Postal Regulatory Commission
Submitted 2/9/2011 3:54:22 PM
Filing ID: 71883
Accepted 2/9/2011

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

COMPETITIVE PRODUCT PRICES PRIORITY MAIL CONTRACT 7 (MC2009-25) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2009-31

NOTICE OF UNITED STATES POSTAL SERVICE OF CHANGE IN PRICES PURSUANT TO AMENDMENT TO PRIORITY MAIL CONTRACT 7
(February 9, 2011)

The Postal Service hereby provides notice that prices under Priority Mail Contract 7, in the above-captioned proceeding, have changed as contemplated by the contract's terms. A redacted version of the amendment to Priority Mail Contract 7 is provided in Attachment A, and the unredacted amendment is being filed under seal. The amendment will become effective on the day that the Commission completes its review of this filing.

The Postal Service is also filing supporting financial documentation and a certified statement as required by 39 C.F.R. § 3015.5. The certified statement required by 39 C.F.R. § 3015.5(c)(2) is provided in Attachment B. The Postal Service's application for non-public treatment of these materials is included with this filing as Attachment C. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product Support

Elizabeth A. Reed

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3179, Fax -6187
elizabeth.a.reed@usps.gov
February 9, 2011

ATTACHMENT A

REDACTED AMENDMENT TO PRIORITY MAIL CONTRACT 7

AMENDMENT OF
SHIPPING SERVICES CONTRACT
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
[redacted]
REGARDING PRIORITY MAIL SERVICE

WHEREAS, the United States Postal Service ("Postal Service") and [redacted] ("Customer") entered into a shipping services contract regarding Priority Mail service on February 25, 2009.

WHEREAS, this contract was reviewed by the Postal Regulatory Commission in its Dockets No. CP2009-31 and MC2009-25 as Priority Mail Contract 7 on June 19, 2009, and became effective on June 20, 2009;

WHEREAS, the contract was amended on December 23, 2009 in Commission Order No. 336 to reflect new pricing;

WHEREAS, the Parties desire to add new pricing to the existing contract for specific package characteristics;

NOW THEREFORE, the Parties agree that the following be added to Paragraph I.D. The existing contract remains unchanged in all other respects. This amendment shall become effective on the day that the Commission issues all necessary regulatory approval.

D. First-Year Customized Priority Mail Prices

2. Beginning the effective date of this amendment through June 18, 2011, contract prices will be the applicable prices shown below for packages meeting the characteristics below. These prices supplement and do not replace the prices outlined in Paragraph D.1.

[redacted]

3. Customized Priority Mail Prices and Volume Minimum for Parcels Weighing Less than 16 Ounces

a. For a period of three (3) months after the effective date of this amendment, or until such time as the Postal Service offering First-Class Mail Commercial Plus ("FCMCP") is approved by the Postal Regulatory Commission and generally available in the marketplace, whichever is later, contract prices will be the applicable prices for packages meeting the characteristics below. These prices supplement and do not replace the prices outlined in Paragraph C.1.

   i. The unzoned flat-rate contract price is [redacted] for machinable parcels, as defined by Domestic Mail Manual 401.1.5 ("DMM"), weighing less than 16 ounces.
   ii. The unzoned flat-rate contract price is [redacted] for machinable parcels, as defined by Domestic Mail Manual 401.1.5, weighing less than 16 ounces with electronic Delivery Confirmation.

b. The above flat-rate contract prices are only applicable if Customer commits to a minimum volume of [redacted] pieces per month until the expiration of this amendment. Customer shall not receive packaging from the Postal Service for packages sent under this section.

c. Within 45 days after the end of each calendar quarter, the Postal Service will determine if Customer has met the minimum volume commitment above. If Customer fails to meet the minimum volume commitment, Customer shall pay the difference between the applicable unzoned flat-rate contract price in this amendment and the one (1) pound, Zone 1 & 2 rate detailed in the existing contract. Payment is due within 30 days after receipt of a billing statement from the Postal Service.

d. Upon the expiration of this amendment, Customer can request an extension in writing in the event it needs additional time to convert from the Priority Mail flat-rate contract prices in this amendment to FCMCP.

UNITED STATES POSTAL SERVICE

Signed by: _____

Printed Name: Gary C. Reblin

Title: Vice President, Domestic Products

Date: January 13, 2011

[redacted]

ATTACHMENT B

SIGNED CERTIFICATION

Certification of Prices for Amendment to Priority Mail Contract 7

I, Joseph D. Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for the amendment to Priority Mail Contract 7. The amended prices and terms contained in this Contract were 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 amended 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 amended contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

Joseph D. Moeller

ATTACHMENT C

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of: the unredacted amendment to the shipping services contract;[1] and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials. The Postal Service further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).[2] Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service

---

[1] The Postal Service informed the customer prior to filing its notice that it would be seeking non-public treatment of the redacted portions of the contract. The Postal Service also informed the customer that it could file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3007.22.

[2] In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C.§ 504(g)(3)(A).The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is elizabeth.a.reed@usps.gov and whose telephone number is 202-268-3179.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

The amendment to the contract identifying the customer and containing the prices, terms and conditions of the contract, and the financial workpapers supporting the amendment to the contract are being filed under seal in this docket. A redacted copy of the amendment to the contract is being filed publicly in this docket. The Postal Service maintains that the redacted portions of the amendment to the contract, name of the customer, and related financial information should remain confidential.

With regard to the amendment to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are

the negotiated price structure and the terms directly related to implementation of the price structure.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. First, revealing customer-identifying information would enable competitors to focus marketing efforts on current postal customers, undermining the effort and resources that the Postal Service has invested in cultivating business relationships with those customers. The Postal Service considers that it is highly probable that if this information were made public, its competitors would take immediate advantage of it. The underlying contract includes a provision allowing the customer to terminate the contract without cause by providing at least 30 days' notice. Therefore, there is a substantial likelihood of losing the customer to a competitor that offers it lower pricing.

Other redacted information concerning the prices and related terms of the contract is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Revealing such information would provide a competitive advantage to competitors of the Postal Service. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service would lose business as a result. Competitors could use the information to assess the offers made by the Postal Service to its customers for any possible

comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. In addition, revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices. Finally, public disclosure of the information in the spreadsheets also presents a serious risk of commercial harm to the customer. Disclosure of such information could be used by competitors of the customer to acquire market intelligence about the customer's underlying costs, mailing patterns, and customer base.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of information in the financial work papers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in

the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials. This includes all competitors of the relevant customer, whether or not they are currently actual Postal Service customers.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity, other than customer identifying information. The Postal Service believes that customer-identifying information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. Disclosure of customer identifying information leaves the Postal Service vulnerable to competitive "cherry-picking." Customers may seek to extend or renew their contracts, but the implementation of a new 10-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. Therefore, the Postal Service seeks indefinite non-public treatment of the customer's name, address and other identifying information in the non-public materials.

(8) Any other factors or reasons relevant to support the application.

None.