

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL
PRIORITY MAIL CONTRACT 17

Docket No. MC2009-37

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL CONTRACT 17 (MC2009-37)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2009-56

**REQUEST OF THE UNITED STATES POSTAL SERVICE
TO ADD PRIORITY MAIL CONTRACT 17
TO COMPETITIVE PRODUCT LIST
AND NOTICE OF FILING (UNDER SEAL)
OF CONTRACT AND SUPPORTING DATA
(July 24, 2009)**

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service hereby requests that Priority Mail Contract 17 be added to the competitive product list within the Mail Classification Schedule.¹ This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).² The prices and classification underlying this contract were established in Governors' Decision No. 09-6.³ A redacted version of the contract is provided in Attachment A. Attachment B shows the requested changes in the Mail Classification product list with the addition in brackets.⁴ Attachment C provides a statement of supporting justification

¹ 39 C.F.R. § 3020.31(a), (c).

² *Id.* § 3020.31(d).

³ *Id.* § 3020.31(b). That Governors' Decision was filed in Docket No. MC2009-25.

⁴ *Id.* § 3020.31(f).

for this request, as specified in 39 C.F.R. § 3020.32.⁵ Attachment D provides the certification of compliance with 39 U.S.C. § 3633.⁶

As explained in the supporting justification, the Postal Service believes that it is appropriate to add this contract to the list of competitive products. The Commission should therefore approve this request as set forth in its rules. As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

The contract and required cost and revenue data⁷ are being filed under seal. The Postal Service maintains that the contract, related financial information, and the customer's name should remain confidential. The contract contains pricing and other information related to the customer and its processes as well as to Postal Service processes and procedures for handling the mail tendered under the contract. Related financial information contains cost and pricing information showing how prices are developed. Prices and other contract terms relating to the parties' processes and procedures are highly confidential in the business world and the Postal Service protects them in accordance with industry standards. The ability of the Postal Service to negotiate such contracts would be severely compromised if prices and other information pertaining to these types of agreements were publicly disclosed. Also, public disclosure would compromise the ability of the customer to negotiate favorable shipping services contracts in the future. The name of the customer should remain confidential due to the substantial likelihood that the Postal Service's competitors would use such information to target their efforts and undercut the Postal Service's prices. The Postal Service is

⁵ *Id.* § 3020.31(e).

⁶ *Id.* § 3015.5(c)(2).

⁷ *Id.* § 3015.5(c)(1); *id.* § 3020.32(c).

aware of no competitor or private company of comparable size and scope that releases similar information to the public.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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July 24, 2009

ATTACHMENT A
REDACTED CONTRACT

SHIPPING SERVICES CONTRACT
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
[REDACTED]
REGARDING PRIORITY MAIL SERVICE

This contract for shipping services is made by and between [REDACTED] (“Customer”, a corporation organized and existing under the laws of [REDACTED], with its principal office at [REDACTED], and the United States Postal Service (“the Postal Service”), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L’Enfant Plaza, SW, Washington, DC 20260. The Postal Service and Customer are referred to herein collectively as the “Parties” and each as a “Party.”

WHEREAS, it is the intention of the Parties to enter into a shipping services contract that will benefit the Postal Service, the postal system as a whole, and Customer, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006,

NOW, THEREFORE, the Parties agree as follows:

I. Terms

The following terms apply as of the implementation date, as defined below:

- A. Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300_landing.htm) and of other postal laws and standards apply to mail tendered under this Contract.
- B. Customer will manifest pieces eligible for customized pricing under this contract as specified by the Postal Service, using a separate permit number to ship such pieces, and will begin using the Electronic Verification System (eVS) for shipments of such pieces.
- C. The Postal Service will provide Customer with standard Priority Mail packaging for pieces eligible for customized pricing under this contract.

