

DPAS: Special Priorities Assistance

Privity Of Contract Issue

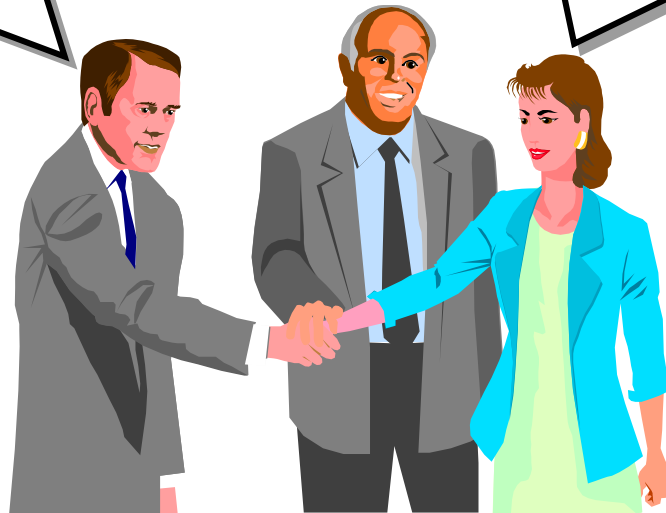


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Special Priorities Assistance (SPA): Scenario

Hello Ms. Subcontractor. I'm a DPASO working a case involving the need for urgent delivery of Sub-Assembly X

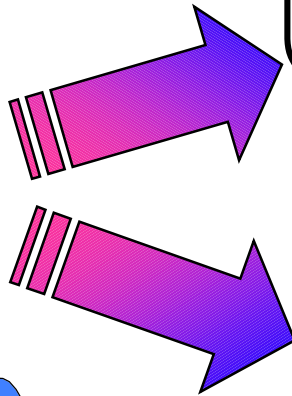
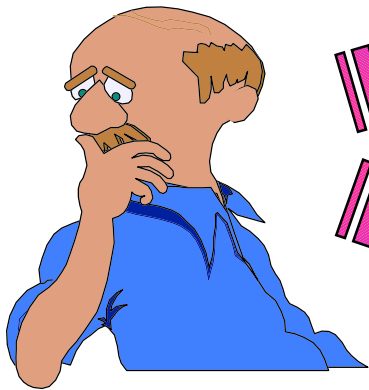
Yes. We've been discussing the problem with our Prime Contractor. I don't really understand...What is your role?



SPA Scenario

How Would You Respond?

?



- Prove you have **Privity of Contract**, and therefore have a right to help with the case

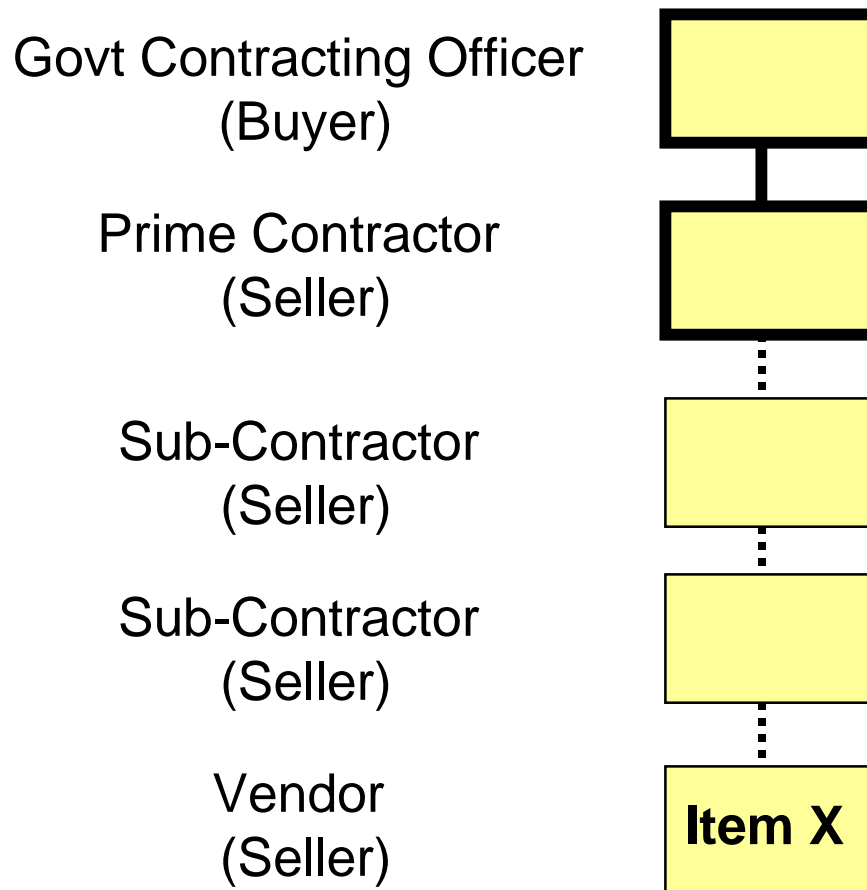
or...

