

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

Competitive Product Prices  
Priority Mail & First-Class Package Service  
Priority Mail & First-Class Package Service  
Contract 159

Docket No. MC2020-223

Competitive Product Prices  
Priority Mail & First-Class Package Service  
Contract 159  
(MC2020-223)  
Negotiated Service Agreement

Docket No. CP2020-253

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL & FIRST-CLASS  
PACKAGE SERVICE CONTRACT 159 TO  
COMPETITIVE PRODUCT LIST

(August 25, 2020)

The Public Representative hereby provides comments pursuant to the Commission's Notice Initiating Dockets.<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 and First-Class Package Service Contract 159 to the competitive product list.<sup>2</sup>

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 19-1 and related analysis, a public version of Priority Mail and First-Class Package Service Contract 159, and proposed changes to the Mail

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<sup>1</sup> Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, August 18, 2020 (Notice).

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 159 to the Competitive Product List and Notice of Filing Materials Under Seal, August 17, 2020 (Request).

Classification Schedule competitive product list with the additions underlined. The Postal Service also filed under seal an unredacted version of Governor's Decision No. 19-1 and Contract 159, and supporting financial data estimating the contract value during the first year.

According to the Postal Service, Priority Mail and First-Class Package Service Contract 159 is a competitive product featuring rates "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 changes applicable to Contract 159 are supported by Governors' Decision No. 19-1.<sup>3</sup> The Postal Service further asserts that the Statement of Supporting Justification (Statement) provides support for adding Contract 159 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). *Id.* at 2.

The effective date for Contract 159 is three (3) business days following approval from the Commission. *Id.*, Attachment B at 11. The contract will expire three (3) years from the effective date unless either party terminates the contract on 30 days' prior written notification, or other specific events. *Id.*, Attachment B at 11.

## COMMENTS

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail and First-Class Package Service Contract 159 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.

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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).

The Postal Service's Statement of Supporting Justification (Statement) makes a number of reasonable assertions that address the considerations of section 3642(b)(1). Attachment D at 2.

*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 159 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 159 is expected to remain in effect for three years, during this period, the contract contains a mechanism for the upward annual adjustment of prices.

The Public Representative has reviewed the Postal Service's Request, the Statement of Supporting Justification, as well as Contract 159, the financial data filed under seal with the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail and First-Class Package Service Contract 159 should be classified as a competitive product and added to the competitive product list. In addition, it appears that Contract 159 in the first year should generate sufficient revenues to cover costs and thereby satisfy 39 U.S.C. § 3633(a).

Finally, the Postal Service must file revenue and cost data for Contract 159 in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for Priority Mail and First-Class Package Service Contract 159 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.

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