



Contractors Supporting National Defense

The Defense Production Act (DPA), enacted in wartime 1950, gives the President the ability to direct private industry in order to meet the needs of a national public crisis. When the President invokes the powers of the DPA, he authorizes the federal government to use emergency acquisition powers to procure goods and services needed for the “national defense.” One such power allows for the application of priority ratings on government contracts and orders.

Though limited exceptions exist, the government can *require* a contractor to accept contracts, if deemed a necessary material or service for the national defense. Upon receiving a priority rated order, the contractor must accept and provide preferential delivery/performance of the order to meet the specified delivery date. Contractors must give their subcontractors and suppliers notice of the priority rating, as they will have the same obligations under the priority order.

While the term “national defense” originally intended wartime activities, it recently became understood to include public health crises like the COVID-19 pandemic. Over the past year, the DPA was invoked in various executive orders that prioritize contracts for the manufacture and procurement of medical supplies. The act also allows for regulating the allocation of such supplies.

President Biden has stated his intention to continue utilizing the DPA to expand the manufacture and distribution of the COVID-19 vaccine. Given the likely increase in priority-rated contracts during the Biden Administration, those who deal in government contracting would do well to keep a few things in mind:

- Subject to a few narrow exceptions, you *must* accept a priority rated contract;
- Once you are notified of priority status and accept the contract, notify your subcontractors and suppliers as soon as possible of their obligations;
- You cannot charge higher prices or impose terms and conditions different than you would for a comparable non-priority contract;
- If complying with the DPA and prioritizing the rated contract causes you to breach another, non-rated contract, the DPA may protect you from liability to that third-party;
- Failure to comply with the DPA requirements for a priority-rated contract can result in fines or even jail time.

A contract subject to a DPA priority rating brings a new set of challenges. When businesses succeed at these challenges, however, you have the unique opportunity to promote your business and support the defense and health of the country. If you have questions concerning your rights or obligations under a priority-rated contract, Andrews Myers is happy to assist.

For more information, please contact [Lauren Scroggs](#).