

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Contract 14 (MC2009-30)
Negotiated Service Agreement

Docket No. CP2009-40

MC2009-30

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO UNITED STATES
POSTAL SERVICE NOTICE OF ESTABLISHMENT OF RATES AND CLASS
NOT OF GENERAL APPLICABILITY (PRIORITY CONTRACT 14)

(July 10, 2009)

In response to Order 234¹, the Public Representative hereby comments on the June 29 United States Postal Service Request to Add Priority Mail 14 to Competitive Product list and Notice of Filing (Under Seal) of Contract and Supporting Data (“Notice”). This involves a negotiated service agreement (NSA) with an individual mailer.

With regard to the contract’s pricing, the Notice is persuasive. Each pertinent element of 39 U.S.C. 3632, 3633, 39 CFR part 3015 and 39 CFR 3020 subpart B appears to be met by this contract.

Discussion

Despite the new era of transparency in Postal Service business operations,² Commission docket filings whose principal elements hinge on matters under seal might take on a mysterious mien. Ironically, shortcomings in the Postal Service’s filing reveal

¹ Commission Order 234, Notice and Order Concerning Priority Mail Contract 14 Negotiated Service Agreement, July 1, 2009.

² See generally, title 39 as amended by P.L. 109-435

an asset for the public when the Commission requests -- on record -- additional data. Intuition may have a place in great business transactions, but contracts formed with the United States Postal Service require serious, painstaking deliberation. Rightly so; Commission Rules of Practice and Procedure and 39 U.S.C. 505 provide that the general public is always *a real party in interest* to these proceedings. Furthermore, the Chairman's July 1 Information Request No. 1 and Notice of Filing of Question[s] Under Seal, the Postal Service's July 1 response to question 4, the Postal Service's July 2 filing under seal of a corrected version of the electronic workbook data supporting Priority Mail Contract 14; and the Postal Service's July 8 filing of the its answers (under seal) to questions 1 through 3 of the Chairman's Information Request, all serve to illustrate the scrupulous review the Commission provides to proposed Postal Service contracts.

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter, documentation in its original (not redacted) version. The Postal Service's additional filings appear to have clarified issues raised by the instant Priority Mail NSA Notice, filed June 29.

Accountability and Confidentiality

The Notice 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.³ Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in

³ 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*,⁴ the Postal Service must demonstrate that the contract will be in compliance with 39 U.S.C. 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).

The Board of Governors is vested with the authority to set rates. 39 U.S.C. 3632 (a) provides that the Board of Governors establish rates and classes for products in the competitive category of mail. For rates not of general applicability, the Governors shall cause each rate and class decision and record of the proceedings in connection with such decision to be filed with the Commission 15 days before the effective date of any new rates or classes. In Manager, Regulatory Reporting and Cost Analysis W. Ashley Lyons' Certification (Attachment D to Notice), he indicates the prices and terms of the instant contract are consistent with those already established by the Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not

⁴ See 39 CFR 3015.5.

of General Applicability for Priority Mail Contract Group, dated April 27, 2009 (Governors' Decision No. 09-6). Although this NSA appears to comply with the parameters of the Governors' Decision 09-06, the Notice itself makes no reference or claim to Priority Mail Contract 14's functionally equivalency to the previously-approved pricing group. For the sake of the general public, some mention in the text of the Notice, or a copy of the Governors' Decision (albeit already filed with the Commission), would be helpful. The general public may only access (absent a qualified [and granted] request to the Commission for access to confidential material) the public materials in this Docket posted online.

Positive Features of the Instant Contract

This three-year NSA provides for the customer to begin using electronic verification for Priority Mail shipments, 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 seal suggests that the instant contract fully covers its attributable costs. Efficient preparation of these Priority Mail pieces contribute to mail processing efficiencies in the aggregate, thereby providing additional value to the general public.

Conclusion

The Public Representative acknowledges that the pricing in the present Priority Mail Contract 14 comports with relevant 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 based upon volumes and other provisions favorable to both the Postal Service and 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).