

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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

Docket No. CP2009-39

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO UNITED STATES  
POSTAL SERVICE NOTICE OF ESTABLISHMENT OF RATES AND CLASS  
NOT OF GENERAL APPLICABILITY (PRIORITY CONTRACT 13)

(June 26, 2009)

In response to Order 224<sup>1</sup>, 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 13), 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 224 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 23, the Postal Service responded to the Supplemental Information request in Order 224 (at 3). On June 23, the Postal Service also filed a Request to Add Priority

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<sup>1</sup> Commission Order 224, Notice and Order Concerning Filing of Priority Mail Contract 13 Negotiated Service Agreement, June 17, 2009.

Mail Contract 13 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 of 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. CP2009-39), 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.<sup>2</sup> Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in this matter, providing a brief explanation for maintaining the confidentiality of each aspect of the matters remaining under seal.

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<sup>2</sup> Postal Service Request, at 2-3.

## **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*,<sup>3</sup> 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 ~*)<sup>4</sup>**

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 use computerized PC Postage or electronic verification for shipments. Prices will be increased for the second and third years of the contract. The supporting cost data in the worksheets filed under 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

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<sup>3</sup> See 39 CFR 3015.5.

<sup>4</sup> 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".

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 13 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.<sup>5</sup> 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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<sup>5</sup> 39 C.F.R. § 3015.7(c).