



## **Association for Postal Commerce**

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April 20, 2004

Michael J. Harris  
Supply Management Infrastructure  
United States Postal Service  
475 L'Enfant Plaza, S.W., Room 4130  
Washington, D.C. 20260-6201

**Re: Comments of the Association for Postal Commerce on  
USPS's Proposed Rule, 69 Fed. Reg 13,786-793 (March 24, 2004)**

Dear Mr. Harris:

On behalf of the Association for Postal Commerce (Postcom), we hereby submit our comments on the proposed changes to the Postal Service's purchasing regulations, as described in the March 24, 2004 *Federal Register* notice.

**In general, Postcom opposes the proposed changes to the Postal Service's purchasing rules, although there are some elements that do deserve further consideration.** These new proposed rules would essentially abolish the Postal Service's existing purchasing regulations and leave no binding rules in their place. While we generally support the Postal Service's desire to implement the best buying practices of the commercial sector, the proposed rules do not accomplish that result. The proposed rules do not identify a single buying practice of the commercial sector that the Postal Service wishes to implement. The complete void in procurement policy that would be created by the new proposed rules would greatly reduce Postal Service accountability for its procurement actions and strike a blow against public-policy oversight. Except for the establishment of an ombudsman and the increased use of alternative dispute resolution methods, the proposed changes should be abandoned. The Postal Service should instead concentrate on identifying and implementing – through binding and public regulations – specific buying practices that will best serve the interests of the Postal Service.

### **Background**

When the Postal Service was created 34 years ago, Congress exempted it from many federal purchasing laws – but by no means all such laws. Many of the most comprehensive and regulation-intensive laws were specifically made applicable to the Postal Service.<sup>1</sup> For example, the Postal Service is compelled to comply with the Service Contract Act, the Davis Bacon Act, and the Contract Disputes Act. Similarly, the federal courts

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<sup>1</sup> The Postal Service is required by law to comply with a variety of statutes governing federal agency purchases, such as the Davis Bacon Act, the Miller Act, the Walsh-Healy Act, the Service Contract Act, the Prompt Payment Act, the Program Fraud and Civil Remedies Act, the Inspector General Act of 1978, and the Contract Disputes Act. See 39 U.S.C. 410(b).

have long taken jurisdiction over challenges to the propriety of Postal Service purchasing decisions.<sup>2</sup> Congress has also taken an interest in Postal Service purchasing decisions, as reflected in part by at least 15 different General Accounting Office reports on postal procurement issues since 1984. Thus, while Congress afforded the Postal Service substantial flexibility in conducting its procurements, it simultaneously reflected an intention to keep postal purchases within a sphere of key federal contracting and public policy principles.

Initially, the Postal Service did not take full advantage of its exemption from many federal procurement laws, and issued purchasing rules that were nearly identical to those of other federal agencies. Starting in 1987, the Postal Service took greater advantage of its flexibility by issuing purchasing rules that combined some of the most advantageous aspects of public and commercial sector buying practices. This process began in earnest with the issuance of the *USPS Procurement Manual*, which replaced the former *Postal Contracting Manual*. The process was continued further by the January 31, 1997 issuance of the *USPS Purchasing Manual*. These purchasing regulations have consistently been incorporated by reference in the U.S. Code of Federal Regulations, and have the full force and effect of law.<sup>3</sup>

The Postal Service has continued to modify the *USPS Purchasing Manual* to incorporate new and improved buying practices, such as the agency's recent adoption of supply chain management policies into its purchasing rules. The most recent edition of the Postal Service's postal rules, the *USPS Purchasing Manual, Issue 3*, was issued only four months ago, on December 25, 2003. The Postal Service's summary of these new rules listed 58 new and significant changes in Postal Service purchasing policy from the previous edition of this manual.

