

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Express Mail Contract 2
Negotiated Service Agreement

Docket No. MC2009-3
Docket No. CP2009-4

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO
UNITED STATES POSTAL SERVICE REQUEST TO ADD
EXPRESS MAIL CONTRACT 2 TO COMPETITIVE PRODUCT LIST
(November 5, 2008)

In response to Order No. 121,¹ the Public Representative hereby comments on the October 15 Request of the United States Postal Service to Add Express Mail Contract 2 to Competitive Products List and Notice of Establishment of Rates and Class Not of General applicability (Request).

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

¹ Commission Order 121, Notice and Order Concerning Express Mail Contract 2 Negotiated Service Agreement, October 29, 2008.

² See 39 C.F.R. 3015.5.

products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs).

The Request [and its accompanying documentation (under seal)] is persuasive. Each element of 39 USC 3633(a) appears to be met by this Express Mail contract.

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. Discussion of salient issues follows.

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 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 Decision of the Governors of the United States Postal Service (Governor's Decision 08-14), and management's analysis of this Express Mail contract detail a number of reasons this contract would be advantageous to the Postal Service:

- The contract brings new volume to the Postal Service.
- The mailer will use Postal Service packaging and labeling.

³ Postal Service Notice, at 2-3.

- The mailings will be entered in bulk.
- The three-year contract's pricing will be adjusted annually.

Pricing, Cost Coverage and Contribution

The Public Representative acknowledges that the pricing for this Express Mail contract comports with pricing, cost coverage and contribution provisions of title 39.

The Express Mail contract is designed to acquire new volume for the Postal Service, and provide incentives for the other party. The mailer will be mailing items in an efficient manner, reducing or eliminating Postal Service collection costs, clerk processing and handling. These factors promote the value of this agreement to the Postal Service throughout the three-year life of the contract. Furthermore, on the anniversaries of the effective date, prices under this contract will be adjusted.

The pricing agreed to in this contract is fair to the general public as well. It appears to generate sufficient revenue to cover its attributable costs, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.⁴

Conclusion

The Public Representative acknowledges that the pricing in the present Express Mail contract comports with provisions of title 39.

⁴ 39 C.F.R. 3015.7(c).

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

Paul L. Harrington
Public Representative

901 New York Ave., NW Suite 200
Washington, D.C. 20268-0001
(202) 789-6867; Fax (202) 789-6883
e-mail: paul.harrington@prc.gov