

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail Express
Priority Mail Express Contract 17

Docket No. MC2014-13

Competitive Product Prices
Priority Mail Express Contract 17 (MC2014-13)
Negotiated Service Agreement

Docket No. CP2014-17

ORDER ADDING PRIORITY MAIL EXPRESS CONTRACT 17
TO THE COMPETITIVE PRODUCT LIST

(Issued January 6, 2014)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express Contract 17 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 Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 19, 2013 (Request).

II. BACKGROUND

On December 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 Express Contract 17 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. Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6,² a contract related to the proposed new product, requested 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

Priority Mail Express Contract 17 is intended to replace Express Mail Contract 12.⁴

On December 20, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, providing interested persons with an opportunity to comment, and requesting supplemental information concerning the effective date of the contract.⁵

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., Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ See Request at 1; Docket Nos. MC2012-36 and CP2012-44, Order Concerning Express Mail Contract 12 Negotiated Service Agreement, August 16, 2012 (Order No. 1433).

⁵ Order No. 1920, Notice and Order Concerning the Addition of Priority Mail Express Contract 17 to the Competitive Product List and Request for Supplemental Information, December 20, 2013.

The Postal Service responded to the request for supplemental information on December 27, 2013, clarifying that the effective date of the contract is intended to be one business day after the Commission issues all necessary regulatory approval.⁶

III. COMMENTS

The Public Representative filed comments on December 27, 2013.⁷ No other interested person submitted comments. The Public Representative states that he has reviewed the contract and supporting materials. *Id.* at 2. He believes that Priority Mail Express Contract 17 should be added to the competitive product list and that the contract should generate sufficient revenues in its first year to cover costs and satisfy the requirements of 39 U.S.C. § 3633. *Id.* He states that the Postal Service provided no data demonstrating compliance with 39 U.S.C. § 3633(a) during the second and third years of the contract but notes that the contract includes “a formula for an annual adjustment in the negotiated rates that should permit revenues to cover costs during years 2 and 3.” *Id.* at 3; footnote omitted. The Public Representative also observes that the Commission has an opportunity to review the contract for ongoing compliance as part of its Annual Compliance Determination (ACD). *Id.* at 3. He requests that the Commission, as part of its ACD, record the accuracy of the forecasts on which the Postal Service’s financial analysis depends (particularly the cost inflation factor) and the effect of those forecasts on the cost model. *Id.* at 3-4.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative’s comments.

⁶ Response of the United States Postal Service to Request for Supplemental Information, December 27, 2013 (Postal Service Response).

⁷ Public Representative Comments on Postal Service Request to Add Priority Mail Express Contract 17 to the Competitive Product List, December 27, 2013.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Express Contract 17 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 Express 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 agrees that the express market 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 businesses. For these reasons, having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Express Contract 17 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because Priority Mail Express Contract 17 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 its review, 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 Contract 17 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination proceedings, the Commission will review the contract's financial performance for consistency with section 3633(a).

Other considerations. The contract becomes effective one business day following the day that the Commission issues all necessary regulatory approvals. Postal Service Response at 2. The contract is scheduled to expire 3 years after the effective date, unless, among other things, the contract partner terminates the contract with 60 days' written notice or it is renewed by mutual agreement.⁸

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 7 days of the contract expiring.⁹ During the extension periods, prices will increase by the increase in the Consumer Price Index – All Urban

⁸ Request, Attachment B at 4. 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.

⁹ *Id.* at 4. As the Commission noted in Order No. 1773, 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 at least 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, at 5; 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.

Consumers for the preceding 12-month period, as described in the contract. Request, Attachment B at 4. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices are automatically adjusted 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 Express Contract 17 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 Contract 17 (MC2014-13 and CP2014-17) 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 as discussed in this Order.
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. MC2014-13 and CP2014-17. 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 Contract 17

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