

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

Before Commissioners:

Dan G. Blair, Chairman;
Mark Acton, Vice Chairman;
Ruth Y. Goldway;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail Contract
Priority Mail Contract 1

Docket No. MC2008-8

Competitive Product Prices
Priority Mail Contract 1 (MC2008-8)
Negotiated Service Agreement

Docket No. CP2008-26

ORDER CONCERNING PRIORITY MAIL CONTRACT 1
NEGOTIATED SERVICE AGREEMENT

(Issued October 15, 2008)

I. BACKGROUND

On September 23, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 1 to the competitive product list. The Postal Service asserts that Priority Mail Contract 1 is a

competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2008-8.¹

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract is assigned Docket No. CP2008-26. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) a redacted version of the Governors’ Decision, which also includes an analysis of the Priority Mail Contract 1;² (2) a redacted version of the contract; which, among other things, provides that the contract will expire 2 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;³ (3) requested changes in the MCS product list⁴; (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁵ and (5) certification of compliance with 39 U.S.C. 3633(a).⁶

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. Attachment D at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial

¹ Request of the United States Postal Service to Add Priority Mail Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, September 23, 2008 (Request).

² Attachment A to the Request. The analysis that accompanies the Governors’ Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 1, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions and financial projections should remain under seal. Request at 2.

In Order No. 111, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.

II. COMMENTS

Comments were filed by the Public Representative.⁷ No filings were submitted by other interested parties. The Public Representative's comments focus on several aspects of the negotiated Priority Mail Contract 1: adequate cost coverage for the product, identification of the source and basis for projected volume figures; and use of reliable adjustment factors. Public Representative Comments at 3-4. In addition, the Public Representative comments on the public interest in ensuring that the proposed competitive negotiated service agreements have been considered by the Governors and that such agreements provide increased options for consumers. *Id.* at 4-5.

Based on a review of materials filed under seal, the Public Representative concludes that the contract comports with 39 U.S.C. 3633(a). *Id.* at 4. The Public Representative comments on the projected contract volumes recommending that in future filings the Postal Service should provide in general terms the nature and source of the volume projections for evaluation and review by the Commission. *Id.* at 5-6. Finally, the Public Representative comments that the contract's economic adjustment

⁷ Public Representative Comments in Response to Order No. 111, October 8, 2008 (Public Representative Comments).

factors appear to be reasonable and provide adequate revenue protection for the Postal Service. *Id.* at 6.

III. COMMISSION ANALYSIS

The Commission has reviewed the contract and the financial analysis provided under seal that accompanies the agreement as well as the comments by the Public Representative.

The Postal Service's filing is distinguishable from previously filed negotiated service agreements. It seeks to establish a new domestic Priority Mail product, but not as a shell classification. Rather, the contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Commission's review of the supporting data uncovered certain inconsistencies which, on further inspection, do not substantially alter the financial results, but which nonetheless merit comment. Some of the underlying cost figures were developed from the Postal Service's FY2007 Annual Report to the Commission instead of from the Commission's FY2007 Annual Compliance Determination. The latter, representing the latest available information, is to be used in future filings.⁸

With respect to volume mix, the Postal Service relies on two different sources of information, namely, an existing special study and data reported by Origin Destination Information System (ODIS). While the use of these two sources of data does not cause the financial results to vary significantly (compared to using only one source), any future similar contracts should employ a single source to derive volume distributions, or alternatively, provide adequate justification for using more than one source.

Based on the data submitted, the Commission finds that the Priority Mail Contract 1 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C.

⁸ Modifications, if any, to such data to reflect changed circumstances would need to be fully supported.

3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Priority Mail Contract 1 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall notify the Commission of the effective date of the instant contract. In addition, the Postal Service shall promptly notify the Commission when the contract terminates no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 1 as a new product. The revision to the competitive product list is shown below the signature of this Order and is effective upon issuance of this Order.

It is Ordered:

1. Priority Mail Contract 1 (MC2008-8 and CP2008-26) is added to the competitive product list as a new product under Negotiated Service Agreement, Domestic.
2. The Postal Service shall notify the Commission of the effective date and the termination date of the contract as discussed in this Order.
3. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Judith M. Grady
Assistant Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE

CHANGE IN PRODUCT LIST

The following material represents changes to the Product List codified at 39 CFR Appendix to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2008-8 and CP2008-26. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

PART B-- COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

NEGOTIATED SERVICE AGREEMENTS

Domestic

Express Mail Contract 1 (MC2008-5)

Priority Mail Contract 1 (MC2008-8 and CP2008-26)
