

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
Priority Mail Express, Priority Mail &
First-Class Package Service Contracts
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 61

Docket No. MC2019-137

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 61
(MC2019-137)
Negotiated Service Agreements

Docket No. CP2019-150

ORDER ADDING PRIORITY MAIL EXPRESS, PRIORITY MAIL & FIRST-CLASS
PACKAGE SERVICE CONTRACT 61 TO THE COMPETITIVE PRODUCT LIST
AND CONDITIONALLY APPROVING AMENDMENT

(Issued May 29, 2019)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 to Competitive Product List and Notice of Filing Materials Under Seal, May 10, 2019 (Request).

II. BACKGROUND

On May 10, 2019, 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 Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 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. 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.

The contract is intended to take effect two business days after the date that the Commission issues all necessary regulatory approval. Request, Attachment B at 10-11. It is set to expire three years from the effective date. *Id.* at 11.

On May 13, 2019, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.²

On May 21, 2019, Chairman’s Information Request No. 1 was issued.³ CHIR No. 1 asked the Postal Service to clarify whether it will provide the customer with flat-rate envelopes and boxes, and if so, to file revised financial workpapers showing the cost of providing the customer with flat-rate packaging. CHIR No. 1 at 1-2. The Postal Service filed a response on May 28, 2019, stating that it will provide the customer with flat-rate

² See Docket No. MC2019-136, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, May 13, 2019.

³ Chairman’s Information Request No. 1, May 21, 2019 (CHIR No. 1).

packaging.⁴ The Postal Service filed revised financial workpapers and stated that it will file an amendment to the contract. Response to CHIR No. 1 at 2.

III. COMMENTS

The Public Representative filed comments on May 20, 2019.⁵ No other interested person filed comments. The Public Representative concludes that contract should be added to the competitive product list and that it appears that the contract will generate sufficient revenue during its first year. PR Comments at 3. He notes that although the financial model does not demonstrate cost coverage in subsequent years, this concern is mitigated by the contract's annual price adjustment provision and by the requirement that the Postal Service file revenue and cost data for the contract for the Commission's review in its Annual Compliance Determination (ACD). *See id.*

IV. COMMISSION ANALYSIS

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

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 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

⁴ USPS Response to Chairman's Information Request No. 1, with Portions Filed Under Seal, May 28, 2019, at 2 (Response to CHIR No. 1).

⁵ Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 to the Competitive Product List, May 20, 2019 (PR Comments).

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. 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 Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. 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 Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because the Commission finds Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 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. 39 U.S.C. § 3633(a)(2). The contract contains a price adjustment provision that adjusts contract rates during subsequent contract years. Request, Attachment B at 10. Combined with sufficiently high first-year cost coverage, the contract's price adjustments will help ensure that the contract will cover attributable costs in subsequent contract years. For these reasons, the Commission also finds that the contract 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, 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 will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

In its Response to CHIR No. 1, the Postal Service indicates that it plans to file an amendment relating to the provision of flat-rate packaging. See Response to CHIR No.

1 at 2. The Commission has reviewed the revised workpapers and concludes that the Agreement, if amended to permit providing flat-rate packaging to the customer, will cover its attributable costs. The Commission, therefore, conditionally approves the forthcoming amendment if it is: (1) filed within 90 days of the date of this Order; (2) has an effective date no earlier than its date of filing; and (3) makes no changes to the Agreement other than a revision of article I.D. to permit the Postal Service to provide the customer with flat-rate packaging. Under those circumstances, the Commission anticipates taking no further action on such an amendment in this docket. The amendment will be considered approved on the filing date of the amendment. The Postal Service is reminded that it may not provide the customer with flat-rate packaging until such time as the amendment takes effect.

Other considerations. By its terms, the contract becomes effective two business days after the date that the Commission issues all necessary regulatory approval. Request, Attachment B at 10-11. The contract is scheduled to expire three years from the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁶

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified at least seven days prior to the contract's expiration date. *Id.* During the extension periods, prices will be adjusted as described in the contract. *Id.* The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices are automatically adjusted in the extension period; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

⁶ *Id.* at 11. Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 as a new product. 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. Priority Mail Express, Priority Mail & First-Class Package Service Contract 61 (MC2019-137 and CP2019-150) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Commission conditionally approves an amendment to the Agreement if it is filed as discussed in the body of this Order.
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.

Ruth Ann Abrams
Acting 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. MC2019-137 and CP2019-150. 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

Negotiated Service Agreements*

Domestic*

Priority Mail Express, Priority Mail & First-Class Package Service Contract 61

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**

Negotiated Service Agreements*

Domestic*

Priority Mail Express, Priority Mail & First-Class Package Service Contract 61

2500 **Negotiated Service Agreements**

2505 **Domestic**

2505.11 **Priority Mail Express, Priority Mail & First-Class Package Service Contracts**

- Priority Mail Express, Priority Mail & First-Class Package Service Contract 61

Baseline Reference

Docket Nos. MC2019-137 and CP2019-150

PRC Order No. 5108, May 29, 2019

Included Agreements

CP2019-150, expires May 30, 2022
