

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Products Prices
Parcel Select & Parcel Return Service
Express Mail & Priority Mail Contract 1

Docket No. MC2009-11

Competitive Product Prices
Parcel Select & Parcel Return Service
(MC2009-11)
Negotiated Service Agreement

Docket No. CP2009-13

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO ORDER NO. 142

(December 10, 2008)

The Public Representative hereby comments on 1) the Postal Service's request to add Parcel Select & Parcel Return Service 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

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

¹ Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, November 25, 2008 (Request). The Postal Service filed an unredacted copy of the contract and supporting materials under seal.

cost coverage, and that that the agreement is categorized properly as a Competitive Product. The Postal Service should be commended for accommodating transparency concerns, but formatting and searchability of redacted documents remains a concern, but one that can be addressed with a modest change in procedures.

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.² 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.³ 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.⁴

The Public Representative, after reviewing the materials under seal in this proceeding and appropriate consultation with technical staff, acknowledges that the provisions of the CP2009-13 contract, including the pricing structure, comport

² See § 3633 (a)(1) & (2).

³ *Id.*

⁴ See § 3633 (b).

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.⁵

Appropriate Categorization

Assessing the data as filed, the Public Representative believes that the proposed CP2009-13 contract is appropriately categorized as a Competitive Product (under the umbrella of the MC2009-11 Parcel Select & Parcel Return Service Contract 1 shell classification).

Increased Options for Customers

Deployment of a Negotiated Service Agreement for the type of Parcel Select and Parcel Return Services described affords vendors with increased opportunities to utilize the "last mile" delivery opportunities afforded by the Postal Service, and also the opportunity to make use of the ability to efficiently collect and gather return parcels. These increased opportunities provide increased

⁵ The Public Representative takes no position in this filing with regard to whether the volume under these contracts represents new (incremental) volume, a matter raised by another commenter (Newgistics). Newgistics reasonably asks the Postal Service to certify in their contracts and filings the extent to which they believe contractual volume would actually be new volume. An examination of the sealed filings suggests that this contract is configured to elicit incremental volume.

flexibility in both shipping methods and pricing. Thus it makes it easier for customers to purchase items as well as to easily return items via the mail.

Transparency

It serves the public interest to make available to the public the maximum amount of information about negotiated service agreements while accommodating the need for preserving the confidentiality of sensitive or proprietary business information, particularly in the Competitive Products context. Frequently, documents are filed for publication in redacted form.

The Postal Service has to date used two primary methods to redact documents: “blacking out” sections and the use of ellipses (...) to signify removed portions. Blacking out sections is preferable to ellipses because it permits the public to view the scope and extent of material that has been removed.

Choices of this sort depend on the circumstances of the specific product or contract, as well as the individual judgment of the responsible manager or attorney. The Postal Service should be allowed some discretion to make a suitable determination.

The Postal Service should not rely primarily on the ellipses method for supplying redacted documents solely because of any residual concern that the text in blacked out sections could somehow still be read. While that may have

been of concern when older computer software was still in use, there is now a great deal of confidence among the technical cognoscenti that this problem has been solved.

Ellipses should only be used when releasing documents in another redacted form would disclose material sensitive information. This might occur, for example, if the intrinsic shape or size or form of the blackouts would itself identify something competitive sensitive. In such cases the use of ellipses is reasonable as a way of conveying the redactions.

The Commission in its rules calls for the filing of text-based pdf versions “where possible”.⁶ The Postal Service in several competitive product agreements had filed redacted versions of sealed documents as image-based rather than text-based documents. As a result, the text of the documents was not keyword searchable or able to be indexed on the Commission’s web site. The Postal Service should make a practice of “OCR’ing” any new image-based documents it submits as part of its filings since such a task is not particularly onerous, is probably required under the rules, and generally makes the documents more accessible now and into the future.

⁶ See 39 C.F.R. § 3001.10. The Commission formerly provided clearer guidance as to the need for filing text-based pdf files in its filing online guidance, but the streamlined version currently published on the Commission’s website omits that explicit requirement. Nevertheless, there is a strong policy argument for the ability to retrieve documents from among the Commission’s large dataset by searching for text within them. Another reason is the federal requirement (Section 508 of the Rehabilitation Act) that documents be made accessible to the visually impaired.

Alternatively, in cases where the Postal Service files image based documents (and has not OCR'd them), the Commission should not be averse to performing the OCR function as needed as part of the docket acceptance process so that the filings are searchable and Section 508 accessible.

With these minor caveats, the Postal Service should be commended for continuing to proceed diligently toward accommodating transparency concerns in a very competitive business environment.

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

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