

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Contract Group (MC2009-25)
Negotiated Service Agreement

Docket No. CP2009-38

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO UNITED STATES
POSTAL SERVICE NOTICE OF ESTABLISHMENT OF RATES AND CLASS
NOT OF GENERAL APPLICABILITY (PRIORITY CONTRACT 12)

(June 26, 2009)

In response to Order 223¹, the Public Representative hereby comments on the June 11 United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 11), a negotiated service agreement (NSA) with an individual mailer ("Notice").

With regard to the contract's pricing, the Notice is persuasive. Each pertinent element of 39 USC 3633(a) appears to be met by this contract.

Discussion

Order 222 presciently observed (at 2) that "Priority Mail Contract Group" the instant contract could require additional support, particularly a rationale for treating the instant contract as a functional equivalent of any approved NSA currently in effect. On June 22, the Commission issued Chairman's Information Request No.1 and Notice of Filing of Question Under Seal for Dockets CP2009-37 and CP2009-38 (Priority Mail

¹ Commission Order 223, Notice and Order Concerning Filing of Priority Mail Contract 12 Negotiated Service Agreement, June 17, 2009.

Contracts 11 and 12 [MC2009-25]). On June 23, the Postal Service responded to the Information Request. On June 23, the Postal Service also filed a Request to Add Priority Mail Contract 12 to the Competitive Product List as an individual product (“Request”), asserting that it fully comports with the Postal Service’s Board of Governors’ April 27, 2009 Decision 09-6 (a redacted copy, and certification of the vote, was supplied in Docket No. MC29009-25, as Attachment A, on May 19 with the Request of the United States Postal Service to Add Priority Mail Contract Group to Competitive Product List).

Order 226 (“Concerning Priority Mail Contracts 6 Through 10” [June 19, 2009]) resolved issues pertaining to functional equivalency (the necessity of similar characteristics), the definition of “product,” and its requisite distinguishing attributes. See Order 226, 7-14.

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter (Docket No. CP2009-38), documentation in its original (not redacted) version. The Postal Service’s June 23 Request appears to have clarified issues raised by the instant Priority Mail “contract group” NSA Notice.

Accountability and Confidentiality

The Request contains a rationale for maintaining confidentiality concerning pricing, processes which enable discounted pricing, the attendant formulae and other contractual terms which are matters of commercial sensitivity.² Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in

² Postal Service Request, at 2-3.

this matter, providing a brief explanation for maintaining the confidentiality of each aspect of the matters remaining under seal.

Procedural requirements

Viewed as a whole, the Postal Service's Notice and Request appear to satisfy the procedural requirements for proposing a new product, a Priority Mail contract with a domestic customer. For a competitive products pricing schedule *not of general applicability*,³ the Postal Service must demonstrate that the contract will be in compliance with 39 USC 3633(a): It will not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and enable competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs).

Functional Equivalency (*f ~*)⁴

The Postal Service presents the instant contract as *f ~* to the Docket No. MC29009-25 Priority Mail Contract Group pricing schedule approved by the Postal Service's Board of Governors' April 27, 2009 Decision 09-6. Indeed, it appears to fall within the parameters of that approved pricing shell.

This three-year contract provides for the customer to present electronic verification shipments mailed under a separate permit, and manifest those mailpieces in conformance with Postal Service specifications. Prices will be increased for the second and third years of the contract. The supporting cost data in the worksheets filed under

³ See 39 CFR 3015.5.

⁴ Once again (see Docket No. CP2009-35 Comments) the Public Representative uses a combination of the mathematical representation of "function" – a lowercase, italicized "f"; combined with a tilde, used in mathematics to denote an equivalence relation (quite different than "equal to") to abbreviate the terms "functional equivalent," "functionally equivalent," and "functional equivalency".

seal suggests that the instant contract fully covers its attributable costs. In these functions, it would appear that this Priority Mail agreement complies with the template proposed in Docket MC2009-25. In other words, this agreement appears to be *f* ~ to the contract the Commission approved in that docket.

Conclusion

The Public Representative acknowledges that the pricing in the present Priority Mail Contract 12 comports with provisions of title 39. This contract appears to be able to generate sufficient revenue to cover its attributable costs, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.⁵ In addition to having the mailer prepare mailings for less costly handling by the Postal Service, the contract employs pricing incentives favorable to the Postal Service and thereby, the public.

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

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⁵ 39 C.F.R. § 3015.7(c).