

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 18

Docket No. MC2009-42

Competitive Product Prices
Priority Mail Contract 18 (MC2009-42)
Negotiated Service Agreement

Docket No. CP2009-63

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO UNITED STATES
REQUEST TO ADD PRIORITY MAIL CONTRACT 18 NEGOTIATED SERVICE
AGREEMENT TO THE COMPETITIVE PRODUCTS LIST

(September 25, 2009)

In response to Order 298,¹ the Public Representative hereby comments on the September 11, 2009 United States Postal Service Request to Add Priority Mail Contract 18 to the Competitive Product List (Request).

This proposed contract's documentation is persuasive. Each pertinent element of 39 U.S.C. 3632, 3622, and 3642 appears to be met by this contract. Furthermore, the contract is consistent with policies in 39 CFR part 3015 and 39 CFR 3020 subpart B.

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter, documentation in its original

¹ Commission Order 298, Notice and Order Concerning Priority Mail Contract 18 Negotiated Service Agreement, September 15, 2009

(not redacted) version. The Public Representative also reviewed supplemental information regarding the new agreement submitted by the Postal Service on September 21, 2009, in response to the Commission's request in Order 298

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.² 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. The Postal Service also requests the Commission order that all customer identifying information remain confidential indefinitely (as opposed to ending after ten years, in accordance with Commission Rules of Procedure³. Attachment F at 1 and 7. The Postal Service presents a reasoned argument for protecting any information identifying the customer, even after pricing and other details of the agreement lose their protective conditions.

Discussion

The instant Priority Mail contract is with a current customer who is partner to an Express Mail and Priority Mail competitive negotiated service agreement (NSA). Terms of Priority Mail Contract 18 supersede this NSA only with respect to Priority Mail

² Attachment C to the Request, Application for Non-Public Treatment of Materials.

³ 39 CFR 3007.30

shipments. Attachment B at 1. Under the instant agreement, the Postal Service will provide the shipper with Priority Mail packaging for shipping at specific, negotiated rates with adjusted annually. The customer must mail with a separate permit for Priority Mail shipments, and use Electronic Verification System (eVS) for shipment and manifesting of such pieces. The existing contract's terms and conditions regarding Express Mail shipments remain effective. The effect of the instant agreement is some minor modifications to an agreement already in effect – these appear to be beneficial to both parties, and do not disadvantage the public. To the extent that these changes constitute a new NSA, there is reason to examine the contract's compliance with title 39.

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 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).

⁴ See 39 CFR 3015.5.

Conclusion

The Public Representative acknowledges that the pricing in the present Priority Mail Contract 18 comports with provisions of title 39. 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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