Activity the authority to direct placement of DPAS rated orders. Notification of re-delegation must be provided in writing to the FEMA Associate Administrator for OPPA.

9. Designation of DHS Component FPAS Officers: Heads of DHS Components, who have been delegated authority by the FEMA Administrator to place DPAS priority ratings on contracts or orders in support of DHS Approved Programs, shall designate at least one subordinate to serve as a DHS Component FPAS Officer for the organization and shall notify the DHS FPAS Coordinator regarding the designee's name and contact information. It is anticipated that DHS Component FPAS Officer functions will be handled as collateral duties. The duties of DHS Component FPAS Officers include:

- Completing on-line training courses offered by FEMA's Emergency Management Institute to become technically proficient regarding the use of the priorities authority;
- Ensuring that DHS Component personnel involved in placing priority ratings are properly trained and capable of performing required actions;
- Assisting program officials, contracting officers, and recipients of rated orders to understand and appropriately use the priorities authority;
- Supporting program officials and contracting officers in resolving issues involving use of the priorities authority;

- Assisting program officials, contracting officers, and recipients of rated orders in preparing requests for SPA, when issues involving use of the priorities authority cannot be resolved, and signing and forwarding such requests to the DHS Lead FPAS Officer;
- Assisting program officials in developing and submitting requests for priority rating authority not covered under DPAS, as needed;
- Assisting private sector owners or operators of critical infrastructure in developing and submitting requests for priority rating authority to support DHS Approved Programs, as needed and appropriate;
- Documenting the organization's use of the priorities authority and forwarding such documentation to the DHS Lead FPAS Officer; and
- Notifying the DHS Lead FPAS Officer of any alleged violations of the priorities provisions of FPAS regulations.

10. Reporting Requirement: Each DHS Component FPAS Officer shall complete and submit to the DHS Lead FPAS Officer a quarterly status report that identifies new contracts and orders issued by the Component that have been rated during the quarterly reporting period pursuant to the delegation of authority from the FEMA Administrator (a template for this report is provided as Attachment 4).

11. Questions: The DHS FPAS Coordinator in FEMA OPPA is available to answer questions regarding this document or the use of priority ratings. The DHS FPAS Coordinator can be reached at: (202) 212-2397 and FEMA-OPPA-DPA@fema.dhs.gov.

Attachments: (1) Delegation of Authority: Defense Priorities and Allocations System
(2) DHS Approved Programs
(3) Defense Priorities and Allocations System Delegation 4
(4) Quarterly Status Report on Use of Priority Rating Authority - Template