

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 15

Docket No. MC2009-36

Competitive Product Prices
Priority Mail Contract 15 (MC2009-36)
Negotiated Service Agreement

Docket No. CP2009-55

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE
TO UNITED STATES POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL CONTRACT 16 TO COMPETITIVE PRODUCT LIST

(August 6, 2009)

In response to Order No. 260,¹ the Public Representative hereby comments on the July 24 Request of the United States Postal Service to add Express Mail & Priority Mail Contract 15 to the Competitive Product List (Request).

The instant Request comports with title 39 stipulations and the relevant Commission Rules of Practice and Procedure. It appears, therefore to be beneficial to the general public.

Discussion

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 Request (and its accompanying documentation) is

¹ Notice and Order Concerning Priority Mail Contract 16 Negotiated Service Agreement, July 29, 2009.

persuasive. Each element of 39 USC 3633(a) appears to be met by Priority Contract 16. However, it is not clear that the Postal Service's justification of this contract under the umbrella of Governors' Decision 09-6 (filed in Docket No. MC2009-25) comports with the requirements of 39 USC 3632(b)(3).

For a competitive products pricing schedule *not of general applicability*,² the Postal Service must demonstrate that the contract will comply 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). In the 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) (at 2), the Governors assert that these conditions are met. Furthermore, the Governors' approval of the pricing shell outlined in that Decision, while arguable broad, does comport with section 3642 stipulations regarding new products. Features such as modified shipping packages for the contract partner and/or postage payments tailored for the most efficient transactions between the Postal Service and the contract partner arguably militate for consideration as a "new" product, as much as negotiated pricing that, while falling within the rubric of Governors' Decision 09-6 and Docket No. MC2009-25, is distinguishable from other, previously-approved, Priority Mail contracts which have been enabled by Governors' Decision 09-6. In this case, the contract calls for the Postal

² See 39 CFR 3015.5-7.

Service to provide packaging and labels. The contract appears to be silent on issues such as manifesting, electronically or otherwise. Finally, because the term of this contract is ambiguous, it is not readily apparent that this contract is a new product distinguishable from other Priority Mail Contracts – but for the pricing, as of this writing. While Term I.(D) “Annual Adjustment”, limns out annual pricing adjustments, Term III, “Expiration Date” states, “This contract shall expire one year from the effective date ...”

This conflict stymies this Public Representative. Without further information, it would appear that these conflicting terms were not a hurdle to the two parties, whose agents signed it. Presumably, both parties also subsequently reviewed the agreement they signed, but there is no explanation in the Postal Service’s Request. The Public representative submits that the contract expiration must be established definitively since it is an essential component of the contract’s classification as” a product.”

Furthermore, the Public Representative respectfully notes that in Attachment C, Statement of Supporting Justification, the Postal Service official sponsors the Request referring to “Priority Mail Contract 14”. No doubt this was merely a typographical or filing error, but this discrepancy should be explained or corrected before the Commission accepts the Statement of Supporting Justification.

Accountability and Confidentiality

The Postal Service 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.³ Here, it would

³ Postal Service Request, at 2-3.

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. It appears that the Postal Service has made a good faith effort to supply enough pertinent details to demonstrate the need for material under seal to be protected.

However, with the confidentiality afforded the Postal Service Requests filed under seal, it is important to provide the general public with the courtesy of transparency to the greatest extent possible. To comply with Order No. 247 in Docket[s] MC2009-30 and CP2009-40,⁴ the Postal Service should include with its filing a redacted copy of the Governors' Decision and certification. Locating the redacted version in another docket may raise an unnecessary hurdle for the layperson. This need not be an onerous task for the Postal Service; when filing multiple sequential NSA notices, each relying on the same Governors' Decision for ratemaking authority, inclusion of the Governors' Decision in the first, and clear reference to the recent "lead" Notice, in each subsequent filing might meet the spirit of the Commission's instruction that each docket should be self-contained. The instant NSA appears to be the second of three filed July 24, 2009 – all relying on Governors' Decision 09-6 for support. The Postal Service's legitimate commercial interests in keeping contract data confidential can thereby be balanced with the general public's right to review rates, classifications and operating practices of the Postal Service.

⁴ Order Concerning Priority Mail Contract 14 Negotiated Service Agreement, July 14, 2009, at 6.

The Agreement

The agreement features provisions that are mutually beneficial to the parties, and beneficial to the general public. Components of this contract which suggest positive results:

- Prices are set to increase for the second and third years of the contract, based on the increases of prices of general applicability (Provided this term is operant).
- The Postal Service will supply the contract partner with Priority packaging and labels, ensuring some efficiencies in processing.

The pricing formula approved in Governors' Decision 09-6 should assure that there is no subsidization of this Priority Mail negotiated service agreement by market dominant products, if pricing were the only variable under consideration in this contract.

Conclusion

The Public Representative submits that the present Priority Mail Contract 15 agreement Request does not comply with title 39, or fulfill all relevant requirements for Commission Rules of Practice and Procedure. The Public Representative does believe that this could be remedied, but the Request as filed is problematic.

The Public Representative apologizes for not bringing the noted discrepancies to the attention of the Commission and/or the Postal Service at an earlier date. This Public Representative will make every effort to discover and reveal any ambiguities and discrepancies in future Requests in a timely manner so that parties can take corrective action, and/or re-file in a timelier manner.

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

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