

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

Before Commissioners:

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

Competitive Product Prices  
Parcel Select & Parcel Return Service  
Parcel Select & Parcel Return Service Contract 5

Docket No. MC2014-1

Competitive Product Prices  
Parcel Select & Parcel Return Service Contract 5  
(MC2014-1)  
Negotiated Service Agreement

Docket No. CP2014-1

ORDER ADDING PARCEL SELECT & PARCEL RETURN SERVICE  
CONTRACT 5 TO THE COMPETITIVE PRODUCT LIST

(Issued October 29, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Select & Parcel Return Service Contract 5 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 Parcel Select and Parcel Return Service Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 17, 2013 (Request).

## II. BACKGROUND

On October 17, 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 Parcel Select & Parcel Return Service Contract 5 is a competitive product that establishes rates “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 copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, proposed changes 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 Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. *Id.* Attachment F.<sup>3</sup>

On October 18, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>4</sup>

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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> 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.

<sup>4</sup> Order No. 1849, Notice and Order Concerning the Addition of Parcel Select & Parcel Return Service Contract 5 to the Competitive Product List, October 18, 2013.

### III. COMMENTS

The Public Representative filed comments on October 24, 2013.<sup>5</sup> No other interested person submitted comments.

The Public Representative reviewed the contract, the Statement of Supporting Justification, and the financial data and model filed under seal. *Id.* at 2. The Public Representative concludes that Parcel Select & Parcel Return Service Contract 5 should be categorized as a competitive product and added to the competitive product list because he believes the Postal Service's assertions about the contract appear reasonable. *Id.* at 2-3. Based on the financial model filed by the Postal Service, the Public Representative states that the contract should meet the requirements of 39 U.S.C. § 3633(a) during the first contract year. *Id.* at 3. He notes that the contract contains an annual adjustment provision, which he believes should permit revenues to cover costs during subsequent contract years.<sup>6</sup> *Id.* He further notes that the Commission will have the opportunity to review cost, revenue, and volume data associated with the contract as part of each year's Annual Compliance Determination (ACD). *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 include assigning Parcel Select & Parcel Return Service Contract 5 to either the market dominant or the competitive product list. See 39 U.S.C.

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<sup>5</sup> Public Representative Comments on Postal Service Request to Add Parcel Select and Parcel Return Service Contract 5 to Competitive Product List, October 24, 2013 (PR Comments).

<sup>6</sup> *Id.* Although the Public Representative states that the contract is expected to remain in effect for 2 years, the contract has a term of 5 years, which may be extended for two 90-day periods. Request, Attachment B at 13.

§ 3642(b)(1); 39 C.F.R. part 3020.30(d). In addition, 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. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 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 states 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 Parcel Select & Parcel Return Service Contract 5 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.

As part of its Request, the Postal Service submitted a certified statement, along with supporting revenue and cost data on the instant contract. Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs. Based on a review of the financial spreadsheets,

the rates in the first year of the contract cover attributable costs. The contract contains a price adjustment provision that adjusts contract rates annually. *Id.* Attachment B at 3. The annual adjustment provision increases the likelihood that prices will cover attributable costs in subsequent years of the contract. However, the Commission will review the contract's cost coverage in the Commission's ACD to ensure that rates continue to cover costs in years two through five of the contract.

The Commission notes that the contract provides for Sunday delivery of Parcel Select packages to ZIP Codes identified in an attachment to the contract. Request, Attachment B at 2. The Postal Service anticipates that Sunday delivery will only account for a small percentage of total Parcel Select volume under the contract and will not hinder its ability to meet statutory requirements. *Id.* The Commission requests that the Postal Service file the Sunday Delivery Pilot Test, and supporting workpapers related to the Sunday Delivery Pilot Test with its FY 2014 Annual Compliance Report. See PS\_Analysis\_public.xls, tab: InputsSunday. The Commission finds that Parcel Select & Parcel Return Service Contract 5 complies with the provisions applicable to rates for competitive products.

*Other considerations.* By its terms, the contract becomes effective one business day following the day on which the Commission issues all necessary regulatory approvals. Request, Attachment B at 13. The contract is scheduled to expire 5 years after the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party. *Id.*

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified at least 7 days prior to the contract expiring. *Id.* at 3-4.<sup>7</sup> During the extension periods, prices will increase by an amount determined in accordance with the contract's annual adjustment provision. Request, Attachment B at 13.<sup>8</sup> The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the contract will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

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 disaggregated by rate category and weight associated with the contract.

In conclusion, the Commission approves Parcel Select & Parcel Return Service Contract 5 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

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<sup>7</sup> As the Commission noted in Order No. 1773, at 3, the Postal Service clarified that identical language in Priority Mail Contract 60 "contemplates the Postal Service filing any notices of extension with the Commission at least one week prior to the 3-year expiration date or the extended expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

<sup>8</sup> The contract states that prices during any 90-day extension period will be increased in accordance with Term I.G of the contract. *Id.* The Commission notes that the contract's annual adjustment provision is contained in Term I.K, not Term I.G. Thus, should the Postal Service elect to exercise the 90-day extension provision, the Commission directs the Postal Service to include clarification of the price adjustment in any notice of the extension.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. Parcel Select & Parcel Return Service Contract 5 (MC2014-1 and CP2014-1) 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 notify the Commission if the instant contract terminates prior to the scheduled expiration date.
3. Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) cost data, and revenues and volumes disaggregated by rate category and weight associated with the contract.
4. The Postal Service shall file the Sunday Delivery Pilot Test, and supporting workpapers related to the Sunday Delivery Pilot Test with its FY 2014 Annual Compliance Report.
5. 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.

Shoshana M. Grove  
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. MC2014-1 and CP2014-1. 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 5

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