**The Postal Service now seeks to abolish essentially all of those purchasing rules**, including the 58 significant changes issued just four months ago. Such action would abandon years of purchasing experience gained by both the Postal Service and its suppliers within this framework. In its place, the Postal Service would substitute seven pages of mostly extraneous regulations for the 523-page *Purchasing Manual, Issue 3* it now employs.<sup>4</sup> Of the seven pages of new regulations, five are devoted to rules on whom the Postal Service may exclude from purchase opportunities.

*None of the proposed regulations state what policies the Postal Service will apply in conducting its purchases and administering its contracts.* Absent from the proposed regulations are any policy statements or procedural rules governing core purchasing concepts, such as: (1) when and how the agency will publicize purchase opportunities; (2) when the agency will use competitive versus non-competitive purchase strategies, (3) how the agency will conduct procurements, evaluate proposals, and make contract award decisions; and (4) what information the agency will provide offerors in post-award debriefings. Similarly, the proposed rules lack any guidance on contract administration policies and rules, such as payment withholding and contract termination.

## Discussion

### Section 601.100, "Purchasing policy."

This section purports to describe USPS's purchasing policy. We use the phrase "purports to" advisedly, because this section does not, in fact, describe any purchasing policies at all. The Postal Service's "Section-by-Section Analysis" states that the agency intends to "acquire goods and services in a manner akin to the best commercial practices in the private sector."<sup>5</sup> But the actual proposed regulation does not even state this

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<sup>2</sup> See *Emery Worldwide Airlines, Inc. v. United States*, 264 F.3d 1071 (Fed. Cir. 2001); *Hewlett-Packard Co. v. United States*, 41 Fed. Cl. 99, 104 -105 (1998).

<sup>3</sup> See 39 C.F.R. §§ 601.100 - 105. See also, e.g., *DeMatteo Construction Co. v. US*, 220 Ct. Cl. 579, 592, 600 F.2d 1384, 1391; *Modern Systems Technology Corp. v. US*, 24 Cl. Ct. 360 (1991); *T & S Products, Inc. v. U.S. Postal Service*, 1994 U.S. Dist. LEXIS 20751 (D.D.C., May 26, 1994).

<sup>4</sup> 69 Fed. Reg. 13786 (March 24, 2004).

<sup>5</sup> 69 Fed. Reg. at 13786.

much about USPS's intended purchasing policy. This section states only that it is USPS policy to acquire property and services in accordance with existing law. No mention is made of any purchasing policy whatsoever – let alone any policies that are consistent with best commercial practices. This section should be withdrawn, or in the interests of accuracy be re-titled “Absence of any USPS purchasing policy.”<sup>6</sup>

***The lack of binding purchasing policies reduces oversight*** and “threatens fundamental norms that define the procurement process,” such as: “(1) robust competition; (2) high standards of individual and institutional integrity; and (3) system transparency – all of which are key to maintaining public trust.” Steven L. Schooner, *Fear of Oversight: the Fundamental Failure of Businesslike Government*, 50 Am. U. L. Rev. 627, 709-10 (2001) (citing Steven Kelman, *Procurement and Public Management: The Fear of Discretion and the Quality of Government Performance*, 97 (1990)); see also 43 *Government Contractor* 211 (2001) (quoting OFPP Director, Angela Styles, as stating that fundamental procurement goals of competition and fairness “cannot be compromised in the name of efficiency.”). While the Postal Service has greater purchasing flexibility than other federal agencies, instituting a purchasing system that is void of any binding policy on core purchasing concepts cannot be justified under the banner of instituting more “businesslike” policies.<sup>7</sup>

Purchasing policies instituted by federal agencies serve a vital public interest:

When the public loses insight into how the government spends its money, when contracts are awarded or administered based upon friendships rather than rules, or when competing firms lack confidence that they stand on equal footing with incumbent contractors, the system suffers. Similarly, if contractors find themselves unable to enforce their contracts and unwilling to aggressively pursue the benefit of their bargain, they will view prospective government purchases through a more jaded, if not jaundiced, lens, and, accordingly, inflate the price of their goods and services.

