

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  
Priority Mail  
Priority Mail Contract 18

Docket No. MC2009-42

Competitive Product Prices  
Priority Mail Contract 18 (MC2009-42)  
Negotiated Service Agreement

Docket No. CP2009-63

ORDER CONCERNING PRIORITY MAIL CONTRACT 18  
NEGOTIATED SERVICE AGREEMENT

(Issued September 28, 2009)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 18 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

## II. BACKGROUND

On September 11, 2009, 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 18 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Priority Mail Contract 18 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. MC2009-42.

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. CP2009-63.

In support of its Request, the Postal Service filed the following materials: (1) a redacted version of the Governors’ Decision, filed in Docket No MC2009-25, authorizing the Priority Mail Contract Group;<sup>2</sup> (2) a redacted version of the contract;<sup>3</sup> (3) a requested change in the Mail Classification Schedule product list;<sup>4</sup> (4) a Statement of Supporting 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 (6) an application for nonpublic treatment of the materials filed under seal.<sup>7</sup> The redacted version of the contract provides that the contract is terminable on 30 days’ notice by either party, but could continue until March 11, 2012 without modification except as to price adjustments. Request, Attachment B, Article III.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to

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<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 18 to Competitive Product List, September 11, 2009 (Request).

<sup>2</sup> Attachment A to the Request, reflecting Governors’ Decision No. 09-6, April 27, 2009.

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

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

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

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

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

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, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. The Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.*, Attachment F at 2-3.

In Order No. 298, the Commission gave notice of the two dockets, appointed a public representative, sought supplemental information, and provided the public with an opportunity to comment.<sup>8</sup> The Postal Service filed its Response for supplemental information pertaining to the sufficiency of spreadsheets of the partially superseded agreement, and related data.<sup>9</sup>

### III. COMMENTS

Comments were filed by the Public Representative.<sup>10</sup> No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing comports with title 39 and the relevant Commission rules. Public

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<sup>8</sup> PRC Order No. 298, Notice and Order Concerning Priority Mail Contract 18 Negotiated Service Agreement, September 15, 2009 (Order No. 298).

<sup>9</sup> Response of the United States Postal Service to Request for Supplemental Information in Order No. 298 (Questions 1 and 2), September 21, 2009 (Response).

<sup>10</sup> Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 18 Negotiated Service Agreement to the Competitive Product List, September 25, 2009 (Public Representative Comments). The Public Representative also filed a Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Priority Mail Contract 18 to the Competitive Products List, September 25, 2009. That motion is granted.

Representative Comments at 1. He further states that the agreement appears to be beneficial to the general public since “[i]n addition to having the mailer prepare mailings for less costly handling by the Postal Service, the contract employs pricing incentives favorable to the Postal Service and thereby, the public.” *Id.* at 4. The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 3.

#### IV. 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.

*Statutory requirements.* The Commission’s statutory responsibilities in this instance entail assigning Priority Mail Contract 18 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 18 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, ¶ (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.*, ¶ (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.*, ¶ (h).

No commenter opposes the proposed classification of Priority Mail Contract 18 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 18 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 18 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.

Based on the data submitted, the Commission finds that Priority Mail Contract 18 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 18 indicates that it comports with the provisions applicable to rates for competitive products.

*Agreements amending previous negotiated service agreements.* In its Request, the Postal Service did not clearly identify the existing contract that the new one effectively modifies. The new contract supersedes, in part, a contract for Express Mail and Priority Mail, only with respect to Priority Mail terms.<sup>11</sup> In the future, if it is amending or changing an existing contract in a new filing, the Postal Service shall identify the contract and docket number of the contract being amended or changed in the new filing and describe the changes. In addition, assuming the existing contract is to continue, in part, as modified, the Postal Service must also certify, as part of its filing, that the amended contract still complies with the requirements of 39 U.S.C. 3633(a).

*Application for non-public treatment.* The Postal Service believes that the 10-year period of non-public treatment, as specified in 39 U.S.C. 3007.30, is insufficient to protect customer-identifying information. Request, Attachment F, at 7. 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.<sup>12</sup>

*Other considerations.* Following the scheduled termination date of the agreement, the Commission will remove the product from the Competitive Product List.

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<sup>11</sup> The existing contract became effective March 11, 2009. Request, Attachment B, at 1.

<sup>12</sup> See Docket Nos. MC2009-40 and CP2009-61, Order Concerning Parcel Select & Parcel Return Service Contract 2 Negotiated Service Agreement, September 4, 2009, at 7.

In conclusion, the Commission approves Priority Mail Contract 18 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. Priority Mail Contract 18 (MC2009-42 and CP2009-63) 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 termination occurs prior to the scheduled termination date.
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 A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-42 and CP2009-63. 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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Priority Mail Contract 18 (MC2009-42 and CP2009-63)

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