

Title 15: Commerce and Foreign Trade
PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

Subpart H—Special Priorities Assistance

§ 700.50 General provisions.

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from time-to-time problems will occur. In this event, a person should immediately contact the appropriate contract administration officer for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form BIS–999 (OMB control number 0694–0057) to the local contract administration representative. Form BIS–999 may be obtained from the Delegate Agency representative or from the Department of Commerce. A sample Form BIS–999 is attached at Appendix I.

[49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.51 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

- (1) Production or construction equipment;
- (2) Computers when not used as production items; and
- (3) Expansion, rebuilding or replacing plant facilities.

(b) Rating authority for production or construction equipment. (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (e.g., Department of Defense Form DD 691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) Rating authority in advance of a rated prime contract. (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate

Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The political sensitivity of the project; and

(vi) The time period for which the rating is being requested.

(4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, i.e., the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

- (a) There is an urgent need for the item; and
- (b) The applicant has made a reasonable effort to resolve the problem.

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance may not be provided include situations when a person is attempting to:

- (a) Secure a price advantage;
- (b) Obtain delivery prior to the time required to fill a rated order;
- (c) Gain competitive advantage;
- (d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or
- (e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.55 Assistance programs with Canada and other nations.

(a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada, Italy, The Netherlands, Sweden, and the United Kingdom in support of approved programs.

(b) Canada. (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the U.S.-Canadian Statement of Principles for Economic Cooperation (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this regulation.

(3) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, the supplier or vendor should contact the Canadian

Public Works and Government Services Canada, for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, Phase 3, Place du Portage, Level 0A1, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; telephone: (819) 956-6825; Fax: (819) 956-7827.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, in accordance with its procedures.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, for such assistance. Public Works and Government Services Canada will forward appropriate requests to the U.S. Department of Commerce.

(6) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to Commerce on Form BIS-999. Commerce will forward appropriate requests to the Canadian Public Works and Government Services Canada.

(c) Foreign nations. (1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should submit a request for such assistance or rating authority to the Office of the Deputy Under Secretary of Defense (Industrial Policy): Office of the Deputy Under Secretary of Defense (Industrial Policy), 3330 Defense Pentagon, Washington, DC 20301; telephone: (703) 697-0051; Fax: (703) 695-4277.

(i) If the end product is being acquired by a U.S. government agency, the request should be submitted to the Office of the Deputy Under Secretary of Defense (Industrial Policy) through the U.S. contract administration representative.

(ii) If the end product is being acquired by a foreign nation, the request must be sponsored prior to its submission to the Office of the Deputy Under Secretary of Defense (Industrial Policy) by the government of the foreign nation that will use the end product.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

(d) Requesting assistance in Italy, The Netherlands, Sweden, and the United Kingdom. (1) The U.S. Department of Defense has entered into bilateral security of supply arrangements with Italy, The Netherlands, Sweden, and the United Kingdom that allow the U.S. Department of Defense to request the priority delivery for U.S. Department of Defense contracts, subcontracts, and orders from companies in these countries.

(2) Any person in the United States requiring assistance in obtaining the priority delivery of a contract, subcontract, or order in Italy, The Netherlands, Sweden, or the United Kingdom to support an approved program should contact the Office of the Deputy Under Secretary of Defense (Industrial Policy) for assistance. Persons in Italy, The Netherlands, Sweden, and the United Kingdom should request assistance in accordance with §700.55(c)(1).

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