- Provide evidence that demonstrates you have a legitimate role in the process

Special Priorities Assistance: Privity Of Contract Issue

- **Privity:** A relationship between parties that is held to be sufficiently close and direct to support a legal claim on behalf of or against another person with whom the relation exist.
- **Privity:** A successive or mutual interest in or relationship to the same property.

Who Has “Privity Of Contract”?

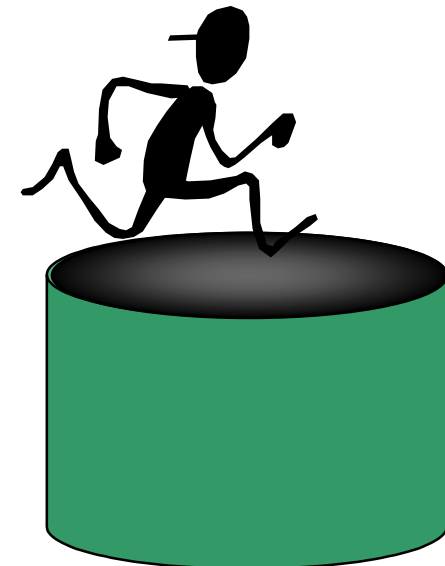


Typically:
A relationship between the principal Buyer and Seller...
In this case, the Govt Buyer and the Prime Contractor are “privity” to the contract.

“Privity Of Contract”: Proving Your Role

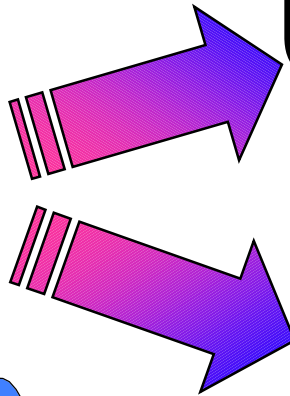
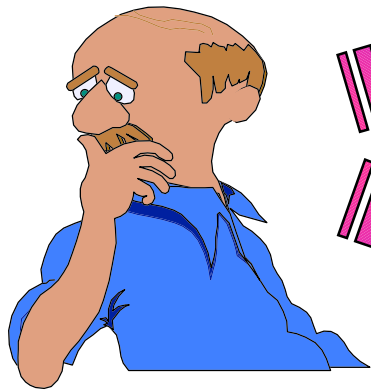


Once the “Bar-Room” lawyer approach is used...it often digs a deeper hole.



SPA Scenario: How Would You Respond?

?



- Prove you have **Privity of Contract**, and therefore have a right to help with the case

or...

- Provide evidence, to a reasonable person, that demonstrates you have a legitimate role in the process

Role And Process:

Explanation To A “Reasonable Person”

- 1st:** Ensure an understanding of DPAS’ Flow-Down Requirements
- 2nd:** Ensure the Sub/Vendor understands compliance provisions of DPAS
- 3rd:** Expand your description of the **relationships...** under Special Priorities Assistance

DPAS Flow-Down Requirements

The Administrative Law Is Made Contract Law

- 15 CFR 700.15 requires -
 - » **“(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce.”**
 - » **“(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.”**

