

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
Parcel Select
Parcel Select Contract 1

Docket No. MC2011-16

Competitive Product Prices
Parcel Select Contract 1 (MC2011-16)
Negotiated Service Agreement

Docket No. CP2011-53

ORDER APPROVING PARCEL SELECT CONTRACT 1
NEGOTIATED SERVICE AGREEMENT

(Issued March 1, 2011)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Select Contract 1 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 Parcel Select Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 23, 2010 (Request).

II. BACKGROUND

A. The Instant Contract

Parcel Select Contract 1 involves an agreement (Agreement) between the Postal Service and StartSampling, Inc. (StartSampling) to license and distribute the “Sample Showcase” co-op box. *Id.* at 1. The Sample Showcase co-op box is a Postal Service-branded parcel box designed to contain product samples and other advertising material from companies who wish to advertise their goods and services. *Id.* Attachment B at 1.

The Sample Showcase co-op box is similar to the Samples Co-Op Box that the Postal Service tested as an experimental product in Docket No. MT2010-1.² Under the Agreement, the Postal Service will license to StartSampling the use of the box and associated trademarks, including the Postal Service and Sample Showcase trademarks. Request, Attachment B at 4. The Postal Service is responsible for providing the Sample Showcase co-op boxes to StartSampling and delivering the boxes to targeted consumers. *Id.* at 2-3.

StartSampling will fund and manage all aspects of providing the Sample Showcase co-op boxes. These include soliciting companies, procuring customer lists, assembling the boxes, and tendering them for delivery by the Postal Service. *Id.* at 1, 3-4. The parties will enter into a revenue-sharing agreement in which StartSampling will pay the Postal Service a portion of all revenue above a certain amount that is derived from companies for placing product samples or other advertising material in the box. The Postal Service will also receive a portion of all other revenue relating to the Sample Showcase box. *Id.* at 8-9. StartSampling must pay the Postal Service a per-piece charge for each box, which includes postage under Parcel Select pricing. *Id.* at 10.

² Docket No. MT2010-1, Order Approving Samples Co-Op Box Market Test, May 5, 2010 (Order No. 452). In May 2010, the Postal Service conducted the market test, targeting 200,000 consumers to evaluate the demand for the Sample Showcase co-op boxes. Request, Attachment A at 3.

B. Procedural History

On December 23, 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 Parcel Select Contract 1 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. 10-8.³

The Postal Service contemporaneously filed the Agreement under 39 U.S.C. § 3632(b)(3) and 39 CFR § 3015.5. To support its Request, the Postal Service also filed proposed changes to the product list, a statement of supporting justification, a certification of compliance, and an application for non-public treatment of materials filed under seal.⁴

On December 28, 2010, the Commission issued an order noticing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁵ Chairman’s Information Request No. 1 sought clarification of the Postal Service’s Request.⁶ The Postal Service responded on January 14, 2011.⁷

³ Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Parcel Select Service (Governors’ Decision No. 10-8), December 16, 2010.

⁴ Request, Attachments C-F; Certification of Compliance with 39 U.S.C. § 3633(a)(1) and (3) in Support of Request of the United States Postal Service to Add Parcel Select Contract 1 to Competitive Product List, December 29, 2010.

⁵ Order No. 627, Notice and Order Concerning Addition of Parcel Select Contract 1 to the Competitive Product List, December 28, 2010.

⁶ The Commission simultaneously issued an order extending the deadline for comments. Order No. 643, Order Extending Time for Comments, January 7, 2011.

⁷ Response of the United States Postal Service to Chairman’s Information Request No. 1, January 14, 2011 (Response to CHIR No. 1); see *also* Notice of the United States Postal Service of Filing of USPS-MC2011-16/CP2011-53/NP2, January 14, 2011.

III. COMMENTS

The Public Representative was the only interested person to file comments.⁸ He states that the Request and Agreement appear to meet applicable statutory and regulatory requirements and will benefit both the Postal Service and the general public. PR Comments at 1, 3. He affirms that the Agreement is consistent with Governors' Decision No. 10-8 and satisfies requirements for new competitive products under 39 U.S.C. §§ 3633(a) and 3642 as well as 39 CFR § 3015.7(c). *Id.* at 2-3.

IV. COMMISSION ANALYSIS

A. Product List Requirements

The Commission's statutory responsibilities when evaluating the Request entail assigning Parcel Select Contract 1 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. 39 U.S.C. § 3642(b)(3).

The Postal Service asserts that it provides Parcel Select service in a highly competitive market that precludes it from increasing prices significantly or decreasing service, quality, or output without risking loss of business to private ground shipping competitors. Request, Attachment D at 2. It contends that its bargaining position is constrained by other sample service providers as well as alternatives to sample delivery, such as newspapers or in-store displays. *Id.* The Postal Service affirms that StartSampling supports the Request, that ground shipping similar to Parcel Select

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Parcel Select Contract 1 to the Competitive Product List, February 11, 2011 (PR Comments). The Public Representative filed an accompanying Public Representative Motion for Late Acceptance of Comments in Response to United States Postal Service Request to Add Parcel Select Contract 1 to the Competitive Product List, February 11, 2011. The motion is granted.

service is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable service for StartSampling. *Id.* at 3.

