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## Contract Review Tips For Auditors and Organizations

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### What Do You Know About DPAS?

- Defense Priority & Allocations System regulation implements the priorities and allocations authority of the Defense Production Act
- The DPA's definition of "national defense" includes programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity

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### DPAS Pop Quiz

An organization, which makes only *one specific product*— at a rate of 1 per month, has taken on a DPAS rated order. On January 1<sup>st</sup> they contracted to make 5 units with a delivery date of 5/30 on a DPAS rated order: DXC9. On February 1<sup>st</sup> they are solicited, by a different customer, to contract for 4 units with a delivery date of 5/30 on a DPAS rated order: DXA7.

What should be their course of action?

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 **DPAS Pop Quiz Response**

Given the known information, the options are actually rather limited.

What this organization should do when faced with the stated scenario is to quote the best possible delivery date for the second solicitation. *The first DX order takes priority and will not be rescheduled for another. Contrary to a common misconception, the program identifiers (C9 and A1), noted in the pop quiz on the previous slide, do not set priorities for rated orders.*

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 **Priority Ratings**

- DPAS rules are a standard part of the U.S. defense contracting process:
  - (DX) Highest national defense urgency
    - All DX rated orders have equal priority and take preference over DO and unrated orders (based on ship schedule)
  - (DO) Critical to national defense
    - All DO rated orders have equal priority and take preference over unrated orders (based on ship schedule)
- Program ID represents an approved program and delegated DPAS agency. Examples: A1, G2, N7 – Program ID does not, by itself, indicate any priority

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 **DPAS Key Elements**

- Preferential Scheduling**
  - A company in receipt of a rated order must schedule operations, including the acquisition of all needed production items, in order to satisfy the delivery requirements of each rated order.
  - Companies are required to reschedule unrated orders if they conflict with performance against a rated order and must reschedule "DO" rated orders if they conflict with performance against a "DX" rated order.

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 **Contractor Responsibilities**

- Contractors receiving DPAS rated orders must comply with the following:
  - Must give rated orders preferential treatment over unrated orders
  - All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date
  - Flow DPAS requirements to all sub-tier suppliers within the supply chain
  - Must be thoroughly familiar with the DPAS regulation and must comply
  - All rated orders shall be accepted and must be filled regardless of any other rated or unrated orders that have been accepted

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 **Most Frequent Findings by DCMA**

- Typical Corrective Action Issues
  - Lack of flow-down to the subcontractors
  - Contractor's internal processes or systems do not identify rated versus non-rated orders
  - Commercial (non-rated) orders prioritized over DPAS rated orders
  - DO rated orders prioritized over DX rated orders
  - Contractor fails to inform the buying activity in advance of rated orders being shipped late
  - Late deliveries of DPAS rated orders

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 **A Few More Interesting Points In Regard to DPAS Rated Orders**

*The following few slides are directed more toward the organizations sitting in on this presentation but, auditors can also get something from them.*

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 **DPAS Key Elements**

- **Acceptance of Rated Orders:**
  - **Mandatory Acceptance** – A person shall accept every rated order received and must fill such orders regardless of any other rated or unrated order that may have been accepted.
  - A person shall not discriminate against rated orders in any manner, such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

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 **DPAS Key Elements**

**Rejection of Rated Orders:**

- **Mandatory Rejection** – A person may not accept a rated order for delivery on a specific date if unable to meet that date.
- However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date.
- The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order.
- A person shall not accept a DO rated order for a delivery date which would interfere with delivery of any previously accepted DO or DX rated orders. Person must offer to accept the order based on earliest delivery date otherwise possible.

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 **DPAS Key Elements**

- **Rejection of Rated Orders (cont):**
  - A person shall not accept a DX rated order for delivery on a date which would interfere with the delivery of previously accepted DX rated order but must offer to accept the order based on earliest delivery due date otherwise possible.
  - If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled and reject the other orders.

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 **DPAS Key Elements**

- **Use of Rated Orders**
  - A rated order must be used to obtain the following:
    - Items which will be physically incorporated into other items to fill rated orders
    - Containers or other packaging materials required to make delivery of the finished items against the rated orders
    - Services other than contracts of employment, needed to fill rated orders
    - Maintenance & repair & operating supplies (MRO) needed to produce the finished items to fill rated orders

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 **Customer QA Clauses and SOW**

- Customer QA clauses should be flowed down both internally and to suppliers - *as applicable*.
  - Not every requirement applies to all situations
    - EX: Raw material certifications would not be a required flow down to a supplier who is performing NDT only
- SOWs (Statements of Work), when included as part of the contract, should be reviewed by the audit team for specific flow down requirements, in particular, key characteristics and special processes.

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 **Customer Requirements That May Confuse**

It is incumbent upon the organization to clarify (and subsequently resolve) any customer requirements that may seem confusing or unclear...*prior* to their commitment to supply product.

*Get It In Writing!*

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## Help With DPAS

- A couple of documents/links that might help:
  - 15 CFR Subchapter A
  - <http://guidebook.dema.mil/38/DPAS%20Guidebook.htm>

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## Wrap Up

- Remember:
  - If you deal in defense product, familiarize yourself with DPAS rated orders.
  - Customer requirements flowed contractually are binding...educate yourselves in their nomenclature.

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## Thank You for Attending

*I will try to answer some of the questions you may have. If for some reason we can't get to them, please feel free to email me at: [mmcrandall@pjr.com](mailto:mmcrandall@pjr.com) and I will get back to you as soon as possible.*

*Thank You*

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