D. First-Year Customized Priority Mail Prices

1. For the first year of this contract, customized prices under this contract will be the applicable prices shown below.



E. Annual Adjustment

1. For the second year of the contract, beginning on the first anniversary of the contract's effective date, customized prices under this contract will be the first year's prices plus [REDACTED]
2. For the third year of the contract, beginning on the second anniversary of the contract's effective date, customized prices under this contract will be the second year's prices plus [REDACTED]
3. Customized prices for the second and third years will be calculated by the Postal Service and rounded up to the nearest whole cent.

II. Regulatory Review and Effective Date

This contract is subject to approval by the Postal Service Governors and the Postal Regulatory Commission ("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, and upon approval of the Postal Service Governors, the Postal Service will make required filings with the Commission. The effective date of this contract shall be the day on which the Commission issues all necessary regulatory approval.

III. Expiration Date

This contract shall expire three years from the effective date, unless (1) terminated by either Party with 30 days notice to the other Party in writing, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent contract between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation.

IV. Appeals

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this contract by submitting a written appeal within 30 days of receipt of notification of the determination giving rise to the appeal to: Manager, Pricing and Classification Service Center, 90 Church St. Ste. 3100, New York, NY 10007-2951 ((212) 330-5300 / Fax: (212) 330-5320). The decision of the PCSC Manager will be administratively final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

V. Confidentiality

Neither Party shall make public the terms of this contract, except to the extent required by law. The Postal Service shall request that the Commission, in executing its functions under the Act, not disclose Customer's identity, the terms of this contract, or supporting data, in accordance with the Commission's rules and practices.

VI. Amendments

This contract shall not be amended except expressly, in writing, by authorized representatives of the Parties.

VII. Assignment

Neither Party may, or shall have the power to, assign its rights under the contract or, delegate its obligations hereunder, without the prior consent of the other; such consent is not to be unreasonably withheld. In addition, in the event that Customer is merged with or into or acquires another entity, pricing under this contract following such merger or acquisition shall apply only to mail sent by the entity existing prior to the merger or acquisition. Following any such merger or acquisition, the parties may negotiate in good faith to extend, modify or enter into a new contract applicable to the merged or acquired entity.

VIII. Waiver

Any waiver by a party shall not constitute a waiver for any future occurrence. No waiver shall be valid unless set forth in a writing executed by the party waiving such provision.

IN WITNESS WHEREOF, the Parties hereto have caused this contract to be duly executed as of the later date below:

UNITED STATES POSTAL SERVICE

Signed by: Gary Reblin

Printed Name: Gary Reblin

Title: VP Expedited Shipping

Date: 7/20/09



Date: 17 July 2009

ATTACHMENT B

MAIL CLASSIFICATION SCHEDULE CHANGES

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

NEGOTIATED SERVICE AGREEMENTS

Domestic

[Priority Mail Contract 17]

ATTACHMENT C

STATEMENT OF SUPPORTING JUSTIFICATION

I, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, am sponsoring this request that the Commission add Priority Mail Contract 14 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c).*

Not applicable. The Postal Service is proposing that this Priority Mail contract be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.*

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The contract sets specific terms and conditions for providing Priority Mail service to the customer. Priority Mail service is provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Priority Mail services in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.*

I am advised that merchandise sent by Priority Mail services and this contract are not covered by these provisions. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Expedited shipping, similar to Priority Mail service, is widely available from well-known and successful private firms at both published and contract prices.

- (g) *Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.*

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

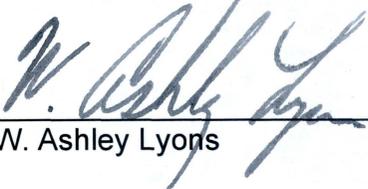
- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

Certification of Prices for Priority Mail Contract 17

I, W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for Priority Mail Contract 17. The prices and terms are consistent with the formulas established by the Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Priority Mail Contract Group, dated April 27, 2009 (Governors' Decision No. 09-6).

I hereby certify, based on in the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. The contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



W. Ashley Lyons