

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langlely, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Competitive Product Prices
Express Mail
Express Mail Contract 3

Docket No. MC2009-15

Competitive Product Prices
Express Mail Contract 3 (MC2009-15)
Negotiated Service Agreement

Docket No. CP2009-21

NOTICE AND ORDER CONCERNING
EXPRESS MAIL CONTRACT 3
NEGOTIATED SERVICE AGREEMENT

(Issued January 5, 2009)

I. INTRODUCTION

On December 31, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail Contract 3 to the Competitive Product List.¹ The Postal Service asserts that the Express Mail Contract 3 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2009-15.

¹ Request of the United States Postal Service to Add Express Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 31, 2008 (Request).

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract is assigned Docket No. CP2009-21.

Request. The Request incorporates (1) a redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the Mail Classification Schedule (MCS) product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).² Substantively, the Request asks the Commission to add the Express Mail Contract 3 product to the Competitive Product List. *Id.* at 1-2.

In the statement of supporting justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Express Mail Contract 3 is included with the Request. The contract is for 1 year and is to be effective the day the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.*, Attachment to Governors' Decision and Attachment E. It notes that performance under this contract could vary from estimates, but concludes that the risks

² Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail Service (Governors' Decision No. 08-25). The Governors' Decision includes an attachment which provides an analysis of the proposed Express Mail Contract 3. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

are manageable, and overall the contract is expected to generate significant contribution. *Id.*, Attachment to Governors' Decision.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Express Mail Contract 3, under seal.³ In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2-3. It further believes that it would be inappropriate in this case to redact information through the "blackout" method since it could provide information or clues about the name of the customer, the length and breadth of price charts, the complexity of annual adjustment mechanisms, or other similar sensitive information. Accordingly, it redacts the sensitive information using ellipses. *Id.* at 3.

II. NOTICE OF FILINGS

The Commission establishes Docket Nos. MC2009-15 and CP2009-21 for consideration of the Request pertaining to the proposed Express Mail Contract 3 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.⁴

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020, subpart B. Comments are due no later than January 15, 2009. The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

³ It notes that data filed under seal are more recent than what was available when the Governors voted. *Id.* at 2, n.10.

⁴ Docket No. MC2009-15 is reserved for only those filings related to the proposed product and the requirements of 39 U.S.C. 3642, while Docket No. CP2009-21 is reserved for those filings specific to the contract and the requirements of 39 U.S.C. 3633.

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is Ordered:

1. The Commission establishes Docket Nos. MC2009-15 and CP2009-21 for consideration of the matters raised in each respective docket.
2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than January 15, 2009.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary