

ORDER NO. 1831

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail Express & Priority Mail
Priority Mail Express & Priority Mail Contract 14

Docket No. MC2013-58

Competitive Product Prices
Priority Mail Express & Priority Mail Contract 14
(MC2013-58)
Negotiated Service Agreement

Docket No. CP2013-79

ORDER ADDING PRIORITY MAIL EXPRESS & PRIORITY MAIL CONTRACT 14
TO THE COMPETITIVE PRODUCT LIST

(Issued September 11, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express & Priority Mail Contract 14 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 Express & Priority Mail Contract 14 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 30, 2013 (Request).

II. BACKGROUND

On August 30, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Express & Priority Mail Contract 14 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* 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 copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, a proposed change to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). 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.³

On September 3, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

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. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. *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. 1825, Notice and Order Concerning Addition of Priority Mail Express & Priority Mail Contract 14 to the Competitive Product List, September 3, 2013.

III. COMMENTS

The Public Representative filed comments on September 10, 2013.⁵ No other interested person submitted comments.

The Public Representative states that she has reviewed the contract, the supporting justification, and the financial data and model filed under seal. PR Comments at 2. She asserts that the contract appears to meet the requirements of 39 U.S.C. § 3633(a) during the first contract year. *Id.* In addition, the contract's price adjustment mechanism will facilitate the contract's ability to meet the requirements of 39 U.S.C. 3633(a) over the lifetime of the contract. *Id.* The Public Representative also acknowledges that the Postal Service will file cost, revenue, and volume data as part of the Annual Compliance Determination (ACD) which will aid the Commission in assessing compliance with 39 U.S.C. § 3633(a) in future years. *Id.* Therefore, she concludes that the contract will provide sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633(a).

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 include assigning Priority Mail Express & Priority Mail Contract 14 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.32(d) and (e). 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 C.F.R. §§ 3020.32(f), (g), and (h).

⁵ Public Representative Comments in Response to Order 1825 Concerning Addition of Priority Mail Express & Priority Mail Contract 14 to the Competitive Product List, September 10, 2013 (PR Comments).

The Postal Service asserts that it provides Priority Mail Express and Priority Mail services in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and 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 services to the contract partner. *Id.* at 3.

The Commission finds that the market for expedited shipping is highly competitive and thus prevents the Postal Service from significantly increasing rates or degrading service without potentially losing volume. This is borne out by the availability of other providers. Further, there is no evidence of an adverse impact on small business concerns. For these reasons, the Commission finds that the instant contract is appropriately classified as a competitive product and added to the competitive product list.

Cost considerations. Because Priority Mail Express & Priority Mail Contract 14 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. § 3633(a); 39 C.F.R. § 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, that the contract meets the applicable statutory and regulatory requirements. Request, Attachment E. The Commission finds that the supporting revenue and cost data are sufficient to conclude that the contract should cover its costs during its first year. The contract includes an annual rate adjustment provision. *Id.* Attachment B at 3. This provision should allow the contract's revenues to cover costs in subsequent years. Thus, the Commission finds that Priority Mail Express & Priority Mail Contract 14 complies with the provisions applicable to rates for competitive products.

As part of its ACD, the Commission will review the contract's financial performance for consistency with 39 U.S.C. § 3633(a).

Other considerations. By its terms, the contract is scheduled to become effective one business day after the date that the Commission issues all necessary regulatory approval. *Id.* at 4. It expires 3 years from the effective date. *Id.* 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 Priority Mail Express & Priority Mail Contract 14 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 Express & Priority Mail Contract 14 (MC2013-58 and CP2013-79) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission if the instant contract ends prior to the scheduled expiration date.
3. 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 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.

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 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2013-58 and CP2013-79. 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 Express & Priority Mail Contract 14

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