

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

Competitive Product Prices
Priority Mail
Priority Mail Contract 377

Docket No. MC2018-32

Competitive Product Prices
Priority Mail Contract 377 (MC2018-32)
Negotiated Service Agreement

Docket No. CP2018-62

PUBLIC REPRESENTATIVE COMMENTS
ON USPS REQUEST TO ADD PRIORITY MAIL CONTRACT 377
TO COMPETITIVE PRODUCT LIST
(December 1, 2017)

I. Introduction

The Public Representative hereby provides comments pursuant to the Commission Notice initiating this docket.¹ In that Notice, the Commission established the above-referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Request to add Priority Mail Contract 377 (Contract) to the competitive product list.² The Request included a redacted copy of the Contract, a Statement of Supporting Justification (Statement of Supporting Justification), a Certification of Compliance with 39 U.S.C. § 3633(a) (Certification of Compliance), and a redacted copy of Governors' Decision No. 11-6 as attachments and a redacted supporting financial model filed separately as an Excel file. Additionally, the Postal Service filed unredacted versions of redacted documents separately under seal.

Under 39 U.S.C. § 3642(b), the criteria governing the Commission's determination to add a product to the competitive product list are (1) whether the

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, November 27, 2017 (Notice).

² USPS Request to Add Priority Mail Contract 377 to Competitive Product List and Notice of Filing Materials under Seal, November 22, 2017 (Request).

product qualifies as market dominant; (2) whether the product is covered by the postal monopoly and therefore excluded from classification as a competitive product; and (3) whether certain additional considerations, including private sector competition, the impact on small businesses, and the views of product users, warrant classification other than that supported by criteria (1) and (2).

Pursuant to 39 U.S.C. § 3633(a), the criteria for the Commission's review require that the Postal Service's competitive prices not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and ensure that all competitive products collectively cover an appropriate share of the institutional costs of the Postal Service.

II. Comments

After reviewing the Postal Service's Request, Statement of Supporting Justification, Certification of Compliance, and the unredacted Contract and supporting financial model filed under seal, the Public Representative agrees that Priority Mail Contract 377 satisfies the requirements for inclusion on the competitive products list. In addition, the prices negotiated in the Contract should generate sufficient revenue to cover costs and therefore satisfy 39 U.S.C. § 3633.

Compliance with 39 U.S.C. § 3642(b): The Postal Service makes a number of assertions that address the requirements of 39 U.S.C. § 3642(b). The Postal Service asserts that its bargaining power in negotiating this Contract is constrained by the existence of other similar services offered by competitors. Statement of Supporting Justification at 2. The Postal Service also states that Priority Mail is not covered by the postal monopoly. *Id.* As these assertions seem reasonable, the Public Representative concludes that the Priority Mail Contract 377 satisfies the criteria set forth in 39 U.S.C. § 3642(b) and therefore warrants classification as a competitive product.

Compliance with 39 U.S.C. § 3633(a): Based upon a review of the financial model and the Contract filed under seal with the Request, it appears that the negotiated prices set forth in the Contract should generate sufficient revenues to cover costs during the first year of the Contract and therefore comply with the requirements of 39 U.S.C. § 3633(a). Although the Contract is expected to remain in effect until January 31, 2021,

the Postal Service has provided no evidence to demonstrate that the Contract will comply with the requirements of 39 U.S.C. § 3633(a) after the first year of the Contract. However, this concern is partially mitigated by terms in the contract that link prices paid under the Contract to the prevailing Priority Mail prices of general applicability. These terms should facilitate continued cost coverage after the first year of the Contract.

The Contract contains other provisions related to price adjustments that the Public Representative finds ambiguous and subject to interpretation. Section I.H.4 of the Contract specifies terms under which the price adjustments are triggered if the Contract Customer's Base Zone has been exceeded. However, the Contract does not define how the Contract Customer's "average zone distribution" introduced in Section I.B of the Contract is to be calculated. Furthermore, in the event that average zone distribution exceeds the Base Zone by the amount specified in Section I.H.4, the terms of the Contract do not specify how the Postal Service will adjust prices or whether such adjustments will terminate at the end of each Contract Period. The Public Representative presumes that these terms will facilitate the Contract's cost coverage but encourages the Commission to request the Postal Service to clarify the meaning of these terms and verify that they do not jeopardize the Contract's compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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