Postal Regulatory Commission
Submitted 10/27/2008 11:07:30 A
Filing ID: 61284
Accepted 10/27/2008

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268–0001

COMPETITIVE PRODUCT PRICES PRIORITY MAIL PRIORITY MAIL CONTRACT 2	Docket No. MC2009–2
COMPETITIVE PRODUCT PRICES PRIORITY MAIL CONTRACT 2 (MC2009-2) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2009–3

ERRATA TO REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD PRIORITY MAIL CONTRACT 2 TO COMPETITIVE PRODUCT LIST AND NOTICE OF ESTABLISHMENT OF RATES AND CLASS NOT OF GENERAL APPLICABILITY
(October 27, 2008)

The United States Postal Service hereby files a correction to the Request filed in these dockets on October 24, 2008. The correction is to the second full paragraph of page 2 of the Request document, concerning the contract's effective date. The Request as originally filed indicated that: "The prices and class are to be effective one day after the Commission approves the required addition to the product list." That statement is supplemented to add "except that if such date is later than November 10, 2008, then the effective date will be deferred until January 1, 2009," as reflected in the contract.

Due to expected heavy volume between those dates, the customer will not be able to implement during that period. Accordingly, the Postal Service is hopeful that the Commission will be able to complete its review to allow for the earlier implementation date. The Postal Service appreciates the Commission's expedition in reviewing contracts filed so far and will, of course, cooperate as needed in facilitating such review.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Scott L. Reiter

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2999, Fax -5402
scott.l.reiter@usps.gov
October 27, 2008

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268–0001

COMPETITIVE PRODUCT PRICES PRIORITY MAIL PRIORITY MAIL CONTRACT 2	Docket No. MC2009–2
COMPETITIVE PRODUCT PRICES PRIORITY MAIL CONTRACT 2 (MC2009-2) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2009–3

REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD PRIORITY MAIL CONTRACT 2 TO COMPETITIVE PRODUCT LIST AND NOTICE OF ESTABLISHMENT OF RATES AND CLASS NOT OF GENERAL APPLICABILITY
(October 24, 2008)

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service hereby requests that Priority Mail Contract 2 be added to the competitive product list within the Mail Classification Schedule.[1] This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).[2] A redacted version of the Governors' Decision establishing the prices and classification and a certification of the Governors' vote is provided in Attachment A.[3] A redacted version of the contract is provided in Attachment B. Attachment C shows the requested changes in the Mail Classification product list with the addition in brackets.[4] Attachment D provides a statement of supporting justification for this request, as specified in 39

[1] 39 C.F.R. § 3020.31(a), (c).
[2] *Id.* § 3020.31(d).
[3] *Id.* § 3020.31(b).
[4] *Id.* § 3020.31(f).

C.F.R. § 3020.32.[5] Attachment E provides the certification of compliance with 39 U.S.C. § 3633(a)(1) and (3).[6]

As explained in the supporting justification, the Postal Service believes that it is appropriate to add this contract to the list of competitive products. The Commission should therefore approve this request as set forth in its rules. As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

The Postal Service also gives notice, pursuant to 39 USC § 3632(b)(3) and 39 CFR § 3015.5, that the Governors have established prices and classifications not of general applicability for this contract.[7] The prices and class are to be effective one day after the Commission approves the required addition to the product list, except that if such date is later than November 10, 2008, then the effective date will be deferred until January 1, 2009.[8] An explanation and justification is provided in the Governors' Decision and accompanying analysis, which are being filed in unredacted version under seal.[9] Also, being filed under seal are the required cost and revenue data.[10]

The Postal Service maintains that the contract, related financial information, the customer's name and the portions of the Governors' Decision and accompanying analyses that provides prices, terms, conditions, and financial projections should remain confidential. The contract contains pricing and other information related to the customer and its processes as well as to Postal Service processes and procedures for handling the mail tendered under the contract. Related financial information contains cost and

---

[5] *Id.* § 3020.31(e).
[6] *Id.* § 3015.5(c)(2).
[7] *Id.* § 3015.5(a).
[8] *Id.* § 3015.5(b).
[9] *Id.*
[10] *Id.* § 3015.5(c)(1).

pricing information showing how prices are developed. Prices and other contract terms relating to the parties' processes and procedures are highly confidential in the business world and the Postal Service protects them in accordance with industry standards. The ability of the Postal Service to negotiate such contracts would be severely compromised if prices and other information pertaining to these types of agreements were publicly disclosed. Also, public disclosure would compromise the ability of the customer to negotiate favorable shipping services contracts in the future. The name of the customer should remain confidential due to the substantial likelihood that the Postal Service's competitors would use such information to target their efforts and undercut the Postal Service's prices. The Postal Service is aware of no competitor or private company of comparable size and scope that releases similar information to the public.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Scott L. Reiter

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2999, Fax -5402
scott.l.reiter@usps.gov
October 24, 2008

ATTACHMENT A

to Postal Service Request

Docket Nos. MC2009-2 & CP2009-3

REDACTED GOVERNORS' DECISION

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON ESTABLISHMENT OF RATE AND CLASS NOT OF GENERAL APPLICABILITY FOR PRIORITY MAIL SERVICE (GOVERNORS' DECISION NO. 08–13)

October 23, 2008

STATEMENT OF EXPLANATION AND JUSTIFICATION

The Postal Service and … have entered into a shipping services contract that provides discounted pricing for certain of …'s Priority Mail pieces. The contract is for one year. Accordingly, pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish prices not of general applicability, and such changes in classifications as are necessary to implement the prices.

Under the contract, … will mail at least …Priority Mail pieces, for which it will receive discounted prices. … will use soft packaging that makes its packages less expensive to handle and will receive an additional … per piece discount if it uses no Postal Service provided packaging. The contribution level of this contract is estimated to be 129 percent.

We have reviewed management's analysis of the contract, which is attached. We have evaluated the new price and classification changes in this context in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. We approve the changes, finding that they are appropriate, and are consistent with the regulatory criteria, as indicated by management.

ORDER

We direct management to file with the Postal Regulatory Commission appropriate notice of these classification and rate changes and to request any needed addition to the competitive product list. The changes in price and class set forth herein shall be effective one day after the Commission approves any required addition to the product list under 39 C.F.R. § 3020 Subpart B.

By The Governors:

_____

Alan C. Kessler
Chairman

Analysis of the Priority Mail Service Contract …

The Postal Service's one-year Priority Mail contract with … provides discounted prices for …'s use of Priority Mail service for fulfillment of customer orders. This is new volume to the Postal Service.

… will use packaging to ensure that its parcels remain less expensive to process. The Postal Service may, at its option, provide … with packaging for an additional … per piece. The pieces will be entered in bulk, avoiding window service costs.

Based on management's discussions with … and the structure of the contract, we estimate that … will tender between … and … Priority Mail pieces per year under this contract. Given that all volume is incremental, this should result in approximately … million additional contribution throughout the year of the contract. Because there are no volume commitments, actual performance could vary from this estimate if … does not tender the expected volume of Priority Mail pieces. However, since all volume is incremental, any volume would generate additional contribution. The estimated contribution level for this contract is 129 percent.

There is some risk of not meeting the expected cost coverage, for instance, if the pieces become less dense, or if a greater percentage of pieces travel a longer distance than expected. These risks are manageable and overall this contract is expected to generate significant contribution.

Based on the estimated increase in contribution from this contract, in light of anticipated costs and volumes, this contract will cover its attributable cost (39 U.S.C. 3633(a)(2)) and will result in competitive products as a whole complying with 39 U.S.C. 3633(a)(3), which, as implemented by 39 U.S.C. 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises 39 U.S.C. 3633(a)(1)).

SHIPPING SERVICES CONTRACT
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
…

This contract for shipping services is made by and between the …, a corporation organized and existing under the laws of …, with its principal office at …, and the United States Postal Service ("the Postal Service"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and ... are referred to herein collectively as the "Parties" and each as a "Party."

WHEREAS, it is the intention of the Parties to enter into a shipping services contract that will benefit the Postal Service, the postal system as a whole, and ..., and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act ("Title 39"),

WHEREAS, ... currently uses Priority Mail service only for pieces destined to APO/FPO and offshore addresses.