Steven L. Schooner, *Fear of Oversight: the Fundamental Failure of Businesslike Government*, 50 Am. U. L. Rev. 627, 710-11 (2001). The Postal Service's proposed abandonment of its purchasing rules would thus inevitably cause the agency to suffer much greater long-term losses than any short-term benefits that are contemplated.<sup>8</sup>

#### **Section 601.102, “Prior purchasing regulations.”**

This section purports to revoke all previous USPS purchasing regulations. We again use the phrase “purports to,” because the Postal Service actually plans to continue to employ the *Purchasing Manual*, or some other set of guidance, as the purchasing rules that its procurement officials should follow. The major difference is that the Postal Service will not treat the *Purchasing Manual* as a binding regulation. We believe this will be ineffective, and that a reviewing court would ultimately hold that the Postal Service is bound to whatever set of internal rules it actually employs as the agency's *de facto* regulations.

Currently, Postal Service purchasing and contract administration policy is set forth in a 500-plus page set of regulations called the *USPS Purchasing Manual, Issue 3*. This manual was recently revised and re-issued on December 25, 2003 – just under four months ago. The final report of the President's Commission was issued on July 31, 2003 – almost five months *before* USPS released its December 25, 2003 revisions to the

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<sup>6</sup> As a practical internal matter, the lack of binding purchasing policies could also result in a balkanized purchasing system, with some offices and individual contracting officers employing policies and procedures that are inconsistent with those of other offices and contracting officers. This will make internal management and oversight of the procurement function more difficult.

<sup>7</sup> Commercial entities that conduct purchases of the same size and breadth as the Postal Service do not shrink from instituting their own set of purchasing policies and guidelines, and frequently employ purchasing manuals with much greater levels of detail than the *USPS Purchasing Manual*.

<sup>8</sup> The *Federal Register* notice did not describe what, if any, benefits the Postal Service expected to derive from the proposed regulations, nor did the Postal Service explain how the proposed regulations would help the Postal Service obtain any benefits.

*Purchasing Manual*. In other words, the Postal Service had nearly five months to consider and evaluate the recommendations of the President's Commission before it issued its latest revision to the *Purchasing Manual*. Yet the newly issued *Purchasing Manual*, and its transmittal documents, nowhere state that the Postal Service would be better served by abolishing its regulations.

***The Postal Service should not abolish or distance itself from its purchasing regulations.*** First, the reason given for the proposed abolishment of the Postal Service's purchasing regulations was the recommendation of the President's Commission on the Postal Service that the agency "revise its purchasing regulations to maximize the flexibility given to it under current law and to reflect commercial best practices." The Postal Service here badly misconstrues the Commission's recommendation. The Commission recommended only that the agency "revise" its regulations to reflect best commercial practices – not that it abolish its regulations and turn them into non-binding guidelines

Second, *abolishment of the Postal Service's purchasing regulations would place USPS in conflict with one of the hallmarks of the Commission's report, which was the oft-cited "need for enhanced managerial accountability and public-policy oversight" of the agency.* Abolishing its purchasing regulations would strike a heavy blow against accountability and public-policy oversight envisioned by the Commission. Congress, the mailing industry, suppliers - and even USPS's own Inspector General - will no longer be able to hold the Postal Service accountable to its purchasing regulations, because there will be none. The public interest will also be undermined, because there will be no way to assure that the Postal Service is actually living up to its desire to employ best commercial purchasing practices.

Third, the abolishment of the Postal Service's current purchasing regulations will reduce supplier interest in USPS purchases, and thus lead to higher prices – not lower prices. Many postal suppliers already privately complain of heavy-handed treatment from the agency. They will become even less interested in pursuing purchase opportunities with an agency that declares itself free from rules that ensure fairness, equal treatment, and consistency. Reduced supplier interest in postal purchasing opportunities could even prevent the Postal Service from acquiring the best suited supplies and technology. The abolishment of its regulations would also give postal officials a ready-made excuse for any lapse or error in conducting a procurement, because they will no longer be legally bound to comply with any purchasing policies and rules. More ominously, it would give procuring officials a much freer hand to play favorites with some contractors and to exact retribution on others.

