

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Competitive Product Prices
Priority Mail
Priority Mail Contracts 6 through 10

Docket No. MC2009-25

Competitive Product Prices
Priority Mail Contract 6 (MC2009-25)
through Priority Mail Contract 10 (MC2009-25)
Negotiated Service Agreement

Docket No. CP2009-30
Docket No. CP2009-31
Docket No. CP2009-32
Docket No. CP2009-33
Docket No. CP2009-34

NOTICE AND ORDER CONCERNING PRIORITY MAIL
CONTRACTS 6 THROUGH 10
NEGOTIATED SERVICE AGREEMENTS

(May 26, 2009)

I. INTRODUCTION

On May 19, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add a new product entitled Priority Mail Contract Group to the Competitive Product List.¹ The Postal Service asserts that Priority Mail Contract Group is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-25.

¹ Docket No. MC2009-25, Request of the United States Postal Service to Add Priority Mail Contract Group to Competitive Product List, May 19, 2009 (Request).

Contemporaneously with Docket No. MC2009-25 and pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, the Postal Service filed five contracts which it identifies as Priority Mail Contract 6, Priority Mail Contract 7, Priority Mail Contract 8, Priority Mail Contract 9, and Priority Mail Contract 10. It believes these contracts are related to the proposed new product in Docket No. MC2009-25. These contracts have been assigned Docket Nos. CP2009-30 through CP2009-34.²

Classification request. The Request incorporates (1) a redacted version of the Governors' Decision authorizing the new product; (2) requested changes in the Mail Classification Schedule product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).³ Substantively, the Request seeks to add Priority Mail Contract Group to the Competitive Product List. *Id.* at 1-2.

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the services to be provided will cover their attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment 2. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this product. *Id.*

Related contracts. Redacted versions of five specific Priority Mail contracts are included with the Request. Three of the contracts are for 3 years, one of the contracts is for 1 year, and the final contract is for 3 months. Depending on the contract, the

² Docket Nos. CP2009-30 through CP2009-34, Notice of Establishment of Rates and Class Not of General Applicability, May 19, 2009 (Notices).

³ Attachment 1 to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rates and Classes Not of General Applicability for Priority Mail Contract Group (Governors' Decision No. 09-6). The Governors' Decision includes two attachments. Attachment A shows the requested changes to the Mail Classification Schedule product list. Attachment B provides an analysis of the proposed Priority Mail Contract Group. Attachment 2 provides a statement of supporting justification for this Request. Attachment 3 provides the certification of compliance with 39 U.S.C. 3633(a).

effective dates are proposed to be either the day on which the Commission provides all necessary regulatory approvals or the following day.⁴ The Postal Service represents that all these contracts are consistent with 39 U.S.C. 3633(a). See Notices, Attachment B.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail contracts, under seal. In its Request, the Postal Service maintains that the contracts and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. Request at 2; Notices at 2.

II. PRELIMINARY OBSERVATIONS

The Postal Service's filings in these cases differ from previous NSA cases in several ways. In the typical negotiated service agreement approval scenario, the Postal Service requests that the Commission list a new competitive negotiated service agreement-type product on the Competitive Product List. Contemporaneously, it typically requests approval of a particular contract or group of contracts under 39 U.S.C. 3633 that relate to the new negotiated service agreement competitive product. See Docket No. MC2009-9, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008; see *generally* Docket No. MC2009-9. If future or concurrent agreements are "functionally equivalent" to the initial proposed agreement, those contracts are typically listed as part of the prior negotiated service agreement product. See *e.g.*, Docket No. CP2009-19, Order Concerning Additional Global Expedited Package Services 1 Negotiated Service Agreement, January 9, 2009, at 4-6.

⁴ The contracts in Docket Nos. CP2009-30, CP2009-31 and CP2009-34 become effective on the day the Commission issues all necessary regulatory approvals. The contracts in Docket Nos. CP2009-32 and CP2009-33 become effective the day after the Commission issues all necessary regulatory approvals.

