



Agriculture Priorities and Allocation System (APAS)

OVERVIEW

The Agriculture Priorities and Allocation System (APAS) is a U.S. Department of Agriculture (USDA) program that supports national defense and emergency preparedness initiatives by addressing essential civilian needs (food and food resources) through the placement of **priorities** or **allocations** on contracts for items and services. The ability to prioritize or allocate items/services is triggered by a determination by the President or other authority that this action is necessary and essential to promote national defense.

Under the Defense Production Act of 1950 (DPA), the term “national defense” includes emergency preparedness, response and critical infrastructure and key resources protection.

Authority for priorities and allocations of contracts is found in the DPA and further defined in Executive Order 13603. DPA is the key source of Presidential authorities to expedite supply and expand productive capacity of materials and services needed to promote the national defense.

APAS PROCESS

Government agencies or private industries that want to place a contract for items/services for national defense can request authorization from USDA to put a priority rating on that contract. This enables the contractor (department or person requesting the priority rating) to meet the requirements of maintaining or restoring national defense operations.

A contractor must submit form AD-2102, Request for Special Priorities Assistance, to request priority authorization. A written justification for the need to use this program must be included with the AD-2102. APAS is used only when the items/services that are needed cannot be obtained in a timely manner through normal market channels.

RESPONSIBILITIES

USDA APAS responsibilities have been delegated to the Farm Service Agency (FSA). The Emergency Preparedness Division (EPD) implements the APAS program for FSA.

FSA’s Deputy Administrator for Management is responsible for the initial determination of placing a priority rating on a contract. The FSA Administrator is responsible for resolving conflicts and hearing appeals on priority ratings.

SCOPE

APAS covers only those government and public agencies that have responsibilities under:

- National defense;
- Emergency preparedness and;
- Response and recovery responsibilities.

Participants eligible to request assistance through this program are strictly limited. Only a few vendors are able to produce or deliver the large quantities of agriculture-related items that will be requested through this program.

Governments that cannot obtain critical resources during or in anticipation of an emergency will be severely limited in mitigating the effects of the hazard on their civilian populations.

EXAMPLE

During the aftermath of Hurricane Katrina, damaged tracks prevented trains from delivering commodities in and around the New Orleans area. A federal department placed a priority rated order with Company X for railroad construction materials to repair track damage. Because this was a rated order, Company X was required to fill the federal department’s order first, before any other orders, unless Company X had a legal reason to reject the rated order.

The rated order allowed the vendor responsible for repairing the railroad track to complete repairs in the fastest time possible. Faster track repair allowed response organizations to quickly receive items in bulk quantities needed to support the mass care and housing of those displaced by the hurricane.

PRIORITIES

Under APAS, certain contracts between the government and private parties, or contracts between private parties, would be given priority over other contracts to ensure timely delivery of items/services needed to support the national defense. Contracts for these items may already be in place but may need to be amended, or new contracts may be awarded that require immediate action as a means to support national defense requirements.

A contract on which a priority rating has been placed is called a “rated order.” Rated orders require a supplier to fill the order before all other unrated orders. The DPA provides liability protection to suppliers if they breach other unrated contracts in order to fill rated orders.

ALLOCATIONS

Allocation authority will only be used when there is an insufficient supply of an item/service to satisfy national defense supply requirements through the use of priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the retail market place.

Allocation orders would be distributed equitably among the suppliers of the resource(s) being allocated and would not require any person to relinquish a disproportionate share of the civilian market.

Under no circumstances would allocations be used to ration materials or services at the retail level.

APAS PROGRAM AREAS APPROVED FOR USE BY USDA

USDA has two pre-approved programs that have been authorized by the Secretary of Homeland Security for priorities and allocations support under section 202(c) of Executive Order 13603.

Items/services that may receive a priority rating from USDA must fall under either of the following two programs to be eligible to receive a rated order from USDA.

- Food and food resources (civilian): Programs involving food and food resources processing and storage in support of emergency preparedness activities conducted pursuant to Title VI of the Stafford Act.
- Agriculture and food critical infrastructure protection and restoration: Programs to protect or restore the agriculture and food system from terrorist attacks, major disasters and other emergencies.

USDA also has a program that was approved by the Secretary of Defense for military food rations.

For other items under the jurisdiction of USDA, but not covered under USDA’s approved programs, USDA will request concurrence from the Secretary of Homeland Security before placing a rated order for these items/services.

ACCEPTANCE AND REJECTION OF A RATED ORDER

A vendor:

- Must accept a rated order and follow provisions contained in the priority-rated contract if the vendor normally supplies the materials or services covered by the order;
- May use the priority rating on the primary contract to place a priority rating on subcontracts in support of the prime contract;
- Must also accept a rated order if they can fulfill the obligations of the contract, but not within the required timeframe for delivery, if all parties involved can accept the delay;
- May reject a rated order for a delivery on a

specific date if they cannot fill it by that date or if they are unable to fill it because they are in receipt of higher-rated or conflicting rated orders;

- Will not discriminate against rated orders in any manner such as charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

If a vendor is unable to accept the rated order, they must immediately notify USDA's Farm Service Agency, Emergency Preparedness Division at FSA. EPD@wdc.usda.gov or 202-720-0135 and the order requester.

A person who was in receipt of a rated order and did not comply with the provisions of the contract is considered to have willfully violated the DPA Act and subject to fine or imprisonment or both per § 789.54.

JURISDICTION

Title I of the DPA and Executive Order 13603 authorized USDA to have jurisdiction for items that fall under the categories of:

- Food resources (including potable water packaged in commercially marketable containers);
- Food resource facilities;
- Livestock resources;
- Veterinary resources;
- Plant health resources and;
- Domestic distribution of farm equipment and commercial fertilizer.

Any vendor or other individual requiring items/services that do not fall under the jurisdiction of USDA should request assistance from DOD or DOC.

APPEALS

Appeal rights to USDA's Farm Service Agency Administrator are available to vendors who do not comply with the provisions of a rated order due to acceptable hardships or if that vendor believes that the order is contrary to the intent of the DPA or other statutes.

FOR MORE INFORMATION

For additional information on the APAS program, contact the Emergency Preparedness Division FSA.EPD@wdc.usda.gov or 202-720-0135.

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