

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 78 (MC2022-35)
Negotiated Service Agreements

Docket No. CP2022-42

ORDER APPROVING AMENDMENT ONE TO
PRIORITY MAIL EXPRESS, PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE
NEGOTIATED SERVICE AGREEMENT

(Issued January 13, 2023)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express, Priority Mail & First-Class Package Service negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ USPS Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 78, Filed Under Seal, December 28, 2022 (Notice). The Amendment is an attachment to the Notice (Amendment).

II. BACKGROUND

In Order No. 6084, the Commission approved the Priority Mail Express, Priority Mail & First-Class Package Service Contract 78 negotiated service agreement (Existing Agreement).² On December 28, 2022, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On December 30, 2022, the Commission issued a notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3035.105. *Id.*

III. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.* She notes that the Commission will have an opportunity to annually review the financial results for the contract for compliance with 39 U.S.C. § 3633(a). *Id.*

² See Docket Nos. MC2022-35 and CP2022-42, Order Adding Priority Mail Express, Priority Mail & First-Class Package Service Contract 78 to the Competitive Product List, January 7, 2022 (Order No. 6084).

³ See Docket No. CP2022-39, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 30, 2022.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 78, January 10, 2023 (PR Comments). The Public Representative also filed a motion for late acceptance of her comments. Motion of Public Representative for Late Acceptance of Public Representative Comments, January 10, 2023 (Motion). The Motion is granted.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107. As long as the revenue generated by the product exceeds its attributable costs, the product 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 a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment revises the terms of the customer's volume commitment and the implementation of tiered pricing, along with making conforming changes to contract terms that reference the pricing tiers. Notice, Attachment A at 1-8. The Amendment also revises the pricing structure for additional services. *Id.* at 8.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, 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, it finds the Existing Agreement, as amended, 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 39 C.F.R. § 3035.107(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The Commission will continue to review the cost coverage of the Existing Agreement, as amended, in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review. Notice at 1.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Express, Priority Mail & First-Class Package Service Contract 78 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Erica A. Barker
Secretary