

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

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Competitive Product Prices
Priority Mail Express International, Priority Mail
International & Commercial ePacket Contracts
Priority Mail Express International, Priority Mail
International & Commercial ePacket Contract 1

Docket No. MC2020-146

Competitive Product Prices
Priority Mail Express International, Priority Mail
International & Commercial ePacket Contract 1 (MC2020-146)
Negotiated Service Agreements

Docket No. CP2020-156

ORDER ADDING PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL
INTERNATIONAL & COMMERCIAL EPACKET CONTRACT 1
TO THE COMPETITIVE PRODUCT LIST

(Issued June 12, 2020)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 1 to the

competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

II. BACKGROUND

On May 28, 2020, in accordance with 39 U.S.C. § 3642, 39 C.F.R. §§ 3020.30-.35, and 39 C.F.R. § 3015.5, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 1 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 Postal Service will notify the mailer of the effective date of the Agreement after the Commission completes its review. Request, Attachment B at 3. It is set to expire June 30, 2020. *Id.*

On May 29, 2020, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.²

¹ USPS Request to Add Priority Mail Express International, Priority Mail International & Commercial ePacket Duty and Tax Chargeback Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal, May 28, 2020 (Request).

² See Docket No. MC2020-143 *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, May 29, 2020.

On May 29, 2020, Chairman's Information Request No. 1 was issued.³ CHIR No. 1 asked the Postal Service to explain the distinctions between the contract filed in this docket and the contract filed in Docket Nos. MC2020-140 and CP2020-149. CHIR No. 1, questions 1. CHIR No. 1 also asked the Postal Service questions relating to the contract's extremely short duration. CHIR No. 1, questions 2-3. The Postal Service provided the requested responses on June 4, 2020, including revised Mail Classification Schedule (MCS) language to harmonize proposed MCS sections 2510.16 and 2510.17, and responding to the concerns regarding the contract's short duration.⁴

III. COMMENTS

The Public Representative filed comments on June 4, 2020.⁵ No other interested person filed comments. The Public Representative concludes that the contract should be categorized as a competitive product. PR Comments at 2. She characterizes as reasonable the Postal Service's assertions regarding the classification of the contract as a competitive product. *See id.* She states that while the financial workpapers demonstrate that the contract should cover its costs, such workpapers do not include the costs of contract negotiation and obtaining regulatory approval. *Id.* at 3. She notes that such costs are likely to be minimal, but that the contract's duration is so short that even those minimal costs may not have time to be recouped. *Id.* Nevertheless, she recommends that the Commission approve the instant contract. *Id.*

The Public Representative recommends that in future contracts of short duration, the Postal Service certify that the contract will produce sufficient contribution to recover administrative costs associated with negotiation and regulatory compliance. *Id.*

³ Chairman's Information Request No. 1 and Notice of Filing Under Seal, May 29, 2020 (CHIR No. 1).

⁴ Response of the United States Postal Service to Chairman's Information Request No. 1, June 4, 2020, questions 1-3. (Response to CHIR No. 1).

⁵ Public Representative Comments, June 4, 2020 (PR Comments).

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 International, Priority Mail International & Commercial ePacket Contract 1 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 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 2-3. 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 3-4.

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 International, Priority Mail International & Commercial ePacket Contract 1 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 International, Priority Mail International & Commercial ePacket Contract 1 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because the Commission finds Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 1 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 term of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). Thus, 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 shares the Public Representative's concern that because the usual financial model used to review cost coverage does not include administrative costs related to contract negotiation and regulatory compliance, it may overstate cost coverage for contracts with an extremely short duration, such as this contract. The Commission will closely review the results of this contract to determine whether such administrative costs impacted compliance. The Commission expects that the short duration of this contract is the result of exceptional circumstances and will not be repeated.⁶

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 Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

MCS language and product name. In its Response to CHIR No. 1, the Postal Service included revised MCS language that include "Duty and Tax Chargeback" as an optional feature of contracts included in the proposed MCS § 2510.17, rather than as a distinguishing feature of contracts included in that section. See Response to CHIR No. 1, question 1. The Commission finds this approach preferable because it minimizes the number of MCS sections required for international contracts while still accurately describing the contracts included in each section.

As part of the proposed revision, the proposed name of the product has changed from "Priority Mail Express International, Priority Mail International & Commercial ePacket Duty and Tax Chargeback Contract 1" to "Priority Mail Express International,

⁶ The Commission may consider revising its rules to require identification of administrative costs, such as those identified by the Public Representative, should submission of these extremely short duration contracts continue.

Priority Mail International & Commercial ePacket Contract 1.” The Commission adopts the revised proposal for the product name, and has captioned this Order accordingly.

The Postal Service additionally proposed conforming edits to MCS § 2510.3 and 2510.6, concerning Global Expedited Package Services (GEPS) Contracts and Global Plus Contracts, respectively, which the Commission adopts.

