

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
EXPRESS MAIL
EXPRESS MAIL CONTRACT 8

Docket No. MC2010-16

COMPETITIVE PRODUCT PRICES
EXPRESS MAIL CONTRACT 8 (MC2010-16)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2010-16

**REQUEST OF THE UNITED STATES POSTAL SERVICE
TO ADD EXPRESS MAIL CONTRACT 8
TO COMPETITIVE PRODUCT LIST
AND NOTICE OF FILING (UNDER SEAL)
OF SUPPORTING DATA
(December 11, 2009)**

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service hereby requests that Express Mail Contract 8 be added to the competitive product list within the Mail Classification Schedule.¹ This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).² The Governors' Decision establishing the prices and classification and a certification of the Governors' vote was filed under seal in Docket Nos. MC2010-5 and CP2010-5.³ Attachment A is a redacted version of that Governors' Decision.⁴ Attachment B is the

¹ 39 C.F.R. § 3020.31(a), (c).

² *Id.* § 3020.31(d).

³ *Id.* § 3020.31(b). See Docket Nos. MC2010-5 and CP2010-5, Notice of Establishment of Rates and Class Not of General Applicability, Request of the United States Postal Service to Add Express Mail Contract 5 to Competitive Product List, and Notice of Filing (Under Seal) of Unredacted Governors' Decision and Supporting Data (October 28, 2009). <http://www.prc.gov/Docs/65/65400/Request%20EM%20contract%205.pdf>

⁴ Although filed in Docket Nos. MC2010-5 and CP2010-5, the redacted version of the Governors' Decision is being refilled in the instant docket in accordance with Order No. 265.

unredacted version of the contract. Attachment C shows the requested changes in the Mail Classification product list with the addition underlined.⁵ Attachment D provides a statement of supporting justification for this request, as specified in 39 C.F.R.

§ 3020.32.⁶ Attachment E is the certification of compliance with 39 U.S.C. § (a)(1) and (3).⁷ Attachment F provides the Application for Nonpublic Treatment of the materials filed under seal.⁸ Those materials are the required cost and revenue data.⁹

As explained in the supporting justification, the Postal Service believes that it is appropriate to add this contract to the list of competitive products. The Commission should therefore approve this request as set forth in its rules. As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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Chief Counsel, Pricing and Product Support

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December 11, 2009

⁵ *Id.* § 3020.31(f).

⁶ *Id.* § 3020.31(e).

⁷ *Id.* § 3015.5(c)(2).

⁸ *Id.* § 3007.21.

⁹ *Id.* § 3015.5(c)(1).

**ATTACHMENT A TO REQUEST
REDACTED GOVERNORS' DECISION**

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON
ESTABLISHMENT OF RATES AND CLASSES NOT OF GENERAL APPLICABILITY FOR
EXPRESS MAIL CONTRACT GROUP (GOVERNORS' DECISION No. 09-14)**

October 26, 2009

STATEMENT OF EXPLANATION AND JUSTIFICATION

In our Decision of April 27, 2009,¹ we established a rate formula to be used by management to negotiate contracts for Priority Mail® service. In considering contracts filed under that Decision, the Postal Regulatory Commission expressed its view that the Decision could be used to authorize Priority Mail contracts within the parameters of the Decision.²

We have concluded that it would be appropriate similarly to streamline our process for contracts for Express Mail® service as well. Therefore, we establish in this decision a classification and rate formula that can be used by management to negotiate contracts for Express Mail service. The classification would consist of contracts for the Postal Service to provide Express Mail service to customers at customized rates. Each contract will specify the applicable rates, any postage payment methods required, any volume minimums that might apply, the provision of packaging by the Postal Service, the length of the contract and any price adjustment mechanism, and any other customized terms or conditions applicable to the provision of Express Mail service at the negotiated rates. The contracts are either to acquire new volume or, when necessary, to retain existing volume. The rates negotiated by management for each contract in the classification must result in a cost coverage between ■■■ and ■■■ percent, as calculated using the appropriate formulas in the attached analysis from management. As explained in that

¹ Decision of the Governors of the United States Postal Service on Establishment of Rates and Classes Not of General Applicability for Priority Mail Contract Group (Governors' Decision No. 09-6).

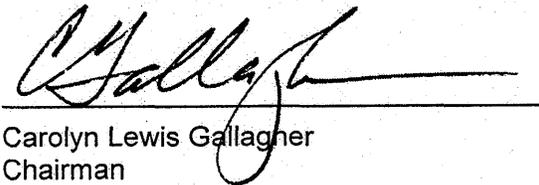
² Postal Regulatory Commission Order No. 217, at 4 (May 26, 2009); PRC Order No. 226, at 12. (June 19, 2009).

analysis, such rates and classifications are consistent with the applicable statutory criteria set forth in 39 U.S.C. §§ 3632-3633.

ORDER

We direct management, in accordance with 39 U.S.C. § 3632(b)(3), to give notice to the Postal Regulatory Commission of, and to have published in the Federal Register, the rate and class not of general applicability which we establish herein. As individual contracts are negotiated, management is directed to file appropriate notice and materials with the Postal Regulatory Commission in accordance with applicable statutory provisions and the Commission's rules of practice.