DPAS Compliance Provisions

The Administrative Law Is Made Contract Law

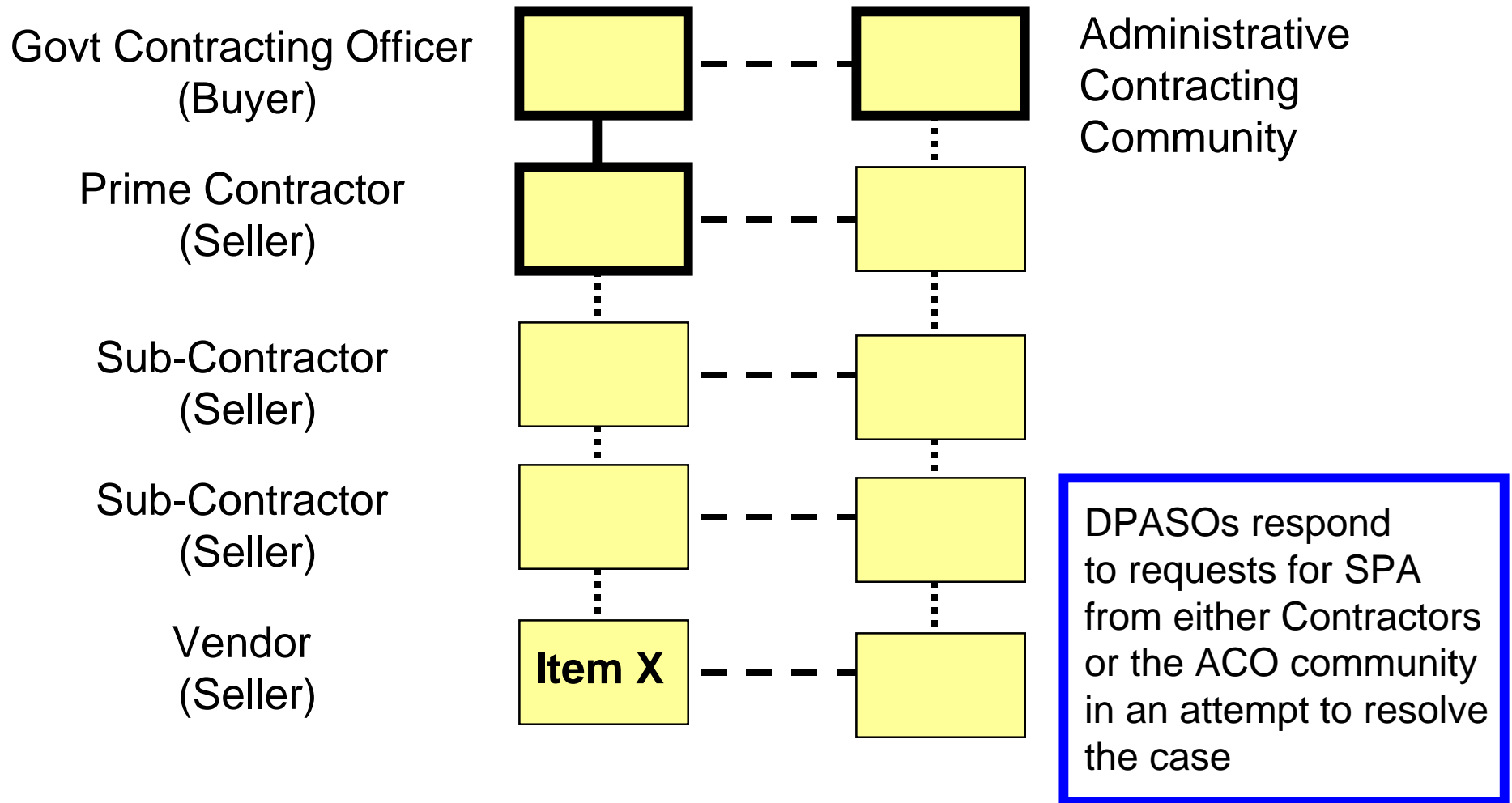
- Thus, the following clause goes into each order down all levels of the procurement chain:
 - » *"This is a rated order certified for national defense use, and you are required to follow all provisions of the Defense Priorities and Allocations System regulation (15 CFR 700)."*
- This means that all buyers and sellers at all levels must comply with 15 CFR 700.70

Special Priorities Assistance

- 15 CFR 700.50(a) reads, in part, as follows:
 - » *"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.**"*

Contractual Relationships

- Where The DPASO Fits -



The Special Priorities Assistance Team

- All persons (*buyers and sellers*) with rated orders have DOD contract administration officers who have cognizance over their rated orders
- These contract administration officers are ACOs (*Administrative Contracting Officers*) working in the Defense Contract Management Agency assigned to each buyer's place of business -- and each seller's place of business

The Special Priorities Assistance Team

- The ACO or DPAS Officer may contact the seller and attempt to resolve the production conflict/problem
- DPASO assistance can be very beneficial, but the role doesn't have to be dictated
- Attempt to foster a Team approach... not an adversarial one
- The DPAS Regulation requires both the...
 - » SPA applicants, and
 - » Delegate agenciesto make a reasonable effort to resolve the problem

Special Priorities Assistance (SPA) Scenario

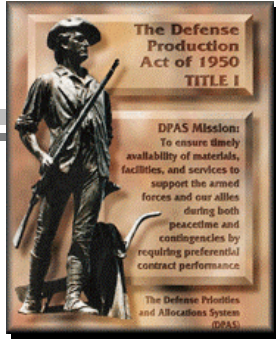


Every SPA is Unique.
Understanding the DPAS Officers
Roles and Responsibilities is
Key for Success.

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM (DPAS)

DPAS Officers (Air Force)

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