

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Competitive Product Prices
Priority Mail
Priority Mail Contract 38

Docket No. MC2012-7

Competitive Product Prices
Priority Mail Contract 38 (MC2012-7)
Negotiated Service Agreement

Docket No. CP2012-15

ORDER ADDING PRIORITY MAIL CONTRACT 38
TO THE COMPETITIVE PRODUCT LIST

(Issued February 3, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 38 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 38 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, January 19, 2012 (Request).

II. BACKGROUND

On January 19, 2012, in accordance with 39 U.S.C. § 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 38 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 09-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), a copy of Governors’ Decision No. 09-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.

On January 20, 2012, the Commission issued an order establishing 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 31, 2012.⁴ No other interested person submitted comments. The Public Representative raises one “minor issue” with the contract. *Id.* at 1. While the contract provides that the Postal Service will provide co-branded Priority Mail packaging with the contract partner free of charge, the Postal Service’s supporting worksheets fail to account for any additional costs

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. 1163, Notice and Order Concerning Addition of Priority Mail Contract 38 to the Competitive Product List, January 20, 2012.

⁴ Public Representative Comments, January 31, 2012 (PR Comments).

associated with this service. *Id.* at 2. Nonetheless, the Public Representative observes that it is unlikely that the inclusion of additional costs related to customized packaging will result in the contract having a cost coverage that fails to meet the requirements of 39 U.S.C. § 3633(a). *Id.* The Public Representative concludes that the contract is expected to comport with the requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. 3015.7, but recommends that the Commission require the Postal Service to provide updated contract workpapers that reflect the additional costs of customized packaging associated with the instant contract. *Id.*

IV. COMMISSION ANALYSIS

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

Product list requirements. The Commission's statutory responsibilities when evaluating the Request entail assigning Priority Mail Contract 38 to either the market dominant or competitive product list. See 39 U.S.C. § 3642; 39 CFR part 3020, subpart B. In making this determination, the Commission must consider the availability and nature of private sector enterprises engaged in delivering 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 it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and therefore that it can neither raise prices nor decrease service, quality or output without risking the loss of business to competitors. Request, Attachment D at 2. 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 to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 38 is appropriately classified as a competitive product.

Cost considerations. Because Priority Mail Contract 38 is a competitive product with rates or classes that are "not of general applicability," the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause market dominant products to subsidize competitive products. 39 U.S.C. §§ 3632(b)(3), 3633(a) and 39 CFR 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, which shows that it satisfies the statutory and regulatory requirements. The Public Representative concurs. PR Comments at 2-3. The Commission finds that Priority Mail Contract 38 complies with the provisions applicable to rates for competitive products.

As the Commission has previously noted, to evaluate whether a contract is likely to satisfy the cost coverage requirement, "the Postal Service should take into account all departures from average cost that may be due to services provided under the contract."⁵ With respect to negotiated service agreements, the Postal Service should endeavor to account for all departures from average cost. Failure to do so may delay Commission consideration of the Request.

Other considerations. By its terms, the contract becomes effective on the day on which the Commission issues all necessary regulatory approvals and it expires 3 years later. Request, Attachment B at 2. The Postal Service shall notify the Commission of the effective dates of the instant contract.

⁵ Docket Nos. MC2009-6 and CP2009-7, Order No. 138, Order Concerning Express Mail & Priority Mail Contract 1 Negotiated Service Agreement, November 20, 2008, at 6-7.

If the instant contract is terminated, renewed, superseded, or modified prior to the scheduled expiration date, the Postal Service shall inform the Commission prior to the new expiration date.⁶

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

In conclusion, the Commission approves Priority Mail Contract 38 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 38 (MC2012-7 and CP2012-15) 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 date of the contract, and shall notify the Commission if the instant contract terminates prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the instant contract terminates, the Postal Service shall file annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

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., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

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. MC2012-7 and CP2012-15. 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 38 (MC2012-7 and CP2012-15)

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