

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
Priority Mail
Priority Mail Contract 66

Docket No. MC2014-2

Competitive Product Prices
Priority Mail Contract 66 (MC2014-2)
Negotiated Service Agreement

Docket No. CP2014-2

ORDER ADDING PRIORITY MAIL CONTRACT 66 TO THE
COMPETITIVE PRODUCT LIST

(Issued November 5, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 66 to the competitive product list.¹ It is the successor agreement to the

¹ Request of the United States Postal Service to Add Priority Mail Contract 66 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 23, 2013 (Request).

contract approved in Docket Nos. MC2010-32 and CP2010-77.² For the reasons discussed below, the Commission approves the Request.

II. BACKGROUND

On October 23, 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 Contract 66 is a competitive product that establishes rates “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 this three-year contract are supported by Governors’ Decision No. 11-6.³ 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. Request, Attachment F.⁴

² See Docket Nos. MC2010-32 and CP2010-77, Order No. 510, Order Approving Priority Mail Contract 27 Negotiated Service Agreement, August 6, 2010. See also Docket No. CP2010-77, Order No. 1796, Order Granting Motion for Temporary Relief, August 1, 2013; Docket No. CP2010-77, Order No. 1843, Order Granting Motion for Temporary Relief, September 30, 2013; and Docket No. CP2010-77, Order No. 1862, Order Granting Motion for Temporary Relief, October 24, 2013.

³ 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).

⁴ 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.

On October 24, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁵

III. COMMENTS

The Public Representative filed comments on October 31, 2013.⁶ No other interested person submitted comments.

In preparing her comments, the Public Representative reviewed the contract, the Statement of Supporting Justification, and the financial data and model filed under seal. PR Comments at 2. The Public Representative concludes that Priority Mail Contract 66 should be categorized as a competitive product and added to the competitive product list because she believes the Postal Service's assertions about the contract appear reasonable. *Id.* at 2, 3.

The Public Representative claims that the Postal Service failed to provide a file, (SupportPriority_FY12.xls), referenced in a footnote to the financial model, Excel file PM66_Analysis_public.xls, worksheet tab "Analysis," which includes additional information on the development of unit costs used in the model. *Id.* at 2. She asserts that the referenced file is necessary to permit "a more thorough" analysis of the Postal Service's cost assumptions. *Id.*

Nevertheless, 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. She notes that the contract contains an annual adjustment provision, which she believes should permit revenues to cover costs during years 2 and 3 of the contract. *Id.*

⁵ Order No. 1859, Notice and Order Concerning the Addition of Priority Mail Contract 66 to the Competitive Product List, October 24, 2013.

⁶ Public Representative Comments on Postal Service Request to Add Priority Mail Contract 66 to the Competitive Product List, October 31, 2013 (PR Comments).

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 Contract 66 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. 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. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Priority 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 states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service 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 Contract 66 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 that the contract complies with the requirements of 39 U.S.C. § 3633(a). 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 spreadsheet, the rates in the first year of the contract cover attributable costs. The contract contains a price adjustment provision that increases contract rates annually. *Id.* Attachment B at 2. The annual adjustment provision increases the likelihood that prices will cover attributable costs in the second and third years of the contract. However, the Commission will review the contract's cost coverage in the Commission's Annual Compliance Determination to ensure that rates continue to cover costs in years 2 and 3 of the contract.

The Public Representative suggests that absence of the referenced file, SupportPriority_FY12.xls, from the supporting financial documents filed in this docket is problematic for the Commission's analysis. The Commission notes, however, that the file was included in the Postal Service's FY 2012 Annual Compliance Report (2012 ACR).⁷ After reviewing the file, the Commission concludes the unit cost figures therein—the most recent available—are appropriate for the development of the costs of Priority Mail Contract 66. Nevertheless, in subsequent Priority Mail Contracts filed with the Commission, the Postal Service should revise the footnote to reflect the source of the referenced file, SupportPriority_FY12.xls, *e.g.*, to the 2012 ACR (or future Annual Compliance Report, as applicable).

By its terms, the contract becomes effective one business day after the date that the Commission issues all necessary regulatory approvals. Request, Attachment B at 2. The contract is scheduled to expire 3 years after the effective date, unless, among

⁷ Docket No. ACR2012, Library Reference USPS-FY12-NP27 - 2012 Competitive NSA & Nonpostals Materials, December 28, 2012.

other things, either party terminates the contract with 30 days' written notice to the other party. *Id.* The contract also allows for a renewal of the contract upon mutual agreement in writing.⁸ *Id.*

The Agreement 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.* During the extension periods, prices will increase by the most recent average increase in prices of general applicability, as described in the contract. *Id.* at 2-3. 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 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 Contract 66 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

⁸ Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 66 (MC2014-2 and CP2014-2) 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 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.
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.

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 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2014-2 and CP2014-2. 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 Contract 66

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