

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

Before Commissioners:

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

Competitive Product Prices  
Parcel Select & Parcel Return Service  
Parcel Select & Parcel Return Service Contract 2

Docket No. MC2009-40

Competitive Product Prices  
Parcel Select & Parcel Return Service Contract 2 (MC2009-40)  
Negotiated Service Agreement

Docket No. CP2009-61

ORDER CONCERNING PARCEL SELECT  
& PARCEL RETURN SERVICE CONTRACT 2  
NEGOTIATED SERVICE AGREEMENT

(Issued September 4, 2009)

I. INTRODUCTION

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

## II. BACKGROUND

On August 21, 2009, 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 2 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Parcel Select & Parcel Return Service Contract 2 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-40.

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. *Id.* The contract has been assigned Docket No. CP2009-61.

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 2 and certification of the Governors’ vote;<sup>2</sup> (2) a redacted version of the contract which, among other things, provides (a) that the effective date of the contract is the day after the date on which the Commission issues all regulatory approvals, and (b) that the contract will expire on May 31, 2011, unless it is extended for an additional year;<sup>3</sup> (3) requested changes in the Mail Classification Schedule product list;<sup>4</sup> (4) a Statement of Supporting

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<sup>1</sup> Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, August 21, 2009 (Request).

<sup>2</sup> Attachment A to the Request. The analysis that accompanies the Governors’ Decision notes, among other things, that the contract will result in new and more profitable volume for the Postal Service.

<sup>3</sup> Attachment B to the Request.

<sup>4</sup> Attachment C to the Request.

Justification as required by 39 CFR 3020.32,<sup>5</sup> (5) a certification of compliance with 39 U.S.C. 3633(a),<sup>6</sup> and (7) an application for non-public treatment of materials.<sup>7</sup>

In the Statement of Supporting Justification, Daniel J. Barrett, Manager, Sales Strategy and Customer Support, 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 increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Mr. Barrett contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, 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, the unredacted contract, and supporting financial analysis,<sup>8</sup> under seal. In its application for non-public treatment of materials, 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.*, Attachment F.

In Order No. 288, the Commission gave notice of the two dockets, appointed a public representative, requested supplemental information, and provided the public with

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<sup>5</sup> Attachment D to the Request.

<sup>6</sup> Attachment E to the Request.

<sup>7</sup> Attachment F to the Request.

<sup>8</sup> The Commission appreciates the Postal Service's efforts to ensure its financial analysis is complete and thorough. The financial analysis filed in this docket should serve as a model for future requests.

an opportunity to comment.<sup>9</sup> On August 27, 2009, the Postal Service filed a response to the Commission's request for supplemental information.<sup>10</sup>

### III. COMMENTS

Comments were filed by the Public Representative.<sup>11</sup> No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing and the Parcel Select & Parcel Return Service Contract 2 agreement comply with applicable Commission rules of practice. *Id.* at 3. He also addresses the relationship between the data systems used to calculate costs in this case and the Postal Service's proposal to change that established methodology as "proposal fourteen" in Commission Docket No. RM2009-10. Specifically, he notes that "the Commission's determination on the costing methodology might impact the data supplied for the instant contract." *Id.* at 4. However, the Public Representative "concede[s] that pricing for this PS&PRS NSA appear to fully comply with the 3-pronged requirements of 39 USC 3633(a), and with the other pricing, cost coverage, and contribution provisions of title 39. *Id.*

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2. He also believes that because the contract is designed to help acquire new volume, the contract appears to benefit the general public. *Id.* at 5.

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<sup>9</sup> PRC Order No. 288, Notice and Order Concerning Parcel Select & Parcel Return Service Contract 2 Negotiated Service Agreement, August 25, 2009 (Order No. 288).

<sup>10</sup> Response of the United States Postal Service to Request for Supplemental Information in Order No. 288, August 27, 2009.

<sup>11</sup> Public Representative Comments in Response to United States Postal Service Request to Add Parcel Select & Parcel Return Service Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, September 2, 2009 (Public Representative Comments).

#### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the supplemental information filed by the Postal Service, and the comments filed by the Public Representative.

*Statutory requirements.* The Commission's statutory responsibilities in this instance entail assigning Parcel Select & Parcel Return Service 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 Parcel Select & Parcel Return Service 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 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 ¶ (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 ground shipping 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 ground shipping 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 Parcel Select & Parcel Return Service Contract 2 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 2 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 Parcel Select & Parcel Return Service Contract 2 ensures 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.

Based on the data submitted, the Commission finds that Parcel Select & Parcel Return Service 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 proposed Parcel Select & Parcel Return Service Contract 2 indicates that it comports with the provisions applicable to rates for competitive products.

In his comments, the Public Representative raises the issue of the pending Parcel Select and Parcel Return Service methodological changes. See Docket No. RM2009-10, Proposal Fourteen. In the instant filing, the Postal Service correctly uses

the current approved methodology concerning Parcel Select and Parcel Return Service Transportation and Mail Processing costs. Nevertheless, the Commission believes the changes presented in Proposal Fourteen, if approved, would not harm the potential profitability of this contract.

*Application for non-public treatment.* The Postal Service believes that the ten-year period of non-public treatment, as specified in 39 U.S.C. 3007.30, is insufficient to protect customer identifying information. Notice, Attachment F, at 6. It asserts that such information should be protected permanently and requests that the Commission enter an order extending that duration indefinitely.

The request is premature. Should the need for non-public treatment remain due to ongoing business relationships, the Postal Service may submit a motion to the Commission to extend the duration at the appropriate time.

*Other considerations.* The Postal Service shall notify the Commission if the contract is extended for an additional year. 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 Competitive Product List.

In conclusion, the Commission approves Parcel Select & Parcel Return Service 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.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. Parcel Select & Parcel Return Service Contract 2 (MC2009-40 and CP2009-61) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission if the contract is extended for an additional year and update the Commission if termination 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 A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-40 and CP2009-61. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Parcel Select & Parcel Return Service Contract 2 (MC2009-40 and  
CP2009-61)

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