Fourth, the Postal Service need not abolish its purchasing rules to implement the best purchasing practices of the commercial sector. All the Postal Service need do is identify what it considers to be the best practices of the commercial sector and then incorporate those practices into its purchasing regulations. This would fulfill both the Commission's recommendation that the Postal Service revise its purchasing regulations to employ best practices and its recommendation that the Postal Service enhance its accountability and public-oversight.

Fifth, the Postal Service will achieve no benefits from abolishing its purchasing regulations. While the absence of binding rules creates unlimited "flexibility," the current set of purchasing regulations already provides the Postal Service a tremendous amount of flexibility. The Postal Service has not identified any purchasing rules which unreasonably restricts the agency in making purchases. Any rules so identified could, of course, be the subject of a proposed revision, which would be a much better method of curing any inflexibility than abolishing all of its existing regulations.<sup>9</sup>

Abolishment of its purchasing regulations might allow the Postal Service to better shield its purchasing decisions from judicial scrutiny and avoid public accountability, but that is neither in the public's or the agency's best interest. There are relatively few bid protests brought each year (only a handful of court actions in the last 10 years), and fewer still where courts have found that the Postal Service had violated its purchasing rules. Too few in number to be a real obstacle to the Postal Service, these cases have had the salutary effect of ensuring that the Postal Service conducts its purchases fairly and honestly. The existence of an effective mechanism and basis for independent judicial review of postal purchases results in greater

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<sup>9</sup> Indeed, the Postal Service was able to award a \$7 billion sole source contract under these rules and defeat a protest challenge to that action. While the reviewing court found that the Postal Service had violated its purchasing regulations, it did not overturn the award. *Emery Worldwide Airlines, Inc. v. United States*, 49 Fed. Cl. 211 (2001).

interest in postal procurements by suppliers and better administration of procurement opportunities by procuring officials.

#### **Section 601.105, “Business relationships.”**

This section, and the one that follows, provides that the Postal Service “reserves the right to cease business relations” with a person or organization that does not meet “reasonable business expectations of high quality, prompt service, and overall professionalism.” The section goes on to state that such conduct can be grounds for “terminating existing contracts for . . . convenience or for default.” The section does not explicitly provide that excusable grounds for failing to meet these expectations should be considered before making this determination.

We believe *this section creates too broad a standard for the potentially drastic consequence of terminating contracts and future business relations with a current supplier.* Also, this section does not limit the consequences to the particular contract under which the conduct occurred. The standard is broad enough to allow subjective factors – such as “overall professionalism” – to overrule actual contract performance and other objective factors. The proposed rule also provides contracting officers too lethal a threat to use against suppliers who are otherwise performing in accordance with the terms and obligations of their contracts. As discussed in the section below, this will have a negative impact on the Postal Service, because suppliers will become reluctant to do business with an agency in which individuals can wield such unbridled discretion. Suppliers will also be reluctant to make investments needed to compete for postal business, as one bad relationship with a single contracting officer could lead to the termination of all of its postal business and a “taint” on its reputation that may follow it to other agencies. Suppliers could determine that their efforts would be better directed to selling goods and services to other agencies and organizations.

The proposed regulation states that such conduct provides grounds to terminate a contract “for default.” This will be ineffective because the grounds for terminating a contract for default are set forth in each contract’s particular terms and conditions. The Postal Service cannot by regulation add new terms to an existing contract, particularly new terms that would substantively affect the parties’ rights and obligations.

