

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

Competitive Product Prices
Express Mail
Express Mail Contract 4

Docket No. MC2009-34

Competitive Product Prices
Express Mail Contract 4 (MC2009-34)
Negotiated Service Agreement

Docket No. CP2009-45

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO NOTICE AND ORDER
CONCERNING EXPRESS MAIL CONTRACT 4
NEGOTIATED SERVICE AGREEMENT

(July 15, 2009)

The Public Representative hereby submits comments in response to Order No. 242.¹ In Order No. 242, the Commission gives interested persons an opportunity to submit comments on whether the Postal Service's request to add Express Mail Contract 4 to the Competitive Product List and to establish a contract related to the proposed new product, comports with the requirements of the law.² Specifically, the Commission seeks input on whether the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633 and 3642, and 39 CFR part 3015 and 39 CFR 3020, subpart B.

On July 8, 2009, the Postal Service submitted a revised financial analysis workbook for this docket.³

¹ PRC Order No. 242, Notice and Order Concerning Express Mail Contract 4 Negotiated Service Agreement July 7, 2009.

² Request of the United States Postal Service to Add Express Mail Contract 4 to Competitive Products List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

³ Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbook for Express Mail Contract 4, July 8, 2009 (Revised).

Upon review of the contract and financial documents the Public Representative believes that the addition of the Express Mail Contract 4 product to the Competitive Product List and approval of the related contract assigned to Docket No. CP2009-45 is in the interest of the general public and that the contract meets all statutory requirements.

The Public Representative recommends the approval of this contract not only because it satisfies the statutory requirements, but also, more generally, because the Express Mail 4 service appears to be a beneficial service for the retail industry and the general public.

I. Statutory Requirements

The Public Representative believes that this contract is consistent with the policies of 39 U.S.C. 3632, 3633 and 3642.

A. The Postal Service has satisfied 39 U.S.C. 3632

The Governors of the United States Postal Service are vested with the authority to set rates. 39 U.S.C. 3632(a) provides that the Governors shall establish rates and classes for products in the competitive category of mail. For rates not of general applicability, the Governors shall cause each rate and class decision and record of the proceedings in connection with such decision to be filed with the Commission 15 days before the effective date of any new rates or class.⁴ In this case, the Postal Service states that the prices and classifications not of general applicability for Express Mail 4 contracts were previously established by a decision of the Governors.⁵ Since the prices and classifications in the instant case were established by a Governors' decision and properly filed with the Commission, 39 U.S.C. 3632(b)(3) is satisfied.

⁴ 39 U.S.C. 3632(b)(3).

⁵ Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail Services (Governors' Decision No. 09-8) June 30, 2009.

B. The Postal Service has satisfied 39 U.S.C. 3633

Under 39 U.S.C. 3633, the Postal Service's competitive rates must: (1) not allow the subsidization of competitive products by market dominant products; (2) ensure that each competitive product will cover its attributable costs; and (3) ensure that all competitive products collectively contribute a minimum share of 5.5 percent to the institutional costs of the Postal Service. Examination of the financial materials provided under seal by the Postal Service indicates that the competitive products proposed in the Express Mail 4 contract are not subsidized by market dominant products. . The materials also indicate that the products will cover their attributable costs, thus ensuring that all competitive products collectively cover an appropriate share of institutional costs of the Postal Service.⁶ The Public Representative notes that the Postal Service also filed revised financial information in its supporting materials. Careful review of filings by the Postal Service is helpful to provide consistency in the supporting materials.

C. The Postal Service has satisfied 39 U.S.C. 3642

Under 39 U.S.C. 3642, the Commission may add new products to the list of competitive products. The Postal Service has complied with the requirements of 39 U.S.C. 3642 for notice and publication of the request. The request is in conformity with 39 CFR 3020.30 *et seq.*, as well. The Postal Service has provided a statement from Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping supporting justification for the instant request. The Postal Service asserts that the Express Mail service is provided in a highly competitive market. It contends that it cannot set prices substantially above costs, raise prices significantly, decrease quality or decrease output without losing this business to private competitors that provide expedited shipping services. The Postal Service states that the contract terms supply sufficient incentive for the customer to choose its services over a competitor.

⁶ The Public Representative notes that Chairman's Information Request No. 1 and Notice of Filing of Questions Under Seal, filed July 13, 2009, with responses due from the Postal Service by July 20, 2009, may have some impact on the assessment presented.

After reviewing the contract and the supplemental materials provided by the Postal Service, including materials under seal, the Public Representative acknowledges that the proposed contract is appropriately categorized as a competitive product.

II. Confidentiality

The Postal Service states that the customer's name, certain portions of the contract, related financial information, and certain portions of the certified statement required by 39 CFR 3015 should remain confidential. The new Commission rules on confidentiality are not effective until July 29, 2009⁷ and based upon current Commission guidelines the Postal Service has provided sufficient reasons relative to the negotiation of similar contracts for maintaining the documents under seal.

III. Express Mail Contract 4

The reasons enumerated in the Postal Service's request that this Express Mail Contract 4 is beneficial to the Postal Service include the following:

- The Postal Service states the mailer's pieces are less costly (compared to the typical Express Mail piece) for the Postal Service to handle;
- The contract is expected to generate significant contribution;
- The contract term is for three years with some increase in prices in the second and third year of the contract.

⁷ In accordance with Docket No. RM2008-1, PRC Order No. 255, Final Rule Establishing Confidentiality Procedures, at 20, filed June 19, 2009, the rules take effect 30 days after publication in the *Federal Register* which is July 29, 2009.

- Sufficient incentive is being given to the customer to ship with the Postal Service rather than a competitor.

The review of the pricing agreed to in the contract appears to be beneficial to the efficient operations of the Postal Service which in turn is a benefit to the general public.

The Postal Service analysis indicates that there is some risk of not meeting the expected cost coverage, if for instance a larger percentage of pieces travel a longer distance than anticipated. The Postal Service, having evaluated the risks, appears confident that the risks are manageable and expects the contract overall to “generate significant contribution.” The Public Representative recommends the approval of this contract, and concludes that it comports with relevant requirements of title 39 and pertinent Commission rules of Practice and Procedure. Additionally, the Postal Service should continue to create opportunities to expand the use of its successful services.

IV. Conclusion

The Public Representative respectfully submits the foregoing Comments for the Commission’s consideration.

Cassandra L. Hicks
Public Representative

901 New York Ave., NW Suite 200
Washington, D.C. 20268-0001
(202) 789-6819; Fax (202) 789-6861
Cassandra.hicks@prc.gov