

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Products Prices
Express Mail & Priority Mail
Express Mail & Priority Mail Contract 1

Docket No. MC2009-6

Competitive Product Prices
Express Mail & Priority Mail Contract 1 (MC2009-6)
Negotiated Service Agreement

Docket No. CP2009-7

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO ORDER NO. 125

(November 10, 2008)

The Public Representative hereby comments on 1) the Postal Service's request to add Express Mail & Priority Mail Contract 1 (EM & PMC 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. MC2009-6 to the request to add the EM & PMC 1 to the Competitive Products List, and has assigned Docket No. CP2009-7 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 November 10, 2008.²

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 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 an EM & PMC 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. EM & 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

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

³ See Decision of the Governors of the United States Postal Service on Establishment of Rates and Class Not of General Applicability, issued October 23, 2008 (Governors’ Decision No. 08-17). On October 27, 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.

cost coverage⁵ 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 contract serves the public interest by providing additional flexibility to the mailer to offer improved shipping options to purchasers.

As the Public Representative noted in comments filed in an earlier case,⁶ the Postal Service in its filings should be attentive to carefully identifying the source of and basis for projected volume figures (and by implication the mailer-specific mailing profile). This continues to be a concern because it has the potential to substantially affect cost coverage.

In this docket, the most significant concern of the Public Representative centers on whether extrapolating costs and characteristics from the profile for all mailers in specific mail categories to a mailer-specific mailing profile leads to reliable cost determination for purposes of calculating cost coverage.

Specifically, are mailer-specific projected volumes sufficiently reliable? Are the cost impacts of mailer-specific shape and weight profiles sufficiently acknowledged? Are important seasonal effects taken into account? Is mailer-specific package density a factor? All things considered, the Public Representative sees no substantial risk for this particular contract, but asks the

⁵ But note certain caveats below at 7-8.

⁶ I.e., Docket MC2008-8/CP2008-26.

Commission to pay close attention to such factors going forward in evaluating other agreements.

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.⁷ 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.⁸ 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.⁹

The Public Representative, after reviewing the materials under seal in this proceeding and appropriate consultation with technical staff, acknowledges that the provisions of the CP2009-7 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

⁷ See § 3633 (a)(1) & (2).

⁸ *Id.*

⁹ See § 3633 (b).

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 hurt the Postal Service.¹⁰ 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.¹¹ In this instance, the Governors approved the shell classification and the contract.

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.¹² In this instance, the Governors have explained and justified their approval of this Express Mail & Priority Mail Contract 1 product to a degree that seems reasonable in the view of the Public Representative.

Assessing the data as filed, the Public Representative believes that the proposed CP2009-7 contract is appropriately categorized as a Competitive

¹⁰ 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.

¹¹ See § 3632(a), (b).

¹² See, e.g., PRC Order No. 78 at 2-3.

Product (under the umbrella of the MC2009-6 Express Mail & Priority Mail Contract 1 shell classification).

Public Interest in Increased Options for Customers

Deployment of a Negotiated Service Agreement for the type of mailer identified in the sealed agreement provides the mailer with opportunities to reduce its shipping costs and offers flexibility in setting shipping fees, and thus can make it easier for 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.

The unique qualities of this contract, including the identity of the mailer, the nature of the product shipped, and the need for rapid response by the mailer and expeditious transit of the product, which were examined by the Public Representative under seal, seem to exemplify the type of unique business opportunities that can be more effectively brought to customers (including consumers) via Postal shipping services.

Mail Profile Related Costing Issues

In this docket, the Public Representative does wish to call the Commission's attention to certain potential concerns stemming from mailing profiles provided as part of the request. Inaccurate mailing profiles (such as distribution by weight, distance/zone, etc.) can in some instances lead to costing discrepancies and thus cost coverage risks. While the Public Representative believes that the risks to the public or to the Postal Service in this particular contract are minimal, both the Commission and the Postal Service may wish to bear in mind these analytical issues at the outset of the contract, during the Commission's Annual Compliance Determinations, and throughout the course of this three year contract.

Uncertainty over Source of Projected Shipping Volume Data

In at least one previous case, the Public Representative questioned the accuracy of data regarding projected shipping volumes as well as the source of that data. The Postal Service should provide information on the nature and source of data describing projected shipping volumes, filed under seal if necessary¹³ to help assess the risks and costs of negotiated rates. In this instance, the Public Representative is less concerned about risks from shortfalls in the overall shipping volume than from risks due to inaccuracies in the profile of the items to be shipped.

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.

Variant Express Mail Profile by Shape and Weight

The Express Mail profile for this contract does not mirror the shape distribution of the Express Mail class as a whole. Furthermore, the profile for this contract is unlikely to mirror the weight (rate cell) distribution of the Express Mail class as a whole. As a result, costs could very well vary from the typical average Express Mail costs.

Seasonal Effects

The anticipated shipping profile includes a strong cyclic element rooted in the calendar: summer shipments are handled by Express Mail to a much greater degree than during the remainder of the year. This may affect the volume split between Express and Priority Mail, as well as the assumptions about Express Mail used for this contract. It is unclear the extent to which seasonal effects have been factored in accurately for costing purposes.

Variant Package Density: Not a Concern

While the physical density (weight per unit volume) of packages handled under this contract is different than is typical for Express Mail packages on the whole, the Public Representative is satisfied that density factors have been taken into consideration when calculating costs.¹⁴

Should additional record evidence on mail profile and costing is sought and received by the Commission, the Public Representative may request an

¹⁴ Higher density means a smaller cubic volume for a given weight cell; lower density is larger volume for a given weight cell. A large portion of cost is associated with cubic volume factors rather than weight factors.

opportunity to submit additional comments after the due date for comments but before the final decision is issued.

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.

Assurance that the Contract Elicits New Volume

The Public Representative is satisfied through independent investigation¹⁵ that the mail volume envisioned in the contract is new volume.

Public Interest in Transparency

It serves the public interest to make available to the public the maximum amount of information about negotiated service agreements notwithstanding the need for preserving the confidentiality of sensitive or proprietary business information.

The Postal Service in its earliest competitive product agreements filed redacted versions of sealed documents as image-based rather than text-based documents. As a result, the text of the documents was neither machine-readable, keyword searchable or able to be indexed on the Commission's

¹⁵ A check of the mailer's website and other secondary evidence indicates that the mailer currently ships using a carrier other than the Postal Service.

website. It should be noted that the Commission's procedures also call for the filing of text-based documents rather than image-based documents. The Public Representative in a previous docket had expressed a concern about this practice.¹⁶

More recently, the Postal Service has -- as an interim measure to address this concern -- begun filing redacted versions of sealed documents in text-based, searchable form but using ellipses (i.e., "...") for removing sensitive information. This method of redaction is inferior and objectionable because it precludes the public from knowing how much of the document was actually removed.¹⁷

A better long-term solution to preserve both confidentiality and transparency would be to file documents so that it is graphically obvious how much material was redacted. The Public Representative has learned that the Postal Service counsel has undertaken substantial efforts to implement the use of new software and better methods of making redacted documents available without jeopardizing any confidential information, and plans to implement these new procedures in the very near future. The Postal Service should be commended for proceeding diligently toward accommodating transparency concerns.

¹⁶ See Docket Nos. CP2008-11, -12, -13, Public Representative Comments in Response to United States Postal Service Notice of Global Expedited Package Services Contract, August 19, 2008, at 7-8 and n.19.

¹⁷ An ellipsis can signify removal of a word, or of several paragraphs, or even pages.

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

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