

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

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices  
Parcel Select Contracts  
Parcel Select Contract 24

Docket No. MC2018-13

Competitive Product Prices  
Parcel Select Contract 24 (MC2018-13)  
Negotiated Service Agreements

Docket No. CP2018-26

ORDER CONDITIONALLY ADDING PARCEL SELECT CONTRACT 24  
TO THE COMPETITIVE PRODUCT LIST

(Issued October 31, 2017)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Select Contract 24 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission conditionally approves the Request.

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<sup>1</sup> USPS Request to Add Parcel Select Contract 24 to Competitive Product List and Notice of Filing Materials Under Seal, October 18, 2017 (Request).

## II. BACKGROUND

On October 18, 2017, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Parcel Select Contract 24 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service states that Parcel Select Contract 24 “is modeled off of the Customized Delivery market test, which will expire on October 31, 2017.” *Id.* Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.<sup>2</sup>

The contract is intended to take effect the same business day that the Commission issues all necessary regulatory approval. Request, Attachment B at 5. It is set to expire three years from the effective date. *Id.*

On October 19, 2017, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup> On the same day, the Postal Service filed a motion to adjust

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<sup>2</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 1, 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

<sup>3</sup> See Docket No. MC2018-13, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, October 19, 2017.

the procedural schedule so that the Commission would better be able to issue a decision before November 1, 2017.<sup>4</sup>

On October 20, 2017, the Public Representative filed a motion for issuance of an information request and extension of the comment deadline so that the answers to the requested information request could be considered.<sup>5</sup> On the same day, a Chairman's Information Request No. 1 was issued.<sup>6</sup>

On October 23, 2017, the Postal Service filed its response to CHIR No. 1.<sup>7</sup> On the same day, the Postal Service filed a notice of filing errata including new workpapers.<sup>8</sup>

On October 24, 2017, the Postal Service filed an additional response to CHIR No. 1.<sup>9</sup> On the same day, the Commission issued an order granting the Postal Service Motion and granting in part the Public Representative Motion.<sup>10</sup>

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<sup>4</sup> USPS Motion to Adjust Procedural Schedule, October 19, 2017 (Postal Service Motion).

<sup>5</sup> Public Representative Motion for Issuance of Information Request and Extension of Comment Deadline, October 20, 2017 (Public Representative Motion).

<sup>6</sup> Chairman's Information Request No. 1 and Notice of Filing Under Seal, October 20, 2017 (CHIR No. 1).

<sup>7</sup> USPS Response to Chairman's Information Request No. 1, with Materials Filed Under Seal, October 23, 2017.

<sup>8</sup> USPS Notice of Filing Revised Financial Workpapers, Including Material Under Seal (Errata), October 23, 2017.

<sup>9</sup> USPS Response to Chairman's Information Request No. 1, Question 1, Filed Under Seal, October 24, 2017 (October 24, 2017 Response to CHIR No. 1). The Postal Service additionally filed a motion for late acceptance of the October 24, 2017 Response to CHIR No. 1. USPS Motion for Late Acceptance of Response to Chairman's Information Request No. 1, Question 1, October 24, 2017 (Motion). The Motion is granted.

<sup>10</sup> Order No. 4174, Order Addressing Procedural Motions, October 24, 2017.

### III. COMMENTS

The Public Representative filed comments on October 26, 2017.<sup>11</sup> No other interested person filed comments. The Public Representative notes that the Request does not meet the Commission's requirements for a product tested in a market test to become a permanent product. PR Comments at 2. In particular, he notes that the Request was not filed by the September 1, 2017 deadline, and that the data collection reports from the market test are incomplete. *Id.* at 2-3. He further notes that the Commission explicitly reminded the Postal Service of these requirements in the market test docket, and that the Request is not in keeping with the spirit of transparency intended by that order.<sup>12</sup>

The Public Representative characterizes as reasonable the Postal Service's assertions addressing the requirements of 39 U.S.C. § 3642(b), and, therefore, concludes that Parcel Select Contract 24 meets the requirements to be classified as a competitive product. See PR Comments at 3. He notes that the Postal Service's use of a new financial model is appropriate given the unique nature of the contract, but warns that the model itself is untested and relies on limited data and questionable assumptions. *Id.* He further notes that the data underlying the model rely on a system not yet approved by the Commission for use in cost estimation. *Id.* He states that he is concerned that the limited data available in the model could result in volatile cost estimates, particularly if the product exhibits seasonal variability. *Id.*

The Public Representative concludes, to the extent the cost estimates are reliable and accurate, that Parcel Select Contract 24 should generate sufficient revenue during its first year to cover costs. *Id.* at 4. He recommends that the Commission

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<sup>11</sup> Public Representative Comments on Postal Service Request to Add Parcel Select Contract 24 to the Competitive Product List, October 26, 2017 (PR Comments).

