

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
Parcel Select & Parcel Return Service
Parcel Select & Parcel Return Service Contract 1

Docket No. MC2009-11

Competitive Product Prices
Parcel Select & Parcel Return Service Contract 1
(MC2009-1)
Negotiated Service Agreement

Docket No. CP2009-13

ORDER CONCERNING PARCEL SELECT
& PARCEL RETURN SERVICE CONTRACT 1
NEGOTIATED SERVICE AGREEMENT

(Issued December 16, 2008)

The Postal Service seeks to add a new product identified as Parcel Select & Parcel Return Service Contract 1 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. BACKGROUND

On November 25, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Parcel Select & Parcel Return Service Contract 1 to the Competitive Product List.¹ The Postal Service asserts that the Parcel Select & Parcel Return Service Contract 1 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. MC2009-11.

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. CP2009-13.

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 Parcel Select & Parcel Return Service Contract 1 and certification of the Governors’ vote;² (2) a redacted version of the contract which, among other things, provides that the contract will expire on May 31, 2011, and will become effective 1 day after the Commission issues all regulatory approvals;³ (3) requested changes in the Mail Classification Schedule 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 Parcel Select & Parcel Return Service Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, November 25, 2008 (Request).

² Attachment A to the Request. The analysis that accompanies the Governors’ Decision notes, among other things, that the agreement remains profitable regardless of the discount level and results in a positive contribution impact of the Postal Service under all conditions.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

In the Statement of Supporting Justification, Daniel J. Barrett, Acting Manager, Product & Business Development, Ground Shipping Services, 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. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies 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 unredacted Governors' Decision and the unredacted contract, 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 confidential. *Id.* at 2-3.

In Order No. 142, 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 and Newgistics, Inc.⁸ The Public Representative Comments focus principally on the adequacy of cost coverage, appropriate classification of the product, and overall transparency. Public Representative Comments at 1-2. He concludes that the agreement meets the

⁷ PRC Order No. 142, Notice and Order Concerning Parcel Select Parcel Return Service Contract 1 Negotiated Service Agreement, December 2, 2008 (Order No. 142).

⁸ Public Representative Comments in Response to Order No. 142, December 10, 2008 (Public Representative Comments); Response from Bill Razzouk, Newgistics to Postal Regulatory Commission Notice and Order Concerning Parcel Select & Parcel Return Service Contract 1 Negotiated Service Agreement Order No. 142, December 10, 2008 (Newgistics Comments).

important public interest in adequate cost coverage and believes the agreement is properly classified as a competitive product. *Id.*

The Public Representative also raises an issue with respect to transparency and the method that the Postal Service uses in this case to redact its filings. He notes that the Commission's rules contemplate text-based pdf files where possible. *Id.* at 5; *accord* 39 CFR 3001.10. Despite these minor caveats, the Public Representative believes that the Postal Service should be commended for continuing to proceed diligently toward accommodating transparency concerns in a very competitive business environment.

Newgistics' comments focus on the financial gain to the Postal Service. It believes that the contract must demonstrate that it will provide "new volumes and revenues" to the Postal Service. It wants to ensure that the Postal Service does not take volume from other postal mail service providers. It notes that shifting mail from one Postal Service customer to another does not result in a contribution gain for the Postal Service. Newgistics also contends that contract rates should not provide an unfair advantage to one company over another.

III. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative and Newgistics.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Parcel Select & Parcel Return Service Contract 1 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 Parcel Select & Parcel Return Service Contract 1 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 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). 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 who 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 precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that the market for ground 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 Parcel Select & Parcel Return Service Contract 1 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Parcel Select & Parcel Return Service Contract 1 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Commission's library reference PRC-CP2009-13-NP-LR-1 analyzes the financial impact of this of this contract. Library Reference PRC-CP2009-13-NP-LR-1 updates the original data submitted by the Postal Service and provides calculations for revenue per piece for each of the negotiated service agreement's rate categories. The results show that the updated data do not cause the financial results to vary significantly.

Based on the data submitted and the Commission's analysis shown in Library Reference PRC-CP2009-13-NP-LR-1, the Commission finds that Parcel Select & Parcel Return Service 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. 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 Parcel Select & Parcel Return Service Contract 1 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.

Public Representative comments. As evidenced by filings in other recent negotiated service agreement dockets, it appears that the Postal Service typically has the ability to properly redact files using blackouts while maintaining the documents "searchability" characteristics. The Postal Service should strive to ensure that all

redacted documents are properly redacted using blackouts unless it specifically justifies the use of other redaction methods in its filings.

Newgistics comments. For the Commission to approve new competitive products and their accompanying rates not of general applicability, the law requires that the contracts meet the requirements of 39 U.S.C. 3633, 3642 and accompanying regulatory criteria. The Postal Service should strive to obtain new volumes and revenues, but the law does not require new volumes and revenues for the Postal Service to enter into negotiated service agreements for competitive products. Additionally, section 403(c) bars undue discrimination and unreasonable preferences. However, no evidence of undue discrimination or unreasonable preferences has been shown here. If Newgistics believes that such a violation exists, it may file a complaint with the Commission pursuant to 39 U.S.C. 3662 to explore the issue.

In conclusion, the Commission approves Parcel Select & Parcel Return Service Contract 1 as a new competitive 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. Parcel Select & Parcel Return Service Contract 1 (MC2009-11 and CP2009-13) 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. MC2009-11 and CP2009-13. 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

* * * * *

Parcel Select & Parcel Return Service Contract 1 (MC2009-11 and
CP2009-13)

* * * * *