

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

Before Commissioners:

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

Competitive Product Prices
Parcel Select & Parcel Return Service
Parcel Select & Parcel Return Service Contract 4

Docket No. MC2012-25

Competitive Product Price
Parcel Select & Parcel Return Service Contract 4
(MC2012-25)
Negotiated Service Agreement

Docket No. CP2012-33

ORDER ADDING PARCEL SELECT & PARCEL RETURN SERVICE
CONTRACT 4 TO THE COMPETITIVE PRODUCT LIST

(Issued July 6, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Select & Parcel Return Service Contract 4 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 and Parcel Return Service Contract 4 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 13, 2012 (Request).

II. BACKGROUND

On June 13, 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 Parcel Select & Parcel Return Service Contract 4 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. 11-6.² 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. 11-6, 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. *Id.* Attachment F.³

On June 14, 2012, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴ On June 28, 2012, Chairman’s Information Request No. 1 was issued.⁵ On July 3, 2012, the Postal Service filed a response to CHIR No. 1.⁶

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ 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 Order No. 1369, Notice and Order Concerning the Addition of Parcel Select & Parcel Return Service Contract 4 to the Competitive Product List, June 14, 2012.

⁵ Chairman’s Information Request No. 1, June 28, 2012 (CHIR No. 1).

⁶ Responses of the United States Postal Service to Chairman’s Information Request No. 1, July 3, 2012 (Response to CHIR No. 1).

III. COMMENTS

The Public Representative filed comments on June 26, 2012.⁷ No other interested person submitted comments. The Public Representative states that she has reviewed the Request, supporting documentation, and supporting financial models. PR Comments at 3.

She concludes that there is insufficient information available to assess whether the Parcel Select & Parcel Return Service Contract 4 complies with the requirements of 39 U.S.C. 3633(a). *Id.* at 2. She contends that, while the workpapers appear to demonstrate that the contract is profitable, several aspects of the contract are “unclear.” *Id.* at 1. First, she states that it is unclear whether the contract contains both Parcel Select and Parcel Return Service. *Id.* at 1-2. Second, she finds that the Postal Service has not clearly demonstrated the cost coverage or volume of either the Parcel Select or Parcel Return Service components of the contract making it difficult to assess the accuracy of the workpapers. Third, she asserts that the Postal Service uses costs associated with both Parcel Select and Parcel Return Service but does not identify the estimated proportion of respective pieces. Given these issues, the Public Representative suggests that the Postal Service be required to file a more complete discussion of how the contract functions and how the financial workpapers accurately demonstrate the contract’s compliance with 39 U.S.C. 3633(a). *Id.* at 2-3.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, the Public Representative’s comments, and the Response to CHIR No. 1.

⁷ Public Representative Comments, June 26, 2012 (PR Comments). Concurrently with the PR Comments, the Public Representative filed a Motion of Public Representative for Late Acceptance of Comments (Motion). The Motion is granted.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request entail assigning Parcel Select & Parcel Return Service Contract 4 to either the market dominant or the competitive product list. See 39 U.S.C. 3642(b)(1); 39 CFR part 3020.30(d). In addition, the Commission must consider the availability and use 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. See 39 U.S.C. 3642(b)(3); 39 CFR 3020.30(f), (g), and (h).

The Postal Service asserts that it provides Parcel Select & Parcel Return Service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it therefore 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 services 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 the Parcel Select & Parcel Return Service Contract 4 product is appropriately classified as competitive and adds it to the competitive product list.

Cost considerations. As a competitive product, Parcel Select & Parcel Return Service Contract 4 must satisfy 39 U.S.C. 3633(a), including, in particular, the requirement that it cover its attributable costs. See *also* 39 CFR 3015.5. As part of its Request, the Postal Service submitted a certified statement, along with supporting revenue and cost data on the instant contract. The Commission found that it needed additional information to fully understand the contract. For this reason, the Commission issued CHIR No. 1 to better understand how the contract's customer uses both Parcel Select and Parcel Return Service.

In its Response to CHIR No. 1, the Postal Service explained that the contract involves packages that are returned to the customer's facility. It clarified that the use of the term "Parcel Select and Parcel Return Service" in the contract reflects the hybrid nature of the return service provided to the customer. It explained that each returned package shares "first mile" elements of Parcel Return Service until the package reaches the local NDC, and then the package continues to the customer's facility in the same way as a Parcel Select non-presort piece. Thus, the Postal Service explained that the financial analysis for the contract incorporates cost elements from both Parcel Select and Parcel Return Service.

The Postal Service's Request along with its Response to CHIR No. 1 demonstrates that the instant contract satisfies the statutory and regulatory requirements. As discussed above, the Public Representative has concerns with the initial information submitted by the Postal Service in this docket in support of its filing. PR Comments at 1-3. The Postal Service's Response to CHIR No. 1 appears to satisfy those concerns. The Commission finds that Parcel Select & Parcel Return Service Contract 4 complies with the provisions applicable to rates for competitive products.

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.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) cost data, and revenues and volumes associated with the contract.

In conclusion, the Commission approves Parcel Select & Parcel Return Service Contract 4 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. Parcel Select & Parcel Return Service Contract 4 (MC2012-25 and CP2012-33) 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 ends prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) cost data, and revenues and volumes 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. MC2012-25 and CP2012-33. 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 & Parcel Return Service Contract 4

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