

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Express Mail
Express Mail Contract 5

Docket No. MC2010-5

Competitive Product Prices
Express Mail Contract 5 (MC2010-5)
Negotiated Service Agreement

Docket No. CP2010-5

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO
UNITED STATES POSTAL SERVICE REQUEST TO ADD
EXPRESS MAIL CONTRACT 5 TO COMPETITIVE PRODUCT LIST

(November 9, 2009)

In response to Order No. 329,¹ the Public Representative hereby comments on the October 28 Request of the United States Postal Service to Add Express Mail Contract 5 to Competitive Products List and Notice of Establishment of Rates and Class Not of General applicability (Request).

This proposed contract's documentation is persuasive. Each pertinent element of 39 U.S.C. 3632, 3622, and 3642 appears to be met by this contract. Furthermore, the contract is consistent with policies in 39 CFR part 3015 and 39 CFR 3020 subpart B.

Analysis

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, including the Errata Notice and revised portable document file

¹ Commission order 329, Concerning Express Mail Contract 5 Negotiated Service Agreement, October 30, 2009.

(pdf.) filing October 29. The Public Representative respectfully notes that because Express Mail Contracts 5, 6 and 7 are all based upon the same Postal Service Governors' Decision (09-14, October 26, 2009), these sequential Negotiated Service Agreements (NSA) requests receive identical analysis. This Public Representative begs the indulgence of the reader; these comments for the instant NSA and the two subsequent, docketed NSAs appear very similar. Nevertheless, each agreement has been reviewed and scrutinized for compliance with title 39 requirements. Because the instant Request, CP 2010-5, comports with title 39 stipulations and the relevant Commission Rules of Practice and Procedure, it therefore should be beneficial to the general public.

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 09-14, 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

² See 39 C.F.R. 3015.5

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.

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 sensitivity³. 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.

Provisions of the Express Mail Contract 5

The Decision of the Governors of the United States Postal Service (Governor's Decision 09-14), 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 is based upon a formula approved by the Board of Governors, in which cost coverage is defined by a ratio between total contract revenue and total contract cost. This, in turn, is capped at a percentage demonstrated to comply with title 39 provisions.
- This three-year contract has built-in pricing adjustments for its second and third years.
- The mailer's pieces are less costly (than average Express Mail mailings) to handle, all submitted using PC postage.

³ Request, attachment F.

- 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 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, this contract can stimulate more efficient performance for the Postal Service's expedited products. This is fair to the parties, and to the general public.

Procedural requirements

Viewed as a whole, the Postal Service's Notice and Request appear to satisfy the procedural requirements for proposing a new product, a Priority Mail contract with a domestic customer. For a competitive products pricing schedule *not of general applicability*,⁴ the Postal Service must demonstrate that the contract will be in compliance 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 products as a whole to cover their costs (contributing 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 5 comports with provisions of title 39. In addition to requiring the mailer to

⁴ See 39 CFR 3015.5.

use PC postage, the contract employs pricing terms favorable to the customer, the Postal Service and thereby, the public.

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

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