#### **Section 601.106, “Cancelling business relationships.”**

This section describes the grounds and procedures for the Postal Service to “cancel its business relationship with a person or organization that does not meet reasonable expectations or that does not provide a high level of confidence about current or future business relations.” This proposed rule is unprecedented in government contracting, and in commercial sector contracting as well. We know of no other public institution that has enacted a regulation similar to this one, and none is referenced in the Postal Service’s Section-by-Section Analysis. In addition, the Postal Service does not seek to explain why it needs to implement such an unprecedented regulation. The totality of the new regulation suggests that the Postal Service seeks to implement a procedure that essentially formalizes a “blacklisting” procedure, which can be brought on broad and highly subjective grounds, can be based on action unrelated to contract performance, can extend indefinitely, and provides the supplier only a limited right to contest the action.

The grounds that may be used for canceling a business relationship are much too broad and subjective, and in many cases not even related to a supplier’s actual performance under its contracts. For example, grounds for canceling a business relationship include “failure to deliver on promises made in the course of dealings with the Postal Service.” § 601.106(a)2). These grounds are ambiguous, because the term “promises” could mean the enforceable promises that make up the terms of a contract, or some other statement that is not part of a contractual commitment but is considered a “promise.” If the term “promises” is meant to include the latter, ceasing a business relationship on these grounds is worrisome and could prove problematic. A supplier’s worth should be judged on its ability to comply with contractual commitments and requirements, not on statements that are outside the contract and are subjectively adjudged to be “promises.”

Another ground for canceling a business relationship is “failure to respond promptly and completely to Postal Service inquiries and requests for information, without inadvertence or good reason.” § 601.106(a)4.). The problem here is that the Postal Service’s request for information could go beyond what the supplier is contractually required to provide. Thus, a supplier could be blacklisted even though it is in full compliance with all of its contractual duties and responsibilities. There could also be disagreements as to whether a supplier’s

response was prompt enough or complete enough. Such disagreements should not be grounds for the ultimate sanction of blacklisting a supplier.

A supplier could also be blacklisted for "engaging in uncooperative practices" during negotiation. § 601.106(a)(5). During a negotiation, one party often feels the other party is being "uncooperative," even in cases where the parties eventually do reach a mutual agreement. So this standard is also too broad. The other grounds given for examples of "unacceptable business practices" are too broad as well and create highly subjective bases for taking an action that, in effect, is tantamount to a debarment.

The unspecified length of the blacklisting, which can last indefinitely, and the limited disputes resolution process are both objectionable. The length of time in which the Postal Service will not do business with an entity should be stated definitely, as in the debarment process. And because a supplier's reputation is at stake, as well as its financial interests, the supplier should have the opportunity for more complete due process rights, as is provided in a debarment action. Under the proposed regulations, the supplier could turn only to the USPS ombudsman or other alternative disputes resolution process agreed to by the Postal Service. Notwithstanding the limited disputes right set out in the proposed rule, we believe a supplier would have an independent right to challenge such action in federal court.

The Postal Service would gain no benefit from this new blacklisting procedure. The terms and conditions that apply to nearly all Postal Service contracts already provide strong mechanisms for enforcing performance in accordance with the contract's terms. Existing contracts also generally contain provisions that require suppliers to produce relevant information and to keep its promises. And in awarding new work, the Postal Service is required by its existing regulations to evaluate a supplier's past performance and capability, so new work need not be awarded to suppliers who do not keep their promises. The Postal Service also has the capability to suspend or debar contractors who commit misconduct or seriously violate their postal contracts.<sup>10</sup> Thus, the Postal Service already has mechanisms for ensuring that its existing suppliers are conducting themselves properly and professionally, for awarding new work only to suppliers who have shown they are capable and reputable, and for debarring undeserving suppliers.

