

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

Competitive Product Prices
Priority Mail Express, Priority Mail,
First-Class Package Service & Parcel Select
Contract 35

Docket No. MC2022-122

Competitive Product Prices
Priority Mail Express, Priority Mail,
First-Class Package Service & Parcel Select
Contract 35 (MC2022-122)
Negotiated Service Agreement

Docket No. CP2022-126

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL EXPRESS, PRIORITY MAIL,
FIRST-CLASS PACKAGE SERVICE AND
PARCEL SELECT CONTRACT 35
TO THE COMPETITIVE PRODUCT LIST

(September 23, 2022)

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, First-Class Package Service and Parcel Select Contract 35 (the

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, September 20, 2022 (Notice).

Contract) 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 Postal Service also filed a contract related to the proposed new product and supporting financial data (unredacted versions of said contract and data were filed under seal and reviewed by the Public Representative).

According to the Postal Service, the Contract 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 the Contract to the competitive product list and the compliance of the contract with 39 U.S.C. § 3633(a). Request at 1.

The contract's effective date will be set 3 business days after receiving final regulatory approval by the Commission. Attachment B at 10. 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 the Contract should be categorized as a competitive

² USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Contract 35 to Competitive Product List and Notice of Filing Materials Under Seal, September 19, 2022 (Request). The Request included several attachments, labeled as Attachment A through Attachment F.

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for 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 and added to the competitive product list. Importantly, it appears that the Contract will generate sufficient revenues to cover costs in the first year and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that the Contract 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 39 C.F.R. § 3020.32. See Attachment D. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add the Contract 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 the Contract 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). Specifically, the product's revenues are greater than the estimated attributable costs in the first year, complying with 39 U.S.C. § 3633(a)(2). As it covers its own costs independently, the Contract cannot be reasonably judged to be subsidized by market dominant products, in accordance with

39 U.S.C. § 3633(a)(1).⁴ In addition, while the Contract is expected to remain in effect for a period of several years, during this period, the contract contains a mechanism for the annual adjustment of prices. The issue of this and all competitive products covering an appropriate share of institutional cost will be analyzed by the Commission in future *Annual Compliance Determination* reports.

As an additional safeguard of the Contract's compliance with existing statutes, the Postal Service must file revenue and cost data for the Contract in future Annual Compliance Reports. These data will permit the Commission to annually review the financial results for the Contract in a future *Annual Compliance Determination* 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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⁴ The Public Representative notes that the existence of some group-level inframarginal costs that are incremental to competitive products collectively but not to any individual competitive product could result in a breach of 39 U.S.C. § 3633(a)(1) even if all products individually cover their attributable costs.