

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 34

Docket No. MC2011-17

Competitive Product Prices
Priority Mail Contract 34 (MC2011-17)
Negotiated Service Agreement

Docket No. CP2011-56

ORDER APPROVING PRIORITY MAIL CONTRACT 34
NEGOTIATED SERVICE AGREEMENT

(Issued January 21, 2011)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 34 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 34 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 30, 2010 (Request).

II. BACKGROUND

On December 30, 2010, the Postal Service filed the Request and supporting information in accordance with 39 U.S.C. § 3642 and 39 CFR 3020.30 *et seq.* It asserts that Priority Mail Contract 34 is a competitive product “not of general applicability” under 39 U.S.C. § 3632(b)(3). *Id.* at 1. It also states that the prices and classification underlying the contract are supported by Governors’ Decision No. 09-6.²

The Postal Service contemporaneously filed a contract related to the proposed new product under 39 U.S.C. § 3632(b)(3) and 39 CFR 3015.5.

To support its Request, the Postal Service filed, among other things, an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information under seal. Request, Attachment F.

On January 3, 2011, the Commission issued an order noticing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

III. COMMENTS

The Public Representative filed comments on January 12, 2011.⁴ No other interested person submitted comments. The Public Representative states that the Request and instant contract appear to meet applicable statutory and regulatory requirements. *Id.* at 1. He affirms that the instant contract is consistent with Governors’

² Docket No. MC2009-25, Decision of the Governors of the United States Postal Service on Establishment of Rates and Classes Not of General Applicability for Priority Mail Contract Group, April 27, 2009 (Governors’ Decision No. 09-6).

³ Order No. 634, Notice and Order Concerning Addition of Priority Mail Contract 34 to the Competitive Product List, January 3, 2011.

⁴ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 34 Negotiated Service Agreement to the Competitive Products List, January 12, 2011 (PR Comments).

Decision No. 09-6 and satisfies requirements for competitive products “not of general applicability” in accordance with 39 U.S.C. § 3633(a) and 39 CFR 3015.5. *Id.* at 2-3.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data provided under seal, and the comments filed by the Public Representative.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request entail assigning Priority Mail Contract 34 to either the market dominant or competitive product list. See 39 U.S.C. § 3642; 39 CFR part 3020, subpart B. The Commission must also consider several criteria, including the availability and nature of private sector enterprises engaged in delivering the product, the views of those using the product, and the likely impact on small business concerns.

In Order No. 226, the Commission permitted the Postal Service to add future Priority Mail contracts to the competitive product list by filing new, joint “MC” and “CP” dockets along with supporting justification.⁵ It concluded that Governors’ Decision No. 09-6 would satisfy applicable requirements as long as the contracts fall within the parameters of that decision. *Id.*

The Postal Service asserts that it provides Priority Mail service in a highly competitive market and that other shippers who provide similar services constrain its bargaining position. Request, Attachment D at 2. Thus, the Postal Service contends that it cannot increase prices or decrease service, quality, or output without risking the loss of business to competitors. *Id.* The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable service for the contract partner. *Id.* at 3.

⁵ Docket Nos. MC2009-25 and CP2009-30 through 34, Order Concerning Priority Mail Contracts 6 through 10, June 19, 2009, at 12 (Order No. 226).

No commenter opposes the proposal to add Priority Mail Contract 34 to the competitive product list. Having considered relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 34 is appropriately classified as competitive and should be added to the competitive product list.

Cost considerations. Priority Mail Contract 34 is a competitive product “not of general applicability.” Thus, the Commission must also ensure that the proposal complies with 39 U.S.C. § 3633(a) and 39 CFR 3015.5. The Postal Service must demonstrate that Priority Mail Contract 34 covers its attributable costs, contributes to the Postal Service's institutional costs, and does not allow market dominant products to subsidize competitive products.

The Postal Service submitted a certified statement along with revenue and cost data to show that it meets these requirements. The Public Representative concurs. PR Comments at 2-3. Based on the information submitted, the Commission finds that Priority Mail Contract 34 complies with the provisions applicable to rates for competitive products.

Other considerations. The contract is scheduled to become effective 1 business day after the Commission issues all necessary regulatory approvals. Request, Attachment B at 2. It will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* at 2-3. The Postal Service shall notify the Commission of the effective dates of the instant contract. If the instant contract terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.⁶

⁶ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. Request, Attachment F at 7. The Commission has consistently denied similar requests. 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.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 34 as a new product. The revision to the competitive product list appears below the signature of this order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 34 (MC2011-17 and CP2011-56) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic.
2. The Postal Service shall promptly notify the Commission of the effective dates of the contract, and shall notify the Commission if the instant contract terminates prior to the scheduled termination date as discussed in this Order.
3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.
4. 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.

Ruth Ann Abrams
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2011-17 and CP2011-56. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 34 (MC2011-17 and CP2011-56)

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