

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail
Priority Mail Contract 2

Docket No. MC2009-2

Competitive Product Prices
Priority Mail Contract 2 (MC2009-2)
Negotiated Service Agreement

Docket No. CP2009-3

ORDER CONCERNING PRIORITY MAIL CONTRACT 2
NEGOTIATED SERVICE AGREEMENT

(Issued November 7, 2008)

The Postal Service seeks to add a new product identified as Priority Mail Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. BACKGROUND

On October 24, 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 2 to the Competitive Product List. The Postal Service asserts that the Priority Mail Contract 2 product 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. MC2009-2.¹

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 has been assigned Docket No. CP2009-3. 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 authorizing the new product which also includes an analysis of the Priority Mail Contract 2;² (2) a redacted version of the contract; which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals, unless that date is later than November 10, 2008, in which case the effective date will be deferred until January 1, 2009;³ (3) requested changes in the MCS product list;⁴ (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

¹ Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 24, 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; see Errata to Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request .

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. Request, Attachment D, at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). See *id.* Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 2, 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. *Id.* at 2.

In Order No. 122, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁷

II. COMMENTS

Comments were filed by the Public Representative.⁸ No filings were submitted by other interested parties. The Public Representative's comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2-3.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service.

⁷ PRC Order No. 122, Notice and Order Concerning Priority Mail Contract 2 Negotiated Service Agreement, October 31, 2008.

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 2 to Competitive Product List, November 5, 2008 (Public Representative Comments).

The Public Representative concludes that the contract is beneficial to both parties as well as the general public. *Id.* at 2-3.

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 filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 2 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C.3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 2 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

the Postal Service exercises sufficient market power that it can be 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 or offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices without the

risk of losing volume to private companies. Request, Attachment D, at 2-3. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Priority Mail Contract 2 as competitive. Having considered the statutory requirement and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 2 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's filing seeks to establish a new domestic Priority Mail product. 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 Postal Service contends that adding the Priority Mail Contract 2 product will result in processing Priority Mail pieces that are less costly for the Postal Service than the average Priority Mail piece. See Request, Attachment A. It believes that its financial analysis shows that these cost savings can be accomplished while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. *Id.*, Attachment E, at 1.

Based on the data submitted and the comments received, the Commission finds that Priority Mail Contract 2 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. 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 2 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates, but 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 2 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. The Priority Mail Contract 2 (MC2009-2 and CP2009-3) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.
2. The Postal Service shall notify the Commission of 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.

Steven W. Williams
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. MC2009-2 and CP2009-3. 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

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 2 (MC2009-2 and CP2009-3)

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