

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail
Priority Mail Contract 69

Docket No. MC2014-7

Competitive Product Prices
Priority Mail Contract 69 (MC2014-7)
Negotiated Service Agreement

Docket No. CP2014-8

ORDER ADDING PRIORITY MAIL CONTRACT 69 TO THE
COMPETITIVE PRODUCT LIST

(Issued December 2, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 69 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 Contract 69 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 19, 2013 (Request).

II. BACKGROUND

On November 19, 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 69 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. 11-6.² Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, 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.³

On November 21, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

On November 25, 2013, Chairman’s Information Request No. 1 was issued, requesting additional information concerning a non-disclosure agreement and the

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. 1888, Notice and Order Concerning the Addition of Priority Mail Contract 69 to the Competitive Product List, November 21, 2013.

calculation of a volume projection figure.⁵ The Postal Service responded on November 27, 2013.⁶

III. COMMENTS

The Public Representative filed comments on November 27, 2013.⁷ No other interested person submitted comments.

In preparing her comments, the Public Representative reviewed all materials submitted in this docket. PR Comments at 2. The Public Representative concludes that Priority Mail Contract 69 is “a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).” *Id.* at 1.

Based on the financial workpapers 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 2. She notes that the contract contains an adjustment provision, which she believes should permit revenues to cover costs if the contract is extended beyond the first year. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, the Response to CHIR No. 1, and the Public Representative’s comments.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 69 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

⁵ Chairman’s Information Request No. 1, November 25, 2013 (CHIR No. 1).

⁶ Response of the United States Postal Service to Chairman’s Information Request No. 1, November 27, 2013 (Response to CHIR No. 1).

⁷ Public Representative Comments, November 27, 2013 (PR Comments).

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 69 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 during the one-year term of the contract cover

attributable costs. The contract contains a price adjustment provision that increases contract rates in the event that the term of the contract is extended. *Id.*, Attachment B at 2. The adjustment provision increases the likelihood that prices will cover attributable costs if the term of the contract is extended. 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 the event the term of the contract is extended.

Material incorporated by reference. The contract incorporates by reference a non-disclosure agreement executed by the Postal Service and the contract partner in July 2010. *Id.*, Attachment B at 3. The Postal Service represents that the non-disclosure agreement does not establish specific requirements for Postal Service employees, does not restrict the ability of the Postal Service to communicate information about the contract to the Commission, and does not establish financial penalties for violations of the contract. Response to CHIR No. 1, question 1. Without access to the information contained in materials incorporated by reference, the Commission cannot fully evaluate a contract's compliance with statutory requirements. In the future, when requesting the approval of a competitive negotiated service agreement that incorporates by reference material that is not publicly available, the Postal Service should provide a copy of the material or, in the alternative, sufficient information concerning that material for the Commission to review the agreement's compliance with 39 U.S.C. §§ 3633 and 3642.⁸

Other considerations. 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 1 year after the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party. *Id.*

⁸ The Postal Service's competitive negotiated service agreements frequently incorporate mailing standards, such as sections of the Domestic Mail Manual, by reference. Because these standards are publicly available, they need not be explained or described by the Postal Service in its requests.

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 within seven days of the contract expiring. *Id.* at 3. During the extension periods, prices will increase by the most recent average increase in prices of general applicability, as described in the contract. *Id.* 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.⁹

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

⁹ 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 expiration of the contract, as opposed to the instant contract's "within seven (7) days of the contract expiring." 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.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 69 (MC2014-7 and CP2014-8) 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. MC2014-7 and CP2014-8. 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 69

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