

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

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 53

Docket No. MC2019-99

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 53
(MC2019-99)
Negotiated Service Agreement

Docket No. CP2019-107

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL EXPRESS,
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE CONTRACT 53
TO THE COMPETITIVE PRODUCT LIST

(March 25, 2019)

The Public Representative hereby provides comments pursuant to a Commission Notice initiating this docket.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express, Priority Mail & First-Class Package Service Contract 53 to the competitive product list.² The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 19-1. In addition, the Postal Service filed a public version of the contract related to the proposed new product. The contract was also filed in its entirety as a non-public document, along with required financial data.

¹ Notice initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 18, 2019 (Notice).

² Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 53 to the Competitive Product List and Notice of Filing Materials Under Seal, March 15, 2019 (Request).

The Postal Service states that the Priority Mail Express, Priority Mail & First-Class Package Service Contract 53 is a competitive product “not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).” *Request* at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors’ Decision No. 19-1.³ The Postal Service further asserts that the Statement of Supporting Justification provides support for adding Priority Mail Express, Priority Mail & First-Class Package Service Contract 53 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). *Request* at 2.

The effective date of the instant contract is two business days following the day on which the Commission issues all necessary regulatory approvals. *Id.*, *Attachment B* at 10. The contract is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification. *Id* at 11.

COMMENTS

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Express, Priority Mail, and First-Class Package Service Contract 53 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). *Request, Attachment D*, at 2. Based upon these

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, February 7, 2019 (Governors’ Decision No. 19-1).

assertions, the Public Representative concludes that the Postal Service's Request to Contract 53 to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must 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 contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model, it appears the negotiated prices in the instant contract should generate sufficient revenues to cover costs during its first year.

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and financial model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Express, Priority Mail & First-Class Package Service Contract 53 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs in its first year and thereby satisfy the standards of 39 U.S.C. § 3633(a).

As noted above, the instant contract is expected to remain in effect for a period of three years. However, the Postal Service's financial model does not demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the three-year period of the contract. This concern is mitigated somewhat by the fact that the terms of the contract provide for an adjustment to the contract prices after the change in prices of general applicability for competitive products that may permit revenues to cover cost during years 2 and 3. Further concern is mitigated by the fact that the Postal Service must file revenue and cost data for Contract 53 in its Annual Compliance Report. This data will permit the Commission to review the financial performance of Contract 53 in its Annual Compliance Determination (ACD) report for compliance with 39 U.S.C. § 3633(a).

The Public Representative notes that the Commission filed a Chairman's Information Request⁴ regarding this contract with a response due by March 29, 2019. The Public Representative agrees with the Commission regarding the nature of the CHIR and expects the Postal Service to answer fully and assuage all concerns.

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

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⁴ Chairman's Information Request No. 1, March 22, 2019.