

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

Competitive Product Prices  
Priority Mail Express & Priority Mail  
Priority Mail Express & Priority Mail Contract 98

Docket No. MC2019-190

Competitive Product Prices  
Priority Mail Express & Priority Mail Contract 98  
(MC2019-190)  
Negotiated Service Agreement

Docket No. CP2019-213

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE  
REQUEST TO ADD PRIORITY MAIL EXPRESS & PRIORITY MAIL  
CONTRACT 98 TO THE COMPETITIVE PRODUCT LIST

(September 11, 2019)

The Public Representative hereby provides comments pursuant to a Commission Notice initiating this docket.<sup>1</sup> 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 Contract 98 to the competitive product list.<sup>2</sup>

The Postal Service's Request includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 USC 3633(a), and proposed changes to the Mail Classification Schedule (MCS) competitive product list with the additions underlined. In addition, the Request includes a public (redacted) version of Governor's Decision No. 19-1 and related analysis, and Priority Mail Express & Priority Mail shipping services Contract 98. The Postal Service also filed under seal the full (unredacted) text of Contract 98, Governor's Decision No. 19-1, and a supporting financial model estimating the contract value during the first year.

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<sup>1</sup> Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, September 4, 2019. (Notice).

<sup>2</sup> USPS Request to Add Priority Mail Express & Priority Mail Contract 98 to the Competitive Product List and Notice of Filing Materials Under Seal, September 3, 2019 (Request).

The Postal Service states that Priority Mail Express & Priority Mail Contract 98 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 proposed classification for Contract 98 are authorized by Governors’ Decision No. 19-1.<sup>3</sup> The Postal Service further asserts that the Statement provides support for adding Contract 98 to the competitive product list and the compliance of the Contract 98 with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

The effective date of Contract 98 is two business day following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 8-9 (Article II). Contract 98 is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification, or other specific events. *Id* at 9, (Article III).

## COMMENTS

The Public Representative has reviewed the Postal Service’s Request, Priority Mail Express & Priority Mail Contract 98, the Statement of Supporting Justification, and financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Contract 98 should be classified as a competitive product and added to the competitive product list. In addition, Contract 98 is projected to generate sufficient revenues to cover costs in its first year and thereby satisfy 39 U.S.C. § 3633(a).

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 98 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.

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<sup>3</sup> 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).

§ 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 Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Express & Priority Mail Contract 98 to the competitive product is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), 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 Postal Service's negotiated prices for Contract 98 should generate sufficient revenues to cover costs during its first year and therefore satisfy the requirements of 39 U.S.C. § 3633(a).

As indicated above, Contract 98 is expected to remain in effect for a period of three years. The Postal Service does not indicate whether or not Contract 98 will cover costs in its second or third years, but that concern is largely mitigated because Contract 98 includes a mechanism for the adjustment of contract prices during the second and third years. Further concern is mitigated by the fact that the Postal Service must file revenue and cost data for Contract 98 in its Annual Compliance Report. This data will permit the Commission to review the financial performance of Contract 98 in its Annual Compliance Determination (ACD) report for 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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