

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 150

Docket No. MC2016-11

Competitive Product Prices
Priority Mail Contract 150 (MC2016-11)
Negotiated Service Agreement

Docket No. CP2016-12

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE REQUEST
TO ADD PRIORITY MAIL CONTRACT 150
TO COMPETITIVE PRODUCT LIST

(November 2, 2015)

I. INTRODUCTION

The Public Representative hereby provides comments pursuant to Order No. 2783.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service's Request to add Priority Mail Contract 150 to the competitive product list.²

II. BACKGROUND

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governors' Decision No. 11-6 and related analysis, a public version of Priority Mail

¹ Notice and Order Concerning the Addition of Priority Mail Contract 150 to the Competitive Product List, October 26, 2015 (Order No. 2783).

² Request of the United States Postal Service to Add Priority Mail Contract 150 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 23, 2015 (Request).

shipping services Contract 150, and proposed changes to the Mail Classification Schedule competitive product list with the addition underlined. The Postal Service also filed (under seal) an unredacted version of Governors' Decision No. 11-6, the contract related to the proposed new product, and supporting financial model.

According to the Postal Service, Priority Mail Contract 150 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.³

Priority Mail Contract 150 is the successor agreement to Priority Mail Contract 42 subject of Docket Nos. MC2012-47 and CP2012-57.⁴ *Id.* Priority Mail Contract 42 was set to expire on September 24, 2015, but the Postal Service filed two subsequent motions with the Commission requesting extensions.⁵ The Commission granted both Motions.⁶

The effective date of Priority Mail Contract 150 is two business days following the day on which Commission issues all necessary regulatory approval. Request, Attachment B at 3. The contract is scheduled to expire 3 years from the effective date, subject to early termination provisions. *Id.*

III. COMMENTS

The Public Representative has reviewed the Postal Service's Request, including the Statement of Supporting Justification, the shipping services Contract 150 and the

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 Order Adding Priority Mail Contract 42 to the Competitive Products List, September 24, 2012 (Order No. 1475).

⁵ See Docket Nos. MC2012-47 and CP2012-57, Motion of the United States Postal Service for Temporary Relief, September 16, 2015 and Docket No. CP2013-57, Motion of the United States Postal Service for Temporary Relief, October 22, 2015 (Motions).

⁶ See Order Granting Motion for Temporary Relief, September 17, 2015 (Order No. 2718); Order Granting Second Motion for Temporary Relief, October 23, 2015 (Order No. 2775).

worksheets filed under seal with the Request. The Public Representative has also reviewed the financial worksheets related to the Priority Mail Contract 42, the predecessor of the Contract 150, that were filed (under seal) in the FY 2014 Annual Compliance Report. Based upon that review, the Public Representative concludes that Priority Mail Contract 150 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that Priority Mail Contract 150 should generate sufficient revenues to cover costs in the first year, and thereby satisfy 39 U.S.C. § 3633(a) during the first year.

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 150 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service’s Statement of Supporting Justification makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Contract 150 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s rates for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial spreadsheets and the contract filed under seal with the Request, it appears that the negotiated prices should generate

sufficient revenues to cover costs during the first year of the contract, and therefore meet the requirements of 39 U.S.C. § 3633(a) during the first year.

As noted above, Priority Mail Contract 150 is expected to remain in effect for a period of three years. The financial model applies only to the first year of the contract. The contract includes a mechanism for the annual adjustment of prices, which should help maintain the contract's ability to meet the requirements of 39 U.S.C. § 3633(a) over the life of the contract. Request, Attachment B at 2. However, while the adjustments to contract prices are linked to changes in prices of general applicability, there is still a limit on annual increase in contract prices. In other words, for contract years two and three, the increase in contract prices will not exceed the specified limit, even though the prices of general applicability (calculated for Priority Mail Commercial Plus) increase over this limit. *Id.* The cost coverage might fall below 100 percent if the contract costs increase significantly. The concern expressed above is mitigated somewhat by the fact that the Commission will have an opportunity to review the revenue, cost and volume data for Priority Mail Contract 150 in the future Annual Compliance Determination (ACD) reports for compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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