

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

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

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO
UNITED STATES POSTAL SERVICE REQUEST TO ADD
EXPRESS MAIL CONTRACT 3 TO COMPETITIVE PRODUCT LIST

(January 15, 2009)

In response to Order No. 165,¹ the Public Representative hereby comments on the October 15 Request of the United States Postal Service to Add Express Mail Contract 3 to Competitive Products List and Notice of Establishment of Rates and Class Not of General applicability (Request).

The Request comports with title 39 stipulations and the relevant Commission Rules of Practice and Procedure. It appears, therefore to be beneficial to the general public.

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 165, Notice and Order Concerning Express Mail Contract 3 Negotiated Service Agreement, January 5, 2009.

(not redacted) version. The Request (and its accompanying documentation) is persuasive. Each element of 39 USC 3633(a) appears to be met by this Express Mail Contract 3.

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 may 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).

The Request also comports with provisions of 39 U.S.C. 3632, as evidenced by the inclusion of Governors' Decision 08-25, the analysis for that Decision, and the procedural steps undertaken by the request. Likewise, section 3642's notice and publication requirements are met by the submission of the Request itself. The relevant *Code of Federal Regulations* procedural requirements (Rules of Practice and Procedure) for Commission review are also fulfilled by the Postal Service's Request and notice in this matter.

² See 39 C.F.R. 3015.5.

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 Once again, it would appear that in this Docket the Postal Service has concisely justified the extent of confidentiality appropriate, providing a brief explanation for maintaining confidentiality of each aspect of the matters remaining under seal.

The Postal Service also noted that in this case, it redacted information using ellipses rather than by the “blackout” method, because the blackout method might “provide information or clues regarding the name of the customer, the length and breadth of price charts, the complexity of annual adjustment mechanisms, or other similar sensitive information.”⁴ Because this contract represents new volume to the Postal Service, it would appear that this increased care might be warranted. This might be an issue the Commission could address in its forthcoming rules regarding treatment of confidential information (Docket No. RM2008-1). The Public Representative would suggest that here the issue is moot. The practice is acceptable in this case because the Commission has received the materials without redaction, and employees of the Commission have access to the materials. See 39 U.S.C. 504(g)(1) through (2)(B). The

³ Postal Service Request, at 2-3.

⁴ *Id.*, at 3.

interests of the general public are safeguarded, and it appears unlikely that the change in redaction method for this Request would disadvantage the general public.

Provisions of the Express Mail Contract 3

The Decision of the Governors of the United States Postal Service (Governor's Decision 08-25), and management's analysis of this Express Mail contract (including the data filed under seal which are more recent than what was available when the Governors voted) 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's pieces are less costly (than average Express Mail mailings) to handle.
- The mailings will be entered in bulk, rather than at retail units.

The Public Representative acknowledges that the pricing for this Express Mail contract appears to comport 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 one-year life of the contract. Furthermore, this contract can stimulate more efficient performance for the Postal Service's expedited products. The one-year term is itself an incentive for the Postal Service to be successful. This is

fair to the parties, and to the general public. The pricing agreed to in this contract appears to be advantageous to the parties and the general public. To reiterate, the contract 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.

Conclusion

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

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