Postal Regulatory Commission
Submitted 8/3/2020 8:50:18 AM
Filing ID: 114092
Accepted 8/3/2020

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

Competitive Product Prices — Docket No. MC2020-206
Priority Mail Express & Priority Mail
Priority Mail Express & Priority Mail Contract 116

Competitive Product Prices — Docket No. CP2020-233
Priority Mail Express & Priority Mail Contract 116
(MC2020-206)
Negotiated Service Agreement

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL EXPRESS & PRIORITY MAIL CONTRACT 116 TO THE COMPETITIVE PRODUCT LIST

(August 3, 2020)

The Public Representative hereby provides comments pursuant to the Commission's Notice in this docket.[1] In that Notice, 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 116 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. The

[1] PRC Notice Initiating Docket No. MC2020-206/CP2020-233, July 29, 2020

[2] USPS Request to Add Priority Mail Express & Priority Mail Contract 116 to Competitive Product List and Notice of Filing Materials Under Seal, July 28, 2020 (Request).

Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

According to the Postal Service, Priority Mail Express & Priority Mail Contract 116 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 Contract 116 to the competitive product list and the compliance of the contract with 39 U.S.C. § 3633(a). *Request* at 2.

The contract's effective date will be set 3 business days after receiving final regulatory approval by the Commission. *Attachment B* at 4. The contract will expire 3 years from the effective date unless either party terminates the contract on 30 days' prior written notification, or other specific events. *Id.*

COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and 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 Contract 116 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract will generate sufficient revenues to cover costs in the first year and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

[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).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Express & Priority Mail Contract 116 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 power 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). *Attachment D.* These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Express & Priority Mail Contract 116 to the competitive product list 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 data, the negotiated prices for Contract 116 should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a). In addition, while Contract 116 is expected to remain in effect for a period of 3 years, during this period, the contract contains a mechanism for the upward annual adjustment of prices.

Finally, the Postal Service must file revenue and cost data for Contract 116 in future Annual Compliance Reports. These data will permit the Commission to annually review the financial results for Priority Mail Express & Priority Mail Contract 116 in a future 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.

_____

Kenneth R. Moeller
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6888
Kenneth.Moeller@prc.gov