

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

Competitive Product Prices
Express Mail Contract 11 (MC2011-14)
Negotiated Service Agreement

Docket No. CP2011-50

PUBLIC REPRESENTATIVE COMMENTS
(June 6, 2013)

I. INTRODUCTION/SUMMARY

On May 24, 2013, the Postal Service filed notice that it has agreed to amend existing Express Mail Contract 11.¹ Specifically, the Amendment changes the prices and terms that apply to packages sent under Express Mail Contract 11. *Notice, Attachment A.* The Postal Service also provided supporting financial documentation and a certified statement as required by 39 CFR 3015.5. *Notice, Attachment B.* Specifically, Attachment B states that the amended prices are consistent with 39 U.S.C. 3633(a) – the contract is expected to cover its attributable costs, will not result in the subsidization of competitive products by market dominant products, and covers an appropriate share of the recovery of institutional costs

The Public Representative believes the pricing terms and customer profiles presented in the amended contract are sufficiently different from the original contract, that this contract may involve a request for a new product requiring approval of a new

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Express Mail Contract 11, May 24, 2013 (Notice).

base rate contract with “Rates Not of General Applicability.” If this is the case, the new contract should be filed in accordance with 39 U.S.C. 3642, and meet the requirements of that section and relevant sections of the Commission’s rules.

The Public Representative respectfully recommends the Commission request the Postal Service to file this new contract as a new product under Section 3020.30 of its rules in order for the Commission and interested parties to more properly evaluate its compliance with the rules governing the establishment of competitive products with rates that are “not of general applicability.”

II. ARGUMENT

The original contract applied solely to customers of the contract partner with mailings weighing 10 pounds or less, whereas the proposed amendment splits customers of the contract partner into groups with mailing profiles substantially different than those governed under the terms of the original contract. Moreover, while the rates under the original contract were determined by weight and distance, other factors determine a substantial share of mailings under the proposed amended contract. In addition, although cost coverage for each customer group of the partner are expected to comply with the “Standards For Compliance” established by the Commission in Section 3015.7 of its rules, transportation costs are substantially different, and this difference is related to the new contract terms. Finally, because customer profiles are so different, the discussion of the competitive impact on competitors in the original contract is not appropriate for this proposed contract which essentially offers a new product.

III. CONCLUSION

The risk of allowing the Postal Service to provide what may be a new product without the time to consider the risks associated with the substantially original terms and conditions of this product are real and could have long-lasting, if unintended, consequences. Therefore, the Public Representative respectfully recommends the Commission request the Postal Service to file what amounts to a new contract, under

section 3020.30 and to add a new rate under section 3015.5 of the Commission's rules in order for the Commission and interested parties to properly evaluate its compliance with the rules governing the establishment of competitive products with rates that are "not of general applicability."

Respectfully submitted,

_____/s
Lawrence Fenster
Public Representative for
Docket CP2011-50