NOW, THEREFORE, the Parties agree as follows:

I. Terms

The following terms apply as of the implementation date, as defined below:

A. Except to the extent different terms or prices are specified in this contract, applicable provisions of the Domestic Mail Manual and of other postal laws and standards apply to mail tendered under this contract.

B. This contract applies to ...'s … Priority Mail pieces, including those destined for APO/FPO and offshore addresses, provided that pieces for those destinations meet the packaging specifications in paragraph I.E. APO/FPO and offshore pieces will not, however, be counted toward the volume commitment set forth in this contract.

C. ... will mail new volume of at least … Priority Mail pieces during the term of this contract.

D. ... will pay the applicable prices shown in the table below for such pieces. Published prices will apply for any pieces not within the cells in the table.

…

E. ... will primarily (*i.e.*, for approximately 97.5 percent of its pieces tendered under this contract) use soft packaging to ensure that the density of its pieces remains at or above the Postal Service average density for similar Priority Mail pieces. The Postal Service may, at its option, provide packaging to ... for preparing pieces tendered under this contract.

F. If ... uses no Postal Service provided packaging for these pieces, the above prices will be reduced by ….

II. Regulatory Review and Effective Date

This contract is subject to approval by the Postal Service Governors and the Postal Regulatory Commission ("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, and upon approval of the Postal Service Governors, the Postal Service will make required filings with the Commission. The effective date of this contract shall be the later of October 15, 2008, or the day following the date on which the Commission issues all necessary regulatory approval, except that if such date is later than November 10, 2008, then the effective date will be deferred until January 1, 2009.

III. Expiration Date and Termination

This contract shall expire 1 year from the effective date, unless (1) terminated by mutual agreement in writing, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent written contract between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation.

IV. Appeals

... may appeal a Postal Service decision regarding prices or other implementation or operational issues under this contract by submitting a written appeal within 30 days of receipt of notification of the determination giving rise to the appeal to the Pricing and Classification Service Center ("PCSC") in New York. The decision of the Manager, PCSC, will be administratively final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

V. Confidentiality

Neither Party shall make public the terms of this contract, except to the extent required by law. The Postal Service shall request that the Commission not disclose the terms of this contract or supporting data in executing its functions under the Act.

VI. Amendments

This contract shall not be amended except expressly, in writing, by authorized representatives of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this contract to be duly executed.

UNITED STATES POSTAL SERVICE

By: Gary Rehlin

Printed Name: Gary C. Rehlin

Title: V.P. Expedited Shipping

Date: 9/22/09

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

***

NEGOTIATED SERVICE AGREEMENTS

Domestic

***

[Priority Mail Contract 2]

Statement of Supporting Justification

I, Kim Parks, Manager, Sales and Communications, Expedited Shipping, am sponsoring this request that the Commission add Priority Mail Contract 2 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

(a) Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.

As demonstrated below, the change complies with the applicable statutory provisions.

(b) Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C.§ 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c).

Not applicable. The Postal Service is proposing that this Priority Mail contract be added to the competitive products list.

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.

The contract sets specific terms and conditions for providing Priority Mail service to the customer. Priority Mail is provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Priority Mail service in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.

I am advised that merchandise sent by Priority Mail service and this contract are not covered by these provisions. See part (d) above.

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.

See part (d) above. Expedited shipping, similar to Priority Mail service, is widely available from well-known and successful private firms at both published and contract prices.

(g) Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

(h) Provide a description of the likely impact of the proposed modification on small business concerns.

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

(i) Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

Certification of Prices for Priority Mail Contract 2

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, am familiar with the prices and terms for Priority Mail Contract 2. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Priority Mail Service, dated October 23, 2008 (Governors' Decision No. 08-13).

I hereby certify, based on in the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. The contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

W. Ashley Lyons

Certification of Prices for Express Mail Contract 2

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, am familiar with the prices and terms for Express Mail Contract 2. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail Service, dated October 23, 2008 (Governors' Decision No. 08-14).

I hereby certify, based on in the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. The contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

W. Ashley Lyons