<sup>12</sup> *Id.* See Docket No. MT2014-1, Order Approving Request for Exemption, May 18, 2017, at 10 (Order No. 3905).

require quarterly data reports and approve the contract for a single year in order to then assess whether it should be renewed, modified, or terminated. *Id.* at 4-5.

#### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, the Responses to CHIR No. 1, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning Parcel Select Contract 24 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. In regards to the provisions of 39 U.S.C. § 3642(b)(3), the Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Parcel Select Contract 24 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses.<sup>13</sup> For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that Parcel Select Contract 24 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because the Commission finds Parcel Select Contract 24 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the rates during the first year of the contract should cover the contract's attributable costs, assuming the Postal Service's financial model proves accurate and reliable. Also, assuming it is accurate and reliable, the Commission finds that the contract should not result in

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<sup>13</sup> In Docket No. MT2014-1, the Postal Service was required to provide a detailed analysis of competitors and small businesses that operate in the geographic areas where the Customized Delivery service was offered. See Supplemental Response of the United States Postal Service to Order No. 3672, and Notice of Expansion, February 8, 2017.

competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contract is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See also 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the contract indicates it is consistent with section 3633(a).

The Commission shares the Public Representative's concerns regarding the untested nature of the Postal Service's new financial model. To provide time to gather additional data and to explore the reasonableness of the assumptions underlying that model, the Commission grants conditional approval to Parcel Select Contract 24 until June 30, 2018. Prior to that date the Commission will determine whether to approve the continuation of the contract.

To ensure that the Postal Service collects data sufficient for the Commission to complete this determination, the Commission directs the Postal Service to report contract-specific volumes, costs, and workhours on a quarterly basis for the duration of this contract. The Postal Service is directed to provide an explanation of the cost model and all assumptions as part of this report. This reporting will allow the Commission to confirm that the Postal Service's financial models contain reasonable cost assumptions, and accurately account for all costs associated with Parcel Select Contract 24. Each report shall be filed in these dockets within 30 days of the completion of each quarter of the fiscal year, with the first report due January 30, 2018.

*Market test requirements.* The Commission is concerned that the Postal Service's Request, at a minimum, frustrates the purpose of the Commission's rules for making experimental products permanent. This could be deemed as disregarding the Commission's rules for making product subject to a market test permanent. See 39 C.F.R. § 3035.18. The Commission shall review its market test regulations and revise as necessary to ensure they are applied and adhered to consistent with the intent of the PAEA.

However, under similar circumstances, the Commission approved Negotiated Service Agreements based on the Metro Post market test and required quarterly financial filings.<sup>14</sup> The Commission takes a consistent approach here with its conditional approval of Parcel Select Contract 24 and requirement for quarterly financial reports.

*Other considerations.* By its terms, the contract becomes effective the same day that the Commission issues all necessary regulatory approval. Request, Attachment B at 5. The contract is conditionally approved for two quarters, and will expire June 30, 2018, absent further action by the Commission.<sup>15</sup> If the instant contract is terminated prior to that date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

To assist the Commission in determining whether this product should continue past June 30, 2018, the Commission holds these dockets open, and directs that Max E. Schnidman continue to serve as Public Representative.

In conclusion, the Commission conditionally approves Parcel Select Contract 24 as a new product until June 30, 2018. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. Parcel Select Contract 24 (MC2018-13 and CP2018-26) is conditionally added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the competitive product list and the Mail

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<sup>14</sup> See, e.g., Docket Nos. MC2016-41 and CP2016-50, Order No. 3071, Order Adding Priority Mail Contract 167 to the Competitive Product List, February 12, 2016, at 13.

<sup>15</sup> By the terms of the contract, the parties may terminate the contract prior to expiration. Request, Attachment B at 5.

Classification Schedule appear below the signature of this Order and are effective immediately.

2. The Postal Service shall report contract-specific volumes, costs, and workhours on a quarterly basis, including an explanation of the cost model and all assumptions, for the duration of this contract. Each report shall be filed in these dockets within 30 days of the completion of each quarter of the fiscal year, with the first report due January 30, 2018.
3. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble  
Secretary

## CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2018-13 and CP2018-26. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

### **Appendix B to Subpart A of Part 3020—Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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Parcel Select Contract 24

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## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **Part B—Competitive Products** **2000 Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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Parcel Select Contract 24

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**2500**            **Negotiated Service Agreements**

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**2505**            **Domestic**

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**2505.8**        **Parcel Select Contracts**

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- Parcel Select Contract 24

*Baseline Reference*

Docket Nos. MC2018-13 and CP2018-26

PRC Order No. 4196, October 31, 2017

*Included Agreements*

CP2018-26, expires June 30, 2018

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