

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 Contract 33 (MC2011-13)
Negotiated Service Agreement

Docket No. CP2011-49

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL CONTRACT 33 NEGOTIATED SERVICE AGREEMENT

(Issued October 8, 2014)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 33, September 29, 2014 (Notice). The Amendment is an attachment to the Notice (Amendment).

In Order No. 641, the Commission approved the Priority Mail Contract 33 negotiated service agreement (Existing Agreement).² On September 29, 2014, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On September 30, 2014, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation. *Id.* It also filed a certified statement, as required by 39 C.F.R. § 3015.5.⁴ The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. Supplemental Notice, Attachment B at 1.

II. COMMENTS

Comments were filed by the Public Representative.⁵ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. *Id.* at 2. Based on that review, he

² See Docket Nos. MC2011-13 and CP2011-49, Order Approving Priority Mail Contract 33 Negotiated Service Agreement, January 6, 2011 (Order No. 641). The contract has been amended three times prior to this Amendment (for pricing-related changes). See Order No.1744, Order Approving Amendment to Priority Mail Contract 33 Negotiated Service Amendment, June 11, 2013; Order No. 1942, Order Approving Amendment to Priority Mail Contract 33 Negotiated Service Agreement, January 2, 2014; and Order No. 2109, Order Approving Amendment to Priority Mail 33 Negotiated Service Agreement, July 1, 2014.

³ Order No. 2201, Notice and Order Concerning Amendment to Priority Mail Contract 33 Negotiated Service Agreement, September 30, 2014.

⁴ Notice of United States Postal Service of Filing Certified Statement for Amendment to Priority Mail Contract 33, September 30, 2014 (Supplemental Notice).

⁵ Public Representative Comments Priority Mail Contract 33 Amendment, October 7, 2014 (PR Comments).

concludes that the Existing Agreement, as amended, should continue to generate sufficient revenues to cover costs and satisfy 39 U.S.C. § 3633(a).⁶ *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice and Supplemental Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement concerns a contract for expedited domestic shipping services.⁷ The Amendment changes prices for these services. Notice at 1.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is

⁶ The Public Representative also observes that there was a lag of nearly one month between the date the Postal Service signed the Amendment and the date it filed the Amendment with the Commission. PR Comments at 2-3. He asserts that the reducing this lag time would increase the speed with which agreements and amendments can be implemented. *Id.* at 3. The Commission encourages expeditious filing for the reason noted by the Public Representative.

⁷ Docket Nos. MC2011-13 and CP2011-49, Request of the United States Postal Service to Add Priority Mail Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 17, 2010 (Request).

unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). *See also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.E. of the amended agreement should allow the amended agreement's revenues to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective one business day after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire five years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁸

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days of the termination of the Existing Agreement, as amended, the Postal Service shall file the annual (contract year) costs, volumes, and revenues, disaggregated by weight and zone associated with the amended agreement.

In conclusion, the Commission approves the Existing Agreement, as amended.

⁸ Request, Attachment B at 4. Should both parties agree to renew the agreement, 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.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 33 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.
3. Within 30 days after the Existing Agreement, as amended, terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone.

By the Commission.

Shoshana M. Grove
Secretary