

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Products Prices
Priority Mail
Priority Mail Contract 1

Docket No. MC2008-8

Competitive Product Prices
Priority Mail Contract 1 (MC2008-8)
Negotiated Service Agreement

Docket No. CP2008-26

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO ORDER NO. 111
(October 8, 2008)

The Public Representative hereby comments on 1) the Postal Service's request to add Priority Mail Contract 1 to the Competitive Products List and 2) the Postal Service's notice of establishment of rates and class not of general applicability.¹ The Commission has assigned Docket No. MC2008-8 to the request to add the Priority Mail Contract 1 to the Competitive Products List, and has assigned Docket No. CP2008-26 to the notice of a competitive negotiated service agreement, has designated the undersigned as the Public Representative in these proceedings and directed that comments would be due no later than October 9, 2008.²

¹ Request of the United States Postal Service to Add Priority Mail Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, September 23, 2008 (Notice). The Postal Service filed an unredacted copy of the contract and supporting materials under seal.

² See PRC Order 111, Notice and Order Concerning Priority Mail Contract 1 Negotiated Service Agreement, October 1, 2008, at 3.

In filing this request and notice and the sealed supporting materials with the Commission, the Postal Service seeks Commission approval to establish a Priority Mail Contract 1 shell category in the Competitive Products List and add a Negotiated Service Agreement (NSA) for certain competitive domestic package services to that product category. PMC 1 was established by decision of the Governors of the United States Postal Service³ under the authority granted the Governors by the PAEA.⁴

The Postal Service filed its notices pursuant to 39 U.S.C. § 3642 and 39 CFR § 3020.30 et seq., and indicates that the proposed agreement is a “competitive product not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3).

Overview

The most important public interests associated with this negotiated contract are adequacy of cost coverage, appropriate categorization of the product, and overall transparency. The Public Representative is satisfied in this instance that this negotiated service agreement meets the important public interest in adequate cost coverage and appropriate categorization. The Postal Service has taken steps to be more transparent in the filing of this request within the constraints of managing commercially-sensitive information. This type of

³ See Decision of the Governors of the United States Postal Service on Establishment of Rates and Class Not of General Applicability for Priority Mail Service, issued Sept. 15, 2008 (Governors’ Decision No. 08-11). On Sept. 23, 2008, a redacted copy of that Governors’ Decision was filed with the Commission, and an unredacted copy was filed under seal.

⁴ See Postal Accountability and Enhancement Act (PAEA), Pub. Law 109-435, Title II, §202, 120 Stat. 3206; 39 U.S.C. §§ 3632(b)(3), 3633.

contract serves the public interest by providing additional flexibility to the retailer/mailer to offer improved shipping options to retail purchasers, given that retail customers are sensitive to shipping fees.

The Postal Service should continue to be attentive to two areas that are important in gauging the accuracy and validity of cost coverage assessment:

- carefully identifying the source of and basis for projected volume figures; and
- using reliable adjustment factors that respond predictably to the effects of national economic volatility or uncertainty.

The Public Interest in Adequate Cost Coverage

An essential public interest in competitive products contracts of this sort is to ensure that these contracts adequately cover their costs so cross-subsidization by market dominant products does not occur.⁵ In other words, there is a strong public interest in ensuring that these products pay their own way and are not supported by mailing prices paid by the general public or other mailers of market dominant products.⁶ In addition, this is linked to an interest in ensuring that the undertaking of these contracts will enable competitive products as a whole to cover their costs, and to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.⁷

The Public Representative, after reviewing the materials under seal in this proceeding and appropriate consultation with technical staff, acknowledges that

⁵ See § 3633 (a)(1) & (2).

⁶ *Id.*

⁷ See § 3633 (b).

the provisions of the CP2008-26 contract, including the pricing structure, comport with the requirement that it will generate sufficient revenue to cover attributable costs for the services provided, enable competitive products as a whole to cover their costs, and as a whole to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. These factors should assure that there is no subsidization of this NSA by market dominant products.

