

ORDER NO. 1433

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  
Express Mail  
Express Mail Contract 12

Docket No. MC2012-36

Competitive Product Prices  
Express Mail Contract 12 (MC2012-36)  
Negotiated Service Agreement

Docket No. CP2012-44

ORDER CONCERNING EXPRESS MAIL CONTRACT 12  
NEGOTIATED SERVICE AGREEMENT

(Issued August 16, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail Contract 12 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request of the United States Postal Service to Add Express Mail Contract 12 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 3, 2012 (Request).

## II. BACKGROUND

On August 3, 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 Express Mail Contract 12 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.<sup>2</sup> 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. Request, Attachment F.

On August 6, 2012, the Commission issued an order establishing the two dockets, appointed a Public Representative, and provided interested persons with an opportunity to comment.<sup>3</sup> On August 10, 2012, Chairman’s Information Request No. 1 was issued.<sup>4</sup> The Postal Service filed its response on August 14, 2012.<sup>5</sup>

## III. COMMENTS

The Public Representative filed comments on August 14, 2012.<sup>6</sup> No other interested person submitted comments. The Public Representative states that she has

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<sup>2</sup> 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).

<sup>3</sup> Order No. 1422, Notice and Order Concerning Addition of Express Mail Contract 12 to the Competitive Product List, August 6, 2012.

<sup>4</sup> Chairman’s Information Request No. 1, August 10, 2012 (CHIR No. 1).

<sup>5</sup> Response of the United States Postal Service to Chairman’s Information Request No. 1, August 14, 2012 (Response to CHIR No. 1).

<sup>6</sup> Public Representative Comments, August 14, 2012 (PR Comments).

reviewed the Request, supporting documentation, and supporting financial models. *Id.* at 2. She states that the terms in the contract, which adjust prices periodically to account for large changes in costs, will maintain the contract's ability to meet the requirements of 39 U.S.C. § 3633(a) over its entire term. She also acknowledges that the Postal Service is responsible for filing costs, volumes, and revenues in each year's Annual Compliance Report, which will enable the Commission to ensure that the requirements of 39 U.S.C. § 3633(a) continue to be met. *Id.* She also notes that prior to filing her comments, no data have been filed that indicate that pieces delivered on Sundays and holidays will be profitable. *Id.*

Pending the Response to CHIR No. 1, the Public Representative concludes that the Express Mail Contract 12 satisfies the relevant statutory criteria and contains provisions favorable to both the Postal Service and the public. *Id.*

#### IV. SUPPLEMENTAL INFORMATION

CHIR No. 1 sought information on the number of pieces that the Postal Service expects to deliver pursuant to this contract on Sunday or holidays. CHIR No. 1 at 1. In its Response to CHIR No. 1, the Postal Service clarified that the number of pieces expected to be received on Sunday or holiday delivery under this contract should be "very small." Response to CHIR No. 1 at 2. This is because the contract partner has no plans to send Express Mail pieces on Saturday and holiday delivery is expected to be "insignificant." *Id.* Therefore, the Postal Service concludes that any packages delivered on Sunday and holidays will have a "negligible impact" on the cost coverage calculations filed with the Commission in this case. *Id.*

#### V. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Response to CHIR No.1, and the comments filed by the Public Representative.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request entail assigning Express Mail Contract 12 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 CFR 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 Express Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore 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 Express Mail Contract 12 is appropriately classified as competitive and added to the competitive product list.

*Cost considerations.* Because Express Mail Contract 12 is a competitive product, 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 any 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, along with its Response to CHIR No 1, which demonstrate that the instant contract satisfies the statutory and regulatory requirements. The Commission finds that Express Mail Contract 12 complies with the provisions applicable to rates for competitive products.

*Other considerations.* By its terms, the contract becomes effective on the day after the Commission issues all necessary regulatory approval and will expire 3 years from the effective date unless, among other things, the contract partner terminates the agreement upon 60 days' written notice to the Postal Service. Request, Attachment B at 3-4.

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 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 Express Mail Contract 12 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

## VI. ORDERING PARAGRAPHS

*It is ordered:*

1. Express Mail Contract 12 (MC2012-36 and CP2012-44) 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 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) costs, volumes, and revenues disaggregated by weight and zone.

4. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

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 to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2012-36 and CP2012-44. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail Contract 12 (MC2012-36 and CP2012-44)