In Docket No. MT2010-1, the Commission considered similar issues when evaluating the proposed Samples Co-Op Box market test. The Commission concluded that the Samples Co-Op Box was properly categorized as competitive given the numerous firms engaged in parcel delivery and the alternative methods for disseminating samples to the public. Order No. 452 at 8.

In its Response to CHIR No. 1, the Postal Service states that the Sample Showcase co-op boxes are physically more similar in size to Standard Mail parcels than Parcel Select parcels. It states that "[t]he piece size has a much greater impact than piece weight on ground transportation, delivery and mail processing costs." Response to CHIR No. 1 at 1. However, the Agreement uses Parcel Select instead of Standard Mail pricing.

The Commission finds that the Agreement is appropriately classified as a Parcel Select rather than a Standard Mail contract given the size and weight of the Sample Showcase co-op boxes. Moreover, even under Parcel Select costs, the Postal Service has demonstrated that the product covers its costs.

No commenter opposes the proposal to add Parcel Select Contract 1 to the competitive product list. Having considered relevant statutory and regulatory requirements, the Postal Service's supporting justification, and its decision in Docket No. MT2010-1, the Commission finds that Parcel Select Contract 1 is appropriately classified as competitive and should be added to the competitive product list.

B. Cost Considerations

The Postal Service asserts that Parcel Select Contract 1 is a competitive product "not of general applicability." Thus, the Commission must ensure that the proposal complies with 39 U.S.C. § 3633(a) and 39 CFR § 3015.5. The Postal Service must demonstrate that the product covers its attributable costs, contributes to the Postal

Service's institutional costs, and prohibits market dominant products from subsidizing competitive products.

The Postal Service submitted a certified statement along with revenue and cost data to show that the new product meets these requirements. See 39 CFR § 3015.5(c). The Public Representative concurs. PR Comments at 2-3.

The revenue and cost data raise concerns about the Postal Service's failure to follow accepted methodological principles. The Request incorporates a mail processing unit cost estimate that was based on a pending proposal to change Standard Mail analytical principles (Proposal Seven).⁹ The Commission had not yet approved Proposal Seven when the Postal Service filed its Request. While the Commission eventually approved Proposal Seven, it modified the cost pool allocation. *Id.* at 14. As a result, the revenue and cost data filed with this Request had to be recalculated using current cost methodologies.

During the recent market dominant price adjustment proceeding, the Commission expressed these same concerns in cases where the Postal Service calculates worksharing passthroughs using unapproved methodologies pending review by the Commission.¹⁰ The Commission stated that it "continues to find it necessary for the Postal Service not to incorporate new, unreviewed analytic methods into the costing analysis offered in support of rate changes." *Id.* at 5. Likewise, supporting revenue and cost data for competitive products must also use currently acceptable methodologies.

⁹ Docket No. RM2010-12, Order No. 658, Order on Analytical Principles Used in Periodic Reporting (Proposals Three Through Eight), January 28, 2011. In Proposal Seven, the Postal Service proposed that the Commission adopt a mail processing cost model for Standard Mail parcels and Not Flat-Machinables (NFMs) that disaggregates the cost of Standard Parcels into machinable, irregular, and NFM categories. *Id.* at 2. The Agreement uses mailing processing costs for Standard Mail machinable parcels.

¹⁰ Docket No. R2011-2, Order Revising Postal Service Market Dominant Price Adjustments, February 16, 2011, at 4 (Order No. 675).

The Commission has reviewed the supporting data using approved methodologies.¹¹ Based on this review, the Commission finds that Parcel Select Contract 1 complies with the provisions applicable to rates for competitive products.

C. Other Considerations

The contract is scheduled to become effective on the date that the Commission issues all necessary regulatory approvals. Request, Attachment B at 1. The term of the Agreement is for 3 years, but lists provisions enabling either party to terminate with or without cause. *Id.* at 11-13; Governors' Decision No. 10-8 at 1, 3.

The Postal Service shall promptly notify the Commission of the effective dates of the Agreement and when the Agreement terminates. Within 30 days after the Agreement terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the Agreement.

In conclusion, the Commission approves Parcel Select Contract 1 as a new competitive product. The revision to the product list appears below the signature of this Order and is effective immediately.

It is ordered:

1. Parcel Select Contract 1 (MC2011-16 and CP2011-53) 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 Agreement and when the Agreement terminates.

¹¹ In Order No. 675, the Commission approved market dominant price adjustments for Standard Mail and filed a revised mail processing cost model based on FY 2010 cost estimates. See Docket No. R2011-2, PRC-R2011-2-LR3, Compliance Calculations for Standard Mail, February 17, 2011. The Commission's review of the Request and Agreement incorporates the mail processing costs identified in the library reference.

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

Shoshana M. Grove
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. MC2011-16 and CP2011-53. 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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Parcel Select Contract 1 (MC2011-16 and CP2011-53)

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