The Public Interest in Appropriate Categorization of NSAs

The mailing public relies on the statutory role of the Governors to evaluate proposed postal rates to help ensure that these rates will benefit rather than detriment the Postal Service.⁸ In this instance, a public interest exists in ensuring that proposed NSAs (competitive product rates or classes not of general applicability) have been considered and approved by the Governors.⁹

The Commission's recognition of NSA shell classifications effectively permits the Governors to exercise their authority in a more measured fashion by directing the establishment of categories encompassing a set of similar NSAs.¹⁰ In this instance, the Governors' have explained and justified their approval of this Priority Mail Contract 1 product to a degree that seems reasonable in the view of the Public Representative.

⁸ For example, on the infrequent occasion when one or more Governors take exception to a Decision, the public benefits from awareness of the reservations expressed by the dissenting Governor or Governors.

⁹ See § 3632(a), (b).

¹⁰ See, e.g., PRC Order No. 78 at 2-3.

Assessing the data as filed, the Public Representative believes that the proposed CP2008-26 contract is appropriately categorized as a Competitive Product (under the umbrella of the MC2008-8 Priority Mail Contract 1 shell classification).

Public Interest in Increased Options for Consumers

Deployment of a Negotiated Service Agreement for the type of retail merchant mailer identified in the sealed agreement provide the mailer with opportunities to reduce their shipping costs and offer flexibility in setting retail shipping fees, and thus can make it easier for retail customers to purchase goods by mail, particularly those who are sensitive to shipping and handling charges.

Negotiated shipping services procured in bulk by companies selling products by mail make the purchase of those products by consumers more affordable by increasing the vendor's flexibility to adjust their shipping and handling charges according to rapidly-changing business conditions.

Sourcing for NSA Volume Projections

The Postal Service in its sealed filing provides projected shipping volumes for the NSA, broken down by destination and weight cell, as part of the process of evaluating its cost coverage. The source of the shipping volumes is not clearly explained. However, the technical data describes the volume figures as simply a relative indicator of zones and weight, and not as a predictor of specific volume figures. The ultimate qualitative source of these numbers is not clear.

The Public Representative sees no specific cause for concern about the accuracy or zonal/weight profile of the volume figures used for this contract.¹¹ The Postal Service cautions in the sealed filing that those figures are used only as zonal and weight profiles to aid in calculations.¹² However, in the future, to avoid the risk of unwarranted volume forecasts that might affect overall cost coverage, the Postal Service should in its sealed filings continue to use best efforts to convey in general terms the nature and source of these volume projections, so the Commission may properly evaluate the significance of potential vulnerabilities or weaknesses underlying those projections.¹³

Selection of Economic Adjustment Factors

The selection of economic adjustment factors within this contract seem reasonable and appear to provide adequate revenue protection for the Service.

¹¹ For example, there are no cost coverage anomalies or asymmetries that present substantial risks in the event the zonal/weight mailing profile differs from that provided.

¹² The casual reader may observe in the Governors' Decision the statement "the pieces to be tendered under the contract are expected to be incremental volume so there is little risk of loss", yet an examination of the mailer's public website indicates that most of its shipping is currently done via the Postal Service. The Postal Service has offered an explanation for this apparent discrepancy: the mailer has already begun using the Postal Service for most of its shipping (at published commercial rates) in anticipation of -- and to help prepare for -- operation under the Negotiated Service Agreement pricing. The Public Representative used a reliable internet archive (the "Wayback Machine" at <http://www.archive.org>) to review previous versions of the salient page on the mailer's website and is quite satisfied that this explanation is correct.

¹³ Information on the source of volume projections would tend to be sensitive in nature because it might disclose the nature and extent of existing business relationships. As a result, such data would likely be filed under seal.

The Public Representative respectfully submits the preceding Comments
for the Commission's consideration.

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