Finally, in addition to the proposed MCS § 2510.17, the Commission is adding MCS § 2010.16, which was originally proposed by the Postal Service in Docket Nos. MC2020-140 and CP2020-149.⁷ That filing has since been withdrawn, but the Postal Service has filed other contracts that, if approved, would be included in the proposed MCS § 2010.16.⁸ Accordingly, the Commission adds MCS § 2010.16 as a placeholder.

Other considerations. The Postal Service will notify the mailer of the effective date of the contract after the Commission has completed its review. Request, Attachment B at 3. The contract is scheduled to expire June 30, 2020, unless it is terminated sooner. *Id.*

The contract also contains a provision whereby the Postal Service can extend the contract for two 3-month periods provided the Commission is notified at least seven days prior to the contract’s expiration date. *Id.* In its Response to CHIR No. 1, the Postal Service expressed its intention to not make use of this provision. Response to CHIR No. 1, question 2. Due to the ability of designated postal operators, starting July 1, 2020, to self-declare rates for certain bulky letters and small parcels, the financial workpapers filed in support of the Request do not accurately demonstrate the costs of

⁷ Docket Nos. MC2020-140 and CP2020-149, USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 1 to Competitive Product List and Notice of Filing Materials Under Seal, May 27, 2020.

⁸ See Docket Nos. MC2020-140 and CP2020-149, Notice of Withdrawal of Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 1 Negotiated Service Agreement, June 10, 2020. See, e.g., Docket Nos. MC2020-157 and CP2020-173, USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 2 to Competitive Product List and Notice of Filing Materials Under Seal, June 11, 2020.

providing services under this contract after July 1. Accordingly, the contract will expire on June 30, 2020 and may not be extended.

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 International, Priority Mail International & Commercial ePacket Contract 1 as a new product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 1 (MC2020-146 and CP2020-156) is added to the competitive product list as a new product under Negotiated Service Agreements, International. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall not extend the instant contract beyond June 30, 2020.
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.

Erica A. Barker
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3040, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2020-146 and CP2020-156. 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 3040—Competitive Product List

Negotiated Service Agreements*

International*

Priority Mail Express International, Priority Mail International & Commercial ePacket
Contract 1

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*

International*

Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 1

2500 Negotiated Service Agreements

2510 International

2510.2 Negotiated Service Agreement Groups

- Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket (2510.16)
- Priority Mail Express International, Priority Mail International & Commercial ePacket (2510.17)

2510.3 Global Expedited Package Services (GEPS) Contracts

2510.3.1 Description

- f. CeP is a commercial service designed for volume shipments of outbound international letter post packet items (destined for delivery to certain destinations outside of the United States) ~~that are subject to the provisions of the Universal Postal Convention of the Universal Postal Union.~~ Individual item tracking is provided. CeP pieces are sealed against inspection and shall not be opened except as authorized by

law. CeP pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender. Size and weight limitations for CeP are the same as for International Priority Airmail Packages (Small Packets) and Rolls (2320.2)

2510.3.5 Optional Features

- Chargeback for Duties and Taxes
 - ~~At the mailer's request,~~ For certain destinations for which the Postal Service has made arrangements with the destination country postal operator, the Postal Service may offer destination country duty and taxes chargeback service, through which custom duties and taxes are paid by the mailer in lieu of the recipient.

2510.6 Global Plus Contracts

2510.6.1 Description

- g. CeP is a commercial service designed for volume shipments of outbound international letter post packet items (destined for delivery to certain destinations outside of the United States) ~~that are subject to the provisions of the Universal Postal Convention of the Universal Postal Union.~~ Individual item tracking is provided. CeP pieces are sealed against inspection and shall not be opened except as authorized by law. CeP pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender. Size and weight limitations for CeP are the same as for International Priority Airmail Packages (Small Packets) and Rolls (2320.2)

2510.6.5 Optional Features

- Duty and Tax Chargeback
 - ~~At the mailer's request,~~ For certain destinations for which the Postal Service has made arrangements with the destination country postal operator, the Postal Service may offer destination country duty and tax chargeback service, through which custom duties and taxes are paid by the mailer in lieu of the recipient.

2510.16 **Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contracts**

2510.17 **Priority Mail Express International, Priority Mail International & Commercial ePacket Contracts**

These contracts provide incentives for Priority Mail Express International (PMEI) (2305), Outbound Priority Mail International (PMI) (2315), and Commercial ePacket (CeP). CeP is a commercial service designed for volume shipments of outbound international letter post packet items (destined for delivery to certain destinations outside of the United States). Individual item tracking is provided. CeP pieces are sealed against inspection and shall not be opened except as authorized by law. CeP pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender. Size and weight limitations for CeP are the same as for International Priority Airmail Packages (Small Packets) and Rolls (2320.2). For certain destinations for which the Postal Service has made arrangements with the destination country postal operator, as an optional feature, the Postal Service may offer destination country duty and taxes chargeback service, through which custom duties and taxes are paid by the mailer in lieu of the recipient.

Each product is followed by a list of agreements included within that product.

- Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 1

Baseline Reference

Docket Nos. MC2020-146 and CP2020-156
PRC Order No. 5547, June 12, 2020

Included Agreements

CP2020-156, expires June 30, 2020