The new blacklisting rule would, in practice, make obsolete the Postal Service's debarment and suspension procedures because the Postal Service would more readily be able to achieve the same or harsher result through the blacklisting rule. In contrast to the proposed blacklisting rule, the standards for imposing a suspension and debarment are more objectively based, require the existence of some supplier misconduct, and provide suppliers with greater due process rights. Also, a supplier may defend against a suspension and debarment action by showing that it is currently a responsible contractor and has put in place corrective action that will effectively prevent recurrence of further misconduct. The proposed blacklisting rules pose none of these obstacles, but yield the same or harsher consequences. Thus, there would be little reason for postal officials to choose debarment over blacklisting.

In sum, ***the proposed rule is unprecedented, unjustified, and ill-advised.*** The rule would allow the Postal Service to blacklist suppliers on broad and highly subjective grounds, which would provide no real benefit to the agency. The proposed rule should be abandoned.

#### **Section 601.107, "Alternative dispute resolution."**

This section would establish USPS policy to resolve purchasing disagreements through the use of alternative disputes resolution (ADR) methods, whenever possible. The new policy requires both suppliers and contracting officers to consider using ADR methods to resolve disagreements regardless of the nature of the disagreement or when it occurs during the purchasing process.

We whole-heartedly support this policy. ADR methods can lead to faster and more cost-effective resolution of contract disputes, and can help avoid the strained relationships that sometimes occur during lengthy periods of uncertainty created by contract disputes. To be effective, however, this must be more than just a policy statement; it must also be practiced. We understand that the Postal Service currently has a policy promoting ADR, but it is not used as frequently, or as early in the dispute process, as it could be. We would encourage the Postal Service to initially turn to ADR methods to resolve all contract disputes.

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<sup>10</sup> See *USPS Purchasing Manual, Issue 3*, § 3.7.1.d.1(d).

To be effective, each party must have in attendance at an ADR proceeding the individual(s) who have the necessary authority to settle the matter, including both sufficient contracting authority and budget authority. Without this level of authority in attendance, ADR proceedings can be unsuccessful or result in the delay of the ultimate resolution of a matter. To this end, we recommend that the proposed new regulation be supplemented to provide that the Postal Service will endeavor to have in attendance at ADR proceedings individuals with sufficient contractual and budgetary authority to fully resolve the matter.

### **Section 601.108, “Ombudsman and dispute resolution.”**

This section creates the position of an ombudsman to aid in the prompt and inexpensive resolution of disagreements on contract-related matters. We support the concept of an ombudsman to help the Postal Service and its suppliers promptly resolve contract-related disagreements. The proposed rule, however, needs further refinement and definition. As currently set out, it is not clear whether the ombudsman will have the necessary (or any) authority to order effective and appropriate remedial action. Also, it is not clear who the ombudsman reports to within the Postal Service’s organization chart. Further, the effectiveness of the ombudsman will depend heavily on the abilities and expertise of the individual selected to serve in that position.

We object to some of the provisions set out in this section. The rules state that in resolving disagreements that arise, the ombudsman may not “take into account” USPS’s internal purchasing guidelines, or the rules or regulations of other agencies. § 601.108(a) and (g). We do not believe it is appropriate to impose blinders on what materials the ombudsman may consider in resolving a disagreement, and enforcing such a provision is problematic. Moreover, it is inappropriate to exclude from the ombudsman’s consideration the Postal Service’s own internal policy guidance. The Postal Service’s failure to follow its own internal policy guidance could be an important consideration in determining the appropriate resolution of a purchasing dispute. Also, the ombudsman should be allowed to consider the rules and regulations of other federal agencies, keeping in mind that those rules and regulations may not be applicable or analogous to postal rules and regulations. In some cases, however, they may be analogous, and thus they should be allowed to be considered by the ombudsman.