Here, the Postal Service is seeking to place a broadly defined negotiated service agreement-type product on the Competitive Product List which has very few requirements or limitations. The proposed requirements for that negotiated service agreement product are as follows: (1) the agreement must be for Priority Mail service, and (2) the cost coverage for the particular contract must fall within a specified range. Request, Attachment 1 and Attachment A.

The Postal Service provides no arguments or evidence attempting to show that the five contracts at issue in the above captioned "CP" cases are functionally equivalent. Additionally, the Commission is concerned that if functionally equivalent is intended to apply broadly, it may be problematic in many respects. See *generally* Docket No. C2008-3. In lieu of initiating separate "MC" dockets for each of the proposed contracts, the Commission will, for purposes of this notice, treat the filing on a consolidated basis and provide interested persons (including the Postal Service) an opportunity to address the proper classification of these contracts, *i.e.*, as separate products or functionally equivalent (in whole or in part).⁵ Those commenting should provide the support for their position.

The broad parameters in the Governors' Decision appear designed to accommodate a variety of Priority Mail contracts. The Commission appreciates the underlying intent. Regardless of the outcome of this proceeding, it is the Commission's view that Governors' Decision 09-6 may be used to authorize future Priority Mail agreements that satisfy the broad parameters set out in Governors' Decision 09-6. Thus, for example, if, based on the parameters of Governors' Decision 09-6, the Postal Service seeks to add a future non-functionally equivalent Priority Mail contract to the Competitive Product List, it may file a new joint "MC" and "CP" docket that relies on Governors' Decision 09-6 to satisfy the requirements of 39 CFR 3020.31(b) and 39 U.S.C. 3642.

⁵ In the alternative, the Commission construes the Postal Service's Request as a proposal to add five separate products to the Competitive Product List.

III. SUPPLEMENTAL INFORMATION

Pursuant to 39 CFR 3015.6, the Commission requests the Postal Service to provide the following supplemental information by June 1, 2009:

1. Please explain the cost adjustments present within each contract. Explain what mailer activities or characteristics result in the cost savings, or result in any additional costs for the Postal Service. Please address every instance where an NSA partner's cost differs from the average cost.
2. Please provide a timeframe of when NSA partner volumes and cubic feet measurements were collected for each contract. Also provide a unit of analysis for volumes in each contract, e.g., whole numbers, thousands, etc.
3. In the Excel files accompanying all five contracts, unit transportation costs are hard coded (See tab: "Partner Unit Cost" rows 21 and 22). Please provide up-to-date sources and show all calculations.

IV. NOTICE OF FILINGS

The Commission establishes Docket No. MC2009-25 for consideration of the Postal Service's classification request and Docket Nos. CP2009-30 through CP2009-34 for consideration of the five proposed contracts. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order.

Filing instructions. For administrative convenience, future filings addressing the issues raised in this notice and order should be filed in Docket No. MC2009-25. However, if interested parties identify issues relating only to one of the contracts at issue in Docket No. CP2009-30 through CP2009-34, such filings should be made in the specific docket in which those issues pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or

3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Additionally, the Commission welcomes comments on the issues discussed above. Comments are due no later than June 8, 2009. The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

It is Ordered:

1. The Commission establishes Docket No. MC2009-25 for consideration of the issues raised in this Order. The Commission establishes Docket Nos. CP2009-30, CP2009-31, CP2009-32, CP2009-33 and CP2009-34 to address specific issues raised by those individual contracts.
2. Future filings addressing the issues raised in this notice and order should be filed in Docket No. MC2009-25. However, if interested parties identify issues relating only to one of the contracts at issue in Docket No. CP2009-30 through CP2009-34, such filings should be made in the specific docket in which those issues pertain.
3. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
4. The Postal Service is to provide the information requested in section III of this order no later than June 1, 2009.
5. Comments by interested persons in these proceedings are due no later than June 8, 2009.

6. The Secretary shall arrange for publication of this order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary