



July 9, 2015

Lt Col Michael W. Erhardt  
SDDC Headquarters  
#1 Soldier Way  
Scott AFB, IL 62225

Lt Col Erhardt,

On June 5, 2015 the International Association of Movers (IAM) sent a communication to MG Susan A. Davidson, SDDC Commanding General, expressing our concerns with the Intrastate Requalification process that SDDC had recently initiated. We did not receive a response from MG Davidson but believe that the memorandum was pushed to the SDDC Personal Property Directorate to address. For that reason I am now following up with you directly regarding our continuing concerns.

We appreciate that SDDC has twice delayed the data submission timeline and that it has streamlined some of the data requirements but our underlying concerns remain exactly the same. IAM still contends that SDDC has overstepped its authority in calling for this requalification.

As stated in our original communication, "Transportation Service Providers are unsure as to what SDDC's end goal is for this process. Is it just to reduce the number of TSPs in a given state?" Just as concerning is the fact that SDDC has not clearly articulated the selection criteria by which TSPs will be evaluated in this process.

In your latest communication (SDDC-PP Advisory 15-0115) regarding the Intrastate Requalification you refer to the process as a "data call", however, in that same message show a Requalification schedule which includes:

*"1 Sep -30 Sep SDDC will send acceptance/rejection email to TSPs"*

We find it incongruous for this process to be referred to as only a "data call" while at the same time the data will somehow, not currently articulated by SDDC, be used to possibly "reject" TSPs from the DP3 Intrastate program.

So many other questions also remain unanswered. It is even difficult to provide comments on the process without knowing what SDDC's selection criteria will be, why it feels the need to do this requalification and what your intended end goals are.

- Will this be an annual process?
- Once “accepted” via this process will TSPs have to requalify every year?
- Will a “rejected” TSP ever be able to get back into the Intrastate program if they at some point are able to meet these unknown evaluation criteria?
- Is this just the precursor to the same type of requalification process in the other DP3 Markets?
- Will it be a requirement of the program for a TSP to have trucks to participate in the dHHG market, which runs directly counter to the current program specifically allowing freight forwarders full rights of participation?

In the rest of this communication IAM hopes to lay the foundation for our belief that SDDC has reached beyond its current purview in conducting this requalification initiative. Our general feeling is that SDDC has “put the cart before the horse” and has laid out a process before the rules allowing for that process have been established.

*The New Intrastate Requalification Requirements Violate DoD Regulations and the Mutually-Binding Terms of SDDC-TSP Contracts*

The unilateral actions being taken by SDDC under the new requalification program not only exceed its authority, but, we believe, also violate the applicable contracting procedures and requirements. The DP3 program is based on two sets of authorities. The first is regulatory: the DoD regulations, Directives and Instructions binding USTRANSCOM and DoD components, Directive 4500.9-R establishing the Defense Transportation Regulations (DTR), DoD Directive 5158.4 specifying USTRANSCOM’s DP3 responsibilities, and DoD Instruction 4500.34 establishing the policies and procedures of the Defense Personal Property Shipment and Storage Program. The second is contractual: the contractual agreements and performance specifications binding both SDDC and TSPs as established in DP3 400NG Domestic Tariff and the bills of lading issued under 49 U.S.C. 13712. Neither of those sources of authority give SDDC the legal right to impose unilaterally new qualification criteria on TSPs involved in the intrastate transportation of household goods.

SDDC’s legal authority to create and enforce TSP qualifications appears in Appendix B to Part IV of the DTR, “Tender of Service,” which sets forth the qualification requirements that DOD is to impose on TSPs. Enclosure 3 to DoD Instruction 4500.34, issued pursuant to the DTR, describes criteria for DoD’s procurement of TSP services and TSP performance requirements. TSP qualification criteria are also listed in the periodically-revised DoD Domestic Personal Property Rate Solicitation (Solicitation) that TSPs review in making their route and rate bids to SDDC. Nothing in the DTR, the DoD Directives, the Instructions or the Solicitation states that intrastate TSPs will ever be required to “requalify,” nor is there any mention of the new warehousing or vehicle ownership requirements included in SDDC PP Advisory 15-0093, SDDC PP Advisory 15-0103 or SDDC PP Advisory 15-0115.

When a TSP is approved as an entrant to DP3, the TSP agrees to and files an electronic Tender of Service (ETOSS) as required by DTR Part IV App. B, and the TSP agrees

to provide service under the 400NG Domestic Tariff. New TSPs may apply to participate in the DP3 during an “Open Season,” on the condition that the TSPs meet the qualifications of the ETOSS and SDDC Pamphlet 55-4. This Pamphlet is a “guidance” document that describes the qualification requirements that TSPs must meet in accordance with the service and performance criteria of DTR Part IV, App. B, and DOD Instruction 4500.34. Again, none of the new Intrastate Requalification requirements appear in the ETOSS, the Domestic Tariff, or the current version of the Pamphlet.

We believe there is case law that has long held that the legally-binding contractual obligations of SDDC and the TSPs include the Solicitation, the ETOSS, 400NG Domestic Tariff and the bill of lading. As a condition of their entrance into the DP3, intrastate TSPs must agree to maintain the ETOSS, Tariff and Pamphlet qualifications. We believe if the new requirements were to be challenged, it would be reasonable to assume that a TSP had accepted and conformed itself to the *then-prevailing* Pamphlet qualifications referenced in the Solicitation and the Domestic Tariff as part of a DP3 contract’s performance and qualification specifications. A TSP would have been on notice of the specific TSP qualification terms described in the Pamphlet, and the TSP would have constructed and bid transportation rates based on the TSP’s understanding of the *then-prevailing* costs and administrative burdens imposed by compliance with the *then-prevailing* Solicitation, the Domestic Tariff and the Pamphlet.

It must be assumed that DoD gave careful thought to the current detailed qualification criteria, which were developed over its many years of experience with the personal property transportation and storage program. Why, then, has SDDC decided mid-cycle to impose these new requirements? It can only be inferred that the new Intrastate Requalification process is being employed to reduce the number of TSPs competing for its business. .

*The New Intrastate Requalification Requirements Undermine the Goals of Sound Military Procurement and Transportation Policy*

Apart from failing to secure any resulting benefit, the Association does not think, the government has considered the negative transportation policy consequences of SDDC’s determination to reduce the number of TSPs by adding new qualification criteria that can be enforced solely at SDDC’s discretion.

Simple economics dictate that SDDC’s attempt to use new criteria to reduce the number of TSPs competing for government freight is likely to diminish the “economy and cost-effectiveness” of the DP3 program, in contradiction of the express criteria of the DP3 program requirements in DOD Instruction 4500.34. Eliminating TSPs and their transportation capacity through the new Intrastate Requalification process will automatically reduce the ability of SDDC to obtain competitive offers and pricing.

IAM does not believe that SDDC has undertaken an in-depth HHG transportation market analysis to determine whether its SCAC reduction methods meet the criteria of DOD Instruction 4500.34 mandating that SDDC “analyze and determine the reasonableness of

rates.” Determining *in advance* whether SCAC reduction would serve the goal of maintaining cost-effective rates would clearly be a critical objective in furtherance of the DOD Instruction, but there is no indication that SDDC has undertaken, much less completed, such a determination prior to initiation of the Intrastate Requalification process.

Because SDDC has not specified the reasoning or data to support imposing the new Intrastate Requalification criteria, SDDC is creating the appearance that SDDC simply wants the ability to reduce the number of SCACs and TSPs through discretionary revocations. Without any evidence to support the need for the Intrastate Requalification process (or to support why fewer SCACs would be in SDDC’s interests from a cost/capacity perspective) SDDC’s Intrastate Requalification requirement can only be viewed as a new, unfair and costly burden on TSPs, without any corresponding benefits to the DP3 program, the government or the taxpayer.

*The New Intrastate Requalification Requirements Constitute a Unilateral Change in Opposition to Sound Government Contracting*

SDDC has created new qualification requirements without modifying the underlying bilateral binding obligations as set forth in the Solicitation, the Tariff and the Pamphlet. Before changing evaluation and qualification criteria, it is our understanding the government must first have the rules and guidelines established in order to provide bidders a common understanding from which to build their rates.

SDDC’s new Intrastate Requalification process and requirements constitute a unilateral breach of SDDC’s contractual obligations made to TSP DP3 participants. A TSP’s defined contractual obligations do not include conforming to requirements that did not exist when they entered into their contracts with SDDC. Requiring TSPs to provide extensive and costly new pieces of proprietary data to SDDC, and requiring them to collect and maintain such information (for purposes known only to SDDC at this time), and putting them at risk of disqualification if they fail to do so, arbitrarily and unfairly would deprive TSPs of a valuable contract right.

SDDC’s proposed Intrastate Requalification standards relating to warehousing and vehicle ownership are obviously not included in the Pamphlet, so no TSP would have estimated, developed and bid rates for transportation services based on these new TSP qualification requirements. Imposing new Intrastate Requalification standards that were not part of the *then-prevailing* Pamphlet that a TSP relied upon in developing their rates constitutes a unilateral change by SDDC of a supposedly bilateral contract.

*Conclusion*

Eliminating TSPs based on new, flawed qualification requirements will only reduce competition between TSPs, and remove valuable transportation capacity for DoD service members, neither of which serve the best interests of DoD. Transportation and storage industry economics drive the costs of TSP service, and there is simply no data or empirical

evidence that reducing the number of SCACs through imposition and enforcement of discretionary qualification criteria will improve the cost, availability, or quality of TSP performance. Without such data or evidence to justify its new qualifications requirements, SDDC requalification criteria are not in conformance with the DTR which states that TSPs should only be excluded from DP3 based on "established standards of satisfactory services..." (emphasis supplied).

SDDC is still receiving responses to its demand for data to support "requalification", and has not gone forward yet to disqualify any intrastate TSPs. **Before SDDC goes any further, SDDC leadership should immediately suspend the current Intrastate Requalification process and review this matter with industry representatives so that the needs of government and industry can be taken into account to improve the DP3 program.**

Sincerely,

A handwritten signature in cursive script that reads "Charles L. White".

Charles L. White, CAE, M.Ed.  
Senior Vice President  
International Association of Movers

CC: Daniel Martinez

