

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

Competitive Product Prices  
Express Mail & Priority Mail  
Express Mail & Priority Mail Contract 12

Docket No. MC2013-33

Competitive Product Prices  
Express Mail & Priority Mail Contract 12 (MC2013-33)  
Negotiated Service Agreement

Docket No. CP2013-44

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD  
EXPRESS MAIL & PRIORITY MAIL CONTRACT 12 TO  
COMPETITIVE PRODUCT LIST

(January 31, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1634.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Express Mail & Priority Mail Contract 12 to the competitive product list.<sup>2</sup> The instant contract will replace the contract that is the subject of Docket Nos. MC2009-33 and CP2009-44. *Id.* The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product and supporting financial data.

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<sup>1</sup> PRC Order No. 1634, Notice and Order Concerning Addition of Express Mail & Priority Mail Contract 12 to the Competitive Product List, January 24, 2013.

<sup>2</sup> Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 12 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 23, 2013 (Request).

According to the Postal Service, Express Mail & Priority Mail Contract 12 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors’ Decision No. 11-6.<sup>3</sup> The Postal Service further asserts that the Statement of Supporting Justification provides support for adding Express Mail & Priority Mail Contract 12 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request at 2.

The instant contract’s effective date is not specified in the contract; however, the “First Year Prices” become effective on January 27, 2013. *Id.*, Attachment B at 1. The contract is scheduled to expire 5 years from the effective date unless either party terminates the contract on 30 days’ prior written notification. *Id.*

## COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service’s Request. Based upon that review, the Public Representative concludes that Express Mail & Priority Mail Contract 12 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract in the first year should generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Express Mail & Priority Mail Contract 12 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms

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<sup>3</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).

offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Express Mail & Priority Mail Contract 12 to the competitive product list is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service’s Request, it appears the negotiated prices in the instant contract should generate sufficient revenues to cover costs during its first year.

As noted above, however, the instant contract is expected to remain in effect for a period of five years. The Postal Service provides no data to demonstrate that the instant contract will comply with the requirements of 39 U.S.C. § 3633(a) during the five-year period of the contract. This concern is mitigated somewhat by the fact that the terms of the instant contract provide a formula for an annual adjustment in the negotiated rates that may permit revenues to cover costs during years 2 through 5. Consequently, the best that can be said is that the instant contract satisfies the requirements of section 3633(a) during the first year. Of course, the Commission has an opportunity to review the financial results of the instant contract for compliance with 39 U.S.C. § 3633(a) each year of the contract in the Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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Kenneth R. Moeller  
Public Representative

901 New York Ave. NW  
Washington, DC 20268-0001  
202-789-6839  
Kenneth.Moeller@prc.gov