

ORDER NO. 5105

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

Before Commissioners:

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

Competitive Product Prices
Parcel Select Contract 2 (MC2012-16)
Negotiated Service Agreements

Docket No. CP2012-23

ORDER APPROVING AMENDMENT FOUR TO
PARCEL SELECT NEGOTIATED SERVICE AGREEMENT

(Issued May 28, 2019)

I. INTRODUCTION

The Postal Service seeks to amend a Parcel Select negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ USPS Notice of Amendment to Parcel Select Contract 2, Filed Under Seal, May 16, 2019 (Notice).

In Order No. 1349, the Commission approved the Parcel Select Contract 2 negotiated service agreement (Existing Agreement).² On May 16, 2019, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On May 17, 2019, the Commission issued a notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³ Also on May 17, 2019, Chairman's Information Request No. 1 was issued, requesting additional information about the Amendment's operation⁴ and financial workpapers and a certified statement in accordance with 39 C.F.R. § 3015.5.⁵

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. In response to CHIR No. 1, the Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5.⁶

² See Docket Nos. MC2012-16 and CP2012-23, Order Adding Parcel Select Contract 2 to the Competitive Product List, May 22, 2012 (Order No. 1349). The contract was later amended. See Order Approving Amendment Three to Parcel Select Negotiated Service Agreement, December 5, 2017 (Order No. 4264); Order Approving Amendment to Parcel Select Negotiated Service Agreement, August 8, 2014 (Order No. 2146); Order Approving Amendment to Parcel Select Contract 2 Negotiated Service Agreement, March 27, 2014 (Order No. 2033).

³ See Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, May 17, 2019. On May 21, 2019, the Commission issued notice appointing a substitute Public Representative. Notice and Order Designating Substitute Public Representative, May 21, 2019 (Order No. 5101).

⁴ The Commission's prior action approving an amendment for this agreement specifically referenced the annual rate adjustment provision in section I.F. of the Agreement as a mechanism that "should allow its revenues to cover costs for the duration of its term." See Order No. 4264 at 3.

⁵ Chairman's Information Request No. 1, May 17, 2019 (CHIR No. 1).

⁶ USPS Response to Chairman's Information Request No. 1, with Portions Filed Under Seal, May 22, 2019 (Response to CHIR No. 1).

II. COMMENTS

Comments were filed by the Public Representative.⁷ No other person submitted comments. The Public Representative reviewed the Amendment, previous amendments, the Existing Agreement, previous comments including those of the previous Public Representative, and the financial model filed under seal. PR Comments at 2. Based on that review, he concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.* He also notes that the Commission will evaluate the cost, revenue, and volume data associated with the contract in the Annual Compliance Determination (ACD). *See id.* at 3.

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, Response to CHIR No. 1 and the corresponding materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, 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 product exceeds its attributable costs, the product 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 a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement is set to expire May 31, 2019. Order No. 2146 at 3-4. The Amendment revises the expiration date of the contract to November 30, 2019.

⁷ Public Representative Comments on Notice of United States Postal Service of Filing Second Amendment to Parcel Select Contract 2, May 24, 2019 (PR Comments).

Notice, Attachment A at 1. The Amendment also clarifies standards applicable to mail tendered under the contract, adds a recordkeeping and audit provision, and freezes rates between the effective date of the Amendment and the expiration date, as amended. *Id.* at 1-2.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the Existing Agreement, as amended, 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 Amendment indicates it is consistent with section 3633(a). The Commission will continue to review the cost coverage of the Existing Agreement, as amended, in its ACD to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire November 30, 2019. *Id.* Attachment A at 1. If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Parcel Select Contract 2 negotiated service agreement, as amended.

2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the revised expiration date, November 30, 2019.

By the Commission.

Ruth Ann Abrams
Acting Secretary