

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

Before Commissioners:

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

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

ORDER CONCERNING EXPRESS MAIL CONTRACT 4  
NEGOTIATED SERVICE AGREEMENT

(Issued July 27, 2009)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail Contract 4 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. BACKGROUND

On July 6, 2009, 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 4 to the Competitive

Product List.<sup>1</sup> On July 14, 2009, the Postal Service filed a notice of correction to the caption of the July 6, 2009 Request.<sup>2</sup> The Postal Service asserts that the Express Mail Contract 4 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-34.

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. *Id.* The contract has been assigned Docket No. CP2009-45.

On July 8, 2009, the Postal Service filed under seal revised versions of the financial analysis workbooks originally filed under seal on July 6, 2009.<sup>3</sup>

In support of its Request, the Postal Service filed the following materials: (1) a redacted version of the Governors’ Decision authorizing the new product which also includes an analysis of Express Mail Contract 4 and certification of the Governors’ vote;<sup>4</sup> (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;<sup>5</sup> (3) requested changes in the Mail classification Schedule product list;<sup>6</sup> (4) a Statement of Supporting Justification as

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<sup>1</sup> Request of the United States Postal Service to Add Express Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

<sup>2</sup> Notice of the United States Postal Service Filing of Corrected Caption to First Page of Request and Notice, July 14, 2009.

<sup>3</sup> See Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbooks for Express Mail Contract 4, July 8, 2009 (Revised Workbooks).

<sup>4</sup> Attachment A to the Request. The analysis that accompanies the Governors’ Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

<sup>5</sup> Attachment B to the Request.

<sup>6</sup> Attachment C to the Request.

required by 39 CFR 3020.32;<sup>7</sup> and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>8</sup>

In the Statement of Supporting Justification, Mary Prince Anderson, 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. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See Id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. 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 confidential. *Id.* at 2-3.

In Order No. 242, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>9</sup>

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<sup>7</sup> Attachment D to the Request.

<sup>8</sup> Attachment E to the Request.

<sup>9</sup> PRC Order No. 242, Notice and Order Concerning Express Mail Contract 4 Negotiated Service Agreement, July 7, 2009 (Order No. 242).

### III. INFORMATION REQUEST

On July 13, 2009, the Chairman issued an information request seeking responses to two questions.<sup>10</sup> The information request was filed under seal. *Id.* On July 20, 2009, the Postal Service filed its responses to CHIR No. 1.<sup>11</sup>

### IV. COMMENTS

Comments were filed by the Public Representative.<sup>12</sup> No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and concludes that the Express Mail Contract 4 agreements comports with the requirements of title 39. *Id.* at 2-4; and 5. She further states that the agreement appears beneficial to the general public. *Id.* at 4-5.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 4. She also points out several contractual provisions that she believes are mutually beneficial to the parties and general public. *Id.* at 4-5. Finally, the Public Representative observes that although the analysis accompanying the Request shows some risk of not meeting expected cost coverage, the Postal Service appears confident that any such risk is manageable and that it expects that overall the contract will "generate significant contribution." *Id.* at 5.

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<sup>10</sup> Chairman's Information Request No. 1 and Notice of Filing of Questions under Seal, July 13, 2009 (CHIR No.1).

<sup>11</sup> See Notice of the United States Postal Service of Filing Response to Chairman's Information Request No.1 Under Seal, July 20, 2009 (Response to CHIR No. 1).

<sup>12</sup> Public Representative Comments in Response to Notice and Order Concerning Express Mail Contract 4 Negotiated Service Agreement, July 15, 2009 (Public Representative Comments).

## V. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Revised Workbooks, the Response to CHIR No.1, and the comments filed by the Public Representative.

*Statutory requirements.* The Commission's statutory responsibilities in this instance entail assigning Express Mail Contract 4 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Product list assignment.* In determining whether to assign Express Mail Contract 4 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at ¶ (d). The Postal Service also contends that it

may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at ¶ (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at ¶ (h).

No commenter opposes the proposed classification of Express Mail Contract 4 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 4 is appropriately classified as a competitive product and should be added to the Competitive Product List.

*Cost considerations.* The Postal Service presents a financial analysis showing that Express Mail Contract 4 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail Contract 4 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Express Mail Contract 4 indicates that it comports with the provisions applicable to rates for competitive products.

*Other considerations.* The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new

termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail Contract 4 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

## VI. ORDERING PARAGRAPHS

*It is ordered:*

1. Express Mail Contract 4 (MC2009-34 and CP2009-45) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.
2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this Order.
3. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Judith M. Grady  
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-34 and CP2009-45. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail Contract 4 (MC2009-34 and CP2009-45)

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