

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 12

Docket No. MC2009-28

Competitive Product Prices
Priority Mail Contract 12 (MC2009-28)
Negotiated Service Agreement

Docket No. CP2009-38

ORDER CONCERNING PRIORITY MAIL CONTRACT 12
NEGOTIATED SERVICE AGREEMENT

(July 1, 2009)

The Postal Service seeks to add a new product identified as Priority Mail Contract 12 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. BACKGROUND

On June 11, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, announcing that it has entered into an additional contract (Priority Mail Contract 12), which it attempts to classify within the previously proposed Priority Mail Contract Group product.¹ In support, the Postal Service filed the proposed contract and referenced Governors' Decision 09-6 filed in Docket No. MC2009-25. *Id.* at 1. The Notice has been assigned Docket No. CP2009-38.

In response to Order No. 223,² and in accordance with 39 U.S.C. 3642 and 39 CFR 3020 subpart B, the Postal Service filed a formal request to add Priority Mail Contract 12 to the Competitive Product List as a separate product.³ The Postal Service asserts that the Priority Mail Contract 12 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. MC2009-28.

In support of its Notice and Request, the Postal Service filed the following materials: (1) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;⁴ (2) requested changes in the Mail Classification Schedule product list;⁵ (3) a Statement of Supporting Justification as

¹ Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 12), June 11, 2009 (Notice).

² PRC Order No. 223, Notice and Order Concerning Filing of Priority Mail Contract 12 Negotiated Service Agreement, June 17, 2009 (Order No. 223).

³ Request of the United States Postal Service to Add Priority Mail Contract 12 to Competitive Product List, June 23, 2009 (Request).

⁴ Attachment A to the Notice.

⁵ Attachment A to the Request.

required by 39 CFR 3020.32;⁶ and (4) certification of compliance with 39 U.S.C. 3633(a).⁷

In the Statement of Supporting Justification, Mary Prince Anderson, Acting 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 B, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Notice, Attachment B.

The Postal Service filed much of the supporting materials, including the unredacted contract, under seal. In its Notice, 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. Notice at 2-3.

In Order No. 223, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.⁸ On June 22, 2009, Chairman's Information Request No. 1 was filed.⁹ On June 23, 2009, the Postal Service filed the supplemental information requested.¹⁰ The Postal Service filed its response to the Chairman's Information Request on June 26, 2009.¹¹

⁶ Attachment B to the Request.

⁷ Attachment B to the Notice.

⁸ Order No. 223 at 1-4.

⁹ Chairman's Information Request No. 1 and Notice of Filing of Question Under Seal, June 22, 2009. A portion of the Chairman's Information Request was filed under seal.

¹⁰ Response of the United States Postal Service to Commission's Request for Supplemental Information in Order No. 223, June 23, 2009.

¹¹ Response to Chairman's Information Request No. 1, Question 2 and Notice of Filing Responses to Questions 1 and 3 Under Seal, June 26, 2009.

II. COMMENTS

Comments were filed by the Public Representative.¹² No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Priority Mail Contract 12 agreement comports with the requirements of title 39 and is appropriately classified as competitive. *Id.* at 3.

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2-3. He indicates that the contractual provisions are mutually beneficial to the parties and general public. *Id.* at 4

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Request, the contract, the financial analysis provided under seal that accompanies it, the Postal Service's responses to Chairman's Information Request No. 1, the Postal Service's response to the Commission's request for supplemental information, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 12 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.

¹² Public Representative Comments in Response to United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 12), June 26, 2009 (Public Representative Comments).

Product list assignment. In determining whether to assign Priority Mail Contract 12 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 B, ¶ (d). 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 Competitive Product List to effectuate the negotiated contractual terms. *Id.* at ¶ (g). 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.* at ¶ (h).

No commenter opposes the proposed classification of Priority Mail Contract 12 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 12 is

appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 12 results in cost savings 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. Order No. 223 and Chairman's Information Request No. 1 sought additional support and justification for particular cost saving elements. The Postal Service's responses did not persuade the Commission that certain cost savings elements were appropriate here.

Accordingly, the Commission's analysis of the proposed contract is based on alternative cost estimates of certain mail functions. The Commission employed this analysis to determine whether changed cost inputs would materially affect the contract's financial analysis.¹³ The Commission concludes that the changed inputs do not have a material effect on the underlying financial analysis of the contract.

Based on the data submitted and the Commission's alternative analysis, the Commission finds that Priority Mail Contract 12 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 proposed Priority Mail Contract 12 indicates that it comports with the provisions applicable to rates for competitive products.

The electronic files submitted in support of the Notice did not include all supporting data. As noted in Order No. 231, Docket Nos. MC2009-27 and CP2009-37, issued concurrently today, future requests must provide all electronic files showing calculations in support of the financial models associated with the request. A failure to provide such information may delay resolution of requests in the future.

¹³ The Commission's analysis is set forth in Library Reference PRC-CP2009-38-NP-LR-1, which, because it contains confidential information, is being filed under seal.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 12 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 12 (MC2009-28 and CP2009-38) 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 scheduled termination date and update the Commission if the termination date occurs prior to that date, 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
Acting 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. MC2009-28 and CP2009-38. 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 12 (MC2009-28 and CP2009-38)

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