By The Governors:



Carolyn Lewis Gallagher
Chairman

Analysis of Pricing Formulas for Express Mail Contract Group

The implicit cost coverage for each contract will be at least [REDACTED] percent and will not exceed 300 percent:

$$\text{Cost Coverage} \geq [\text{REDACTED}] \text{ and Cost Coverage} \leq [\text{REDACTED}]$$

The cost coverage for the contract equals the contract's total revenues divided by its total costs, as follows:

$$\text{Cost Coverage} = \frac{\text{Total Contract Revenue}}{\text{Total Contract Cost}}$$

Each contract may have multiple price categories and negotiated components within Express Mail. Examples of such categories or components would be Flat-Rate Envelopes, or Express Mail Open and Distribute, whereby Express Mail sacks containing other classes of mail are opened for further distribution at the destination facility. For contracts that include more than one category or component, the contract revenues and costs are weighted by the proportion of volume in each category or component, as follows:

$$\text{Total Contract Revenue} = \text{SUM of (Volume}(\text{cat}_i) * \text{Unit Revenue}(\text{cat}_i))$$

$$\text{Total Contract Cost} = \text{SUM of (Volume}(\text{cat}_i) * \text{Unit Cost}(\text{cat}_i))$$

where cat_i is the i^{th} category or component covered by the contract, $\text{Unit Revenue}(\text{cat}_i)$ is the average revenue per piece and $\text{Unit Cost}(\text{cat}_i)$ is the average cost per piece for that category or component.

The revenue per piece for each category or component included depends on the negotiated price schedule and on the specific profile of pieces from the partner. The cost per piece similarly depends on the partner's profile. It is calculated as:

$$\text{Unit Cost} = \frac{\text{[REDACTED]}}{\text{[REDACTED]}}$$

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Each cost element is inflated to reflect the appropriate time period.

So long as the estimated revenue from the contract equals or exceeds the total costs of the contract multiplied by the minimum factor of [REDACTED], the attributable costs will be covered (39 U.S.C. § 3633(a)(2)) and competitive products as a whole will comply with 39 U.S.C. § 3633(a)(3), which, as implemented by (39 C.F.R. § 3015.7(c)) requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. § 3633(a)(1)).

**CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 09-14**

I hereby certify that the Governors voted on adopting Governors' Decision No. 09-14, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.



Julie S. Moore
Secretary of the Board of Governors

Date: 10/27/09

**ATTACHMENT B TO REQUEST
SHIPPING SERVICES CONTRACT**

USPS SALES DEPARTMENT
FEDERAL SECTOR



December 4, 2009

Jason Holloway
Director, Travel Acquisition Support Division
U.S. General Services Administration
2200 Crystal Drive, Room 3000
Arlington, VA 22202-4502

Dear Mr. Holloway:

The Postal Service has announced permanent price changes to take effect January 4, 2010.

The USPS's GSA Schedule GS-33F-0036V Terms and Conditions include Economic Price Adjustment Clause (552.216-70). The clause provides that price increases may be requested to be effective on or after the first 12 months of the contract period. The UPSP Schedule was awarded May 28, 2009, and therefore, has not yet exceeded 12 months.

This is confirmation that there will be no increase in prices for SIN 451-1 from January 4, 2010 until May 27, 2010.

Sincerely,


Charles H. Irving
Manager, Federal Sector

RM 2P606
USPS HEADQUARTERS
475 L'ENFANT PLAZA SW
WASHINGTON, DC 20260
PH: (202)-268-5974

UNITED STATES POSTAL SERVICE

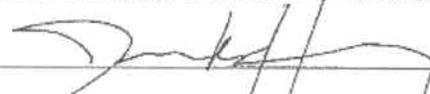
Signed by: 

Printed Name: CHARLES H. FANNING

Title: MANAGER, FEDERAL SECTOR

Date: 12-7-09

U.S. GENERAL SERVICES ADMINISTRATION

Signed by: 

Printed Name: Jason R. Holloway

Title: Director - Transportation Acquisition Support Division

Date: 12-7-09

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

NEGOTIATED SERVICE AGREEMENTS

Domestic

Express Mail Contract 8

Statement of Supporting Justification

I, Susan M. Plonkey, Vice President, Sales, am sponsoring this request that the Commission add Express Mail Contract 8 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

(a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

(b) *Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c).*

Not applicable. The Postal Service is proposing that this Express Mail contract be added to the competitive products list.

(c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.*

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The contract provides Express Mail service to the customer. Express Mail service is provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Express Mail services in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.*

I am advised that merchandise sent by Express Mail services and this contract are not covered by these provisions. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Expedited shipping, similar to Express Mail service, is widely available from well-known and successful private firms at both published and contract prices.

- (g) *Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.*

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

The Postal Service is currently on the GSA's schedule for Express Mail service. To remain on the GSA schedule, the Postal Service has reached this agreement with GSA so that the Express Mail prices paid by GSA will not increase during the period of January 4, 2010, until May 27, 2010.

Certification of Prices for Express Mail Contract 8

I, Joseph D. Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for Express Mail Contract 8. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail Contract Group, dated October 26, 2009 (Governors' Decision No. 09-14).

I hereby certify, based on in the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. The contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Joseph D. Moeller

**APPLICATION OF THE UNITED STATES POSTAL SERVICE
FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of: the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).¹⁰ Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

¹⁰ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

The Postal Service does not believe that any third-party has a proprietary interest in any of the materials filed under seal.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

The financial workpapers supporting the contract are being filed under seal in this docket. The Postal Service maintains that the redacted portions of the related financial information should remain confidential. The redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. The financial workpapers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their

advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Identified harm: Public disclosure of information in the financial work papers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor “cost to serve” scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service’s customer in order to underbid the Postal Service’s prices.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission’s regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the

Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity.

(8) Any other factors or reasons relevant to support the application.

None.