

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 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

COMMENTS OF PUBLIC REPRESENTATIVES IN
RESPONSE TO PRC ORDER NO. 359

(December 23, 2009)

The Public Representatives hereby offer comments on the United States Postal Service's request to add Express Mail Contract 8 to the Competitive Product List¹ in response to Commission Order No. 359.²

OVERVIEW

On May, 28, 2009, the Postal Service entered into an agreement with the U.S. General Services Administration (GSA) to offer current Express Mail Commercial Plus Pricing (CPP) rates on the GSA Schedule (GS-33F-0036V). On December 15, 2009, the Postal Service filed a Request to add that agreement as Express Mail Contract 8 to the Competitive Product List. The Request was assigned Docket No. MC2010-16.

¹ See 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 (Request).

² See Commission Notice and Order Concerning Express Mail Contract 8 Negotiated Service Agreement, December 15, 2009.

Contemporaneously, the Postal Service filed a contract related to the new product. The contract was assigned Docket No. CP2010-15.

The Postal Service's Express Mail CPP rates are scheduled to increase on January 4, 2010.³ However, the Terms and Conditions of the GSA agreement include an Economic Price Adjustment Clause (552.216-70); this clause prohibits price increases within the first 12 months of the contract period.⁴ Since the current GSA Schedule Express Mail CPP rates have only been in effect for seven months, the prices cannot be subjected to a price increase. As a result, the instant Request appears to be an addendum would allow the current GSA Schedule GS-33F-0036V prices to remain in effect from January 4, 2010 through May 27, 2010.

In response to Commission Order No. 359, the Postal Service supplemented its Request with 1) a copy of the agreement with GSA; 2) the rates currently in effect under the agreement; and 3) an explanation why the agreement was not filed prior to its effective date.⁵

CONTRACT ANALYSIS

The Public Representatives have reviewed both the Request and Supplemental Information submitted by the Postal Service. It appears that the Postal Service's filing comports with provisions of title 39. The proposed contract should generate sufficient

³ See Docket No. CP2010-8, *Competitive Products Price Changes Rates of General Applicability*, Order Concerning Changes in Rates of General Applicability for competitive Products, Order No. 353, December 4, 2009. See also, United States Postal Service Price List (Notice 123), Effective January 4, 2010.

⁴ See Request, Attachment B.

⁵ See Supplemental Information Provided by the United States Postal Service in Response to Order No. 359 (Supplemental Information), December 18, 2009.

revenue through May 27, 2010 to cover its attributable costs, should not lead to the subsidization of competitive products by market dominant products, and the contract should have a positive effect on competitive products' contribution to institutional costs.

Furthermore, the Public Representatives believe that the contract is appropriately classified as competitive.

CONFIDENTIALITY

Attachment F of the Request includes the Postal Service's rationale for maintaining the confidentiality of financial materials filed in this docket. It claims that the redacted portions of the financial materials are commercial in nature which under good business practice would not be publicly disclosed. Financial workpapers filed under seal in this docket contain underlying costs and assumptions, pricing formulas, the mailing profile of the customer, and cost coverage projections and other contractual terms, all of which are matters of commercial sensitivity.⁶ The Postal Service alleges it would suffer commercial harm if the material is publicly disclosed and asks that the material be withheld from persons involved in decision-making in the market for domestic parcel shipping products, their consultants and attorneys. It appears that the Postal Service has justified confidential treatment for each of the matters filed under seal in this docket.

⁶ Request, Attachment F, throughout.

CONCERNS

The Public Representatives are concerned that the original May 28, 2009 agreement was not filed with the Commission. The Postal Service indicates that the agreement was not filed prior to its May 29, 2009 effective date because “it simply placed the Postal Service on the GSA Schedule for published Express Mail Commercial Plus Pricing, which is available to any customer that meets the specified CPP requirements.” Supplemental Information, response c.

The GSA agreement could be viewed as a negotiated agreement. The May 28, 2009 agreement contains stipulations similar to negotiated agreements such as a minimum order and a maximum order threshold. Therefore, the Commission should determine which types of negotiated agreements should be added to the product list.

The original agreement used existing rates and thus, according to the Postal Service, the agreement did not need to be filed with the Commission. The Public Representatives feel that all contracts, whether the contracts use existing prices or not should be submitted to the Commission for the record. It appears that the Commission would not have been informed of the agreement if the Economic Price Adjustment Clause was not included in the agreement. To maintain a complete record of current Express Mail contracts, the Commission should direct the Postal Service to file all existing Express Mail contracts which have not been previously filed.

The Public Representatives are also concerned that the original filing did not include the necessary materials for the Public Representatives to adequately review the contract. According to the relevant Governors’ Decision, “[e]ach contract will specify the applicable rates, any postage payment methods required, any volume minimums apply,

the provisions 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.” Governors’ Decision, No. 09-14 at 1. The Public Representatives request the Commission to encourage the Postal Service to submit all required materials with future requests. Thereby, any interested parties may have sufficient time to offer comments on the request.

CONCLUSION

After review, the Public Representatives have determined that the pricing in the present Express Mail Contract 8 comports with pricing, cost coverage and contribution provisions of title 39.

The Public Representatives respectfully submit the preceding Comments for the Commission’s consideration.

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