The regulations state that the ombudsman process is the “sole and exclusive procedure” for resolving disagreements arising in connection with the purchasing process (except for Contract Disputes Act claims). § 601.108(b). While the ombudsman process might in many cases be the preferable method for resolving disagreements arising from the purchasing process, it is not – and cannot by agency fiat be made – the sole and exclusive procedure for resolving purchasing disputes. It has been long established that the federal courts (currently, the U.S. Court of Federal Claims) have jurisdiction to review the propriety of Postal Service purchasing decisions.<sup>11</sup> Similarly, the proposed regulations state that the only grounds for appeal of the ombudsman’s decision is whether the decision was procured by fraud or other criminal misconduct or was obtained in violation of the regulations or statute. § 601.108(h). An agency, however, cannot by regulation deprive or restrict the exercise of a court’s of judicial review of its actions.

The regulations provide that confidential material will be provided to the ombudsman only. In reviewing protests of Postal Service procurements, the U.S. Court of Federal Claims frequently employs a “Protective Order” that allows all parties to review confidential material under strict safeguards. The General Accounting Office employs a similar procedure in its protest resolution process. We suggest that a procedure be set up that would allow each party to review confidential material under appropriate safeguards.

### **Section 601.111, “Interest on claim amounts.”**

This section states that interest on a claim will be paid from the date it is received “or from the date payment would otherwise be due, if that date is later.” This regulation conflicts with case law defining a federal agency’s obligation to pay interest on claims under the Contract Disputes Act.<sup>12</sup> This regulation would therefore be unenforceable and should be stricken.

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<sup>11</sup> *Emery Worldwide Airlines, Inc. v. United States*, 49 Fed. Cl. 211, affirmed 264 F.3d 1071 (2001).

<sup>12</sup> *Caldera v. J.S. Alberici Constr. Co. et al.*, 153 F.3d 1381, 1383 (Fed. Cir. 1998).

## Summary

***We strongly oppose the Postal Service's proposed abolishment of its purchasing rules and the implementation of a broad and highly subjective "blacklisting" procedure.*** The proposed regulations are unprecedented, unhelpful to the agency, and unfair to suppliers. Moreover, the proposed abolishment of the agency's purchasing rules would not likely withstand judicial scrutiny, so the effort would be a wasteful endeavor that sets back real purchasing reform.

***The proposed rules are also squarely inconsistent with the recommendations of the President's Commission on the Postal Service.*** The Postal Service should be encouraged to identify and implement the best purchasing practices of both the commercial sector and the federal government. Unlike most federal agencies, the Postal Service has the statutory flexibility to do this. But that is not what the Postal Service is proposing to do. Rather, the Postal Service is proposing to abolish its existing purchasing rules as binding regulations and employ them instead as non-binding guidelines. No support for such an approach can be drawn from the recommendations of the President's Commission, which specifically advised the Postal Service to "revise" its purchasing regulations. The Commission meant what it said – "revise" its regulations, not abolish them. The proposed action would also run contrary to the Commission's recommendation that the Postal Service be made more accountable and open to public-policy oversight.

The new rules make no mention of what policy the Postal Service will follow in just about every core purchasing concept that exists, other than a new measure that amounts to blacklisting. The proposed blacklisting regulation is itself unprecedented in both the government and commercial sector. The standards for blacklisting a supplier are so broad and subjective, and often unrelated to actual contract performance, that they will likely have a negative impact on USPS's ability to attract suppliers and obtain the best prices.

***We support the Postal Service's proposed regulation to encourage the use of ADR methods.*** We also find promising the concept of an ombudsman to resolve disagreements that arise in the purchasing process, but more detail is needed here and objectionable provisions should be eliminated.

Finally, we commend the Postal Service for expressing its willingness to examine its current purchasing rules and propose revisions that would better serve the agency. We encourage the Postal Service to continue to pursue its goal of identifying the best purchasing practices of the commercial sector (and the federal sector, where appropriate) and implementing those practices in binding purchasing regulations. We also express our appreciation with being provided the opportunity to review the proposed rules and submit these commits.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene A. Del Polito". The signature is fluid and cursive, with a large initial "G" and "D".

Gene A. Del Polito  
President