

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail
Priority Mail Contract 30

Docket No. MC2011-9

Competitive Product Prices
Priority Mail Contract 30 (MC2011-9)
Negotiated Service Agreement

Docket No. CP2011-44

ORDER APPROVING PRIORITY MAIL CONTRACT 30
NEGOTIATED SERVICE AGREEMENT

(Issued January 4, 2011)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 30 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Priority Mail Contract 30 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 15, 2010 (Request).

II. BACKGROUND

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 30 to the competitive product list. The Postal Service asserts that Priority Mail Contract 30 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service states that prices and classification underlying this contract are supported by Governors’ Decision No. 09-6 in Docket No. MC2009-25. *Id.* The Request was assigned Docket No. MC2011-9.

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. It states the instant contract is the successor to Priority Mail Contract 1 approved in Docket Nos. MC2008-8 and CP2008-26. The current contract expires on January 31, 2011.² The instant contract was assigned Docket No. CP2011-44.

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors’ Decision No. 09-6, originally filed in Docket No. MC2009-25, authorizing certain Priority Mail contracts;
- Attachment B—a redacted copy of the contract;
- Attachment C—a proposed change in the Mail Classification Schedule competitive product list;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and

² Priority Mail Contract 1 was originally set to expire on October 15, 2010. Pursuant to Order No. 610, the Commission extended the effective date of Priority Mail Contract 1 until January 31, 2011. See *also* Order Nos. 560 and 598, Docket Nos. MC2008-8 and CP2008-26, Order Granting Motion for Temporary Relief, October 14, 2010; Order Granting Motion for Temporary Relief, November 29, 2010.

- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

In the Statement of Supporting Justification, Josen Punnoose, Manager, Shipping Support (A), Shipping Services, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Mr. Punnoose contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 30 is included with the Request. The contract will become effective on the day that the Commission provides all necessary regulatory approvals. The contract will expire 3 years from the effective date, unless terminated by either party on 30 days' written notice to the other party. *Id.*, Attachment B at 3. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.*, Attachment D.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 30, under seal. It maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.*, Attachment F. It also requests that the Commission order that the duration of such treatment of all customer-identifying information be extended indefinitely instead of ending after 10 years. *Id.* at 7.

In Order No. 610, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.³

³ Notice and Order Concerning Addition of Priority Mail Contract 30 to the Competitive Product List and Order Granting Temporary Relief, December 17, 2010 (Order No. 610).

III. COMMENTS

Comments were filed by the Public Representative.⁴ No comments were submitted by other interested parties. The Public Representative states that the instant Priority Mail Contract 30 product filing appears to comport with applicable elements of 39 U.S.C. 3632, 3633, and 3642. *Id.* at 2. He also affirms that the Postal Service's filing complies with applicable Commission rules. *Id.* The Public Representative states that the instant contract complies with the pricing formula established in Governors' Decision No. 09-6, should not lead to the subsidization of competitive products by market dominant products, should cover its attributable costs, and should have a positive net contribution to institutional costs. *Id.* at 2-3. The Public Representative relates that the Postal Service has demonstrated the competitive product pricing comports with 39 U.S.C. 3633 in the supporting documentation and complies with the publication requirements of 39 U.S.C. 3642 by its publication in the *Federal Register* seeking to add this new product. *Id.* at 3.

He concludes that the Priority Mail Contract 30 filing satisfies all relevant provisions of title 39 and therefore should be added to the competitive product list. *Id.* at 3-4.

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 30 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

⁴ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 30 to the Competitive Product List, December 29, 2010 (PR Comments).

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 30 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 consists 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.* 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 30 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 30 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 30 covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. The Public Representative concurs. PR Comments at 3-4.

The Postal Service did not adjust unit acceptance costs in the instant contract and does not provide a narrative explaining why the traditional adjustment should not be done. As a result of including the adjustment, the cost coverage differs slightly from the cost coverage reflected in the Postal Service analysis. However, the contract still comports with the requirements of section 3633. The Postal Service is directed to continue to include an adjustment for unit acceptance costs in its supporting documentation to accurately reflect all associated costs in the contract analysis, or, if applicable, provide an explanation justifying their exclusion.

In conclusion, based on the data submitted, the Commission finds that Priority Mail Contract 30 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 Priority Mail Contract 30 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission if Priority Mail Contract 30 terminates earlier than the proposed term, but no later than the

actual termination date. The Commission will then remove Priority Mail Contract 30 from the competitive product list.⁵

Within 30 days of the expiration of the instant contract in Docket No. CP2011-44, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

Within 30 days of the expiration of Priority Mail Contract 1, approved in Docket Nos. MC2008-8 and CP2008-26, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with that contract.

Upon notification of termination of Priority Mail Contract 1,⁶ the Commission will, in due course, remove that product from the competitive product list.

In conclusion, the Commission approves Priority Mail Contract 30 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 30 (MC2011-9 and CP2011-44) 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 instant contract terminates prior to the scheduled termination date as discussed in this Order.

⁵ In its application for non-public treatment, the Postal Service requests an indefinite extension of non-public treatment of customer-identifying information. The Commission has consistently denied similar requests and reiterated its findings in a recent order. See, e.g., Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁶ See Docket Nos. MC2008-8 and CP2008-26, Order Concerning Priority Mail Contract 1 Negotiated Service Agreement, October 15, 2008. at 5.

3. Within 30 days of the expiration of the instant contract in Docket No. CP2011-44, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.
4. Within 30 days of the expiration of Priority Mail Contract 1, approved in Docket Nos. MC2008-8 and CP2008-26, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with that contract.
5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
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. MC2011-9 and CP2011-44. 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

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Domestic

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Priority Mail Contract 30 (MC2011-9 and CP2011-44)

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