

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

Competitive Product Prices
Priority Mail Express
Priority Mail Express Contract 29

Docket No. MC2016-16

Competitive Product Prices
Priority Mail Express Contract 29 (MC2016-16)
Negotiated Service Agreement

Docket No. CP2016-22

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
REQUEST TO ADD PRIORITY MAIL EXPRESS CONTRACT 29
TO THE COMPETITIVE PRODUCT LIST

(December 1, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2831.¹ 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 Request to add Priority Mail Express Contract 29 to the competitive product list.²

The Postal Service's Request includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail Express shipping services Contract 29, and proposed changes to the Mail Classification Schedule (MCS) competitive product list with the additions underlined. The Postal Service also filed under seal the full (unredacted) text of Governor's Decision No. 11-6 and Contract 29, as well as a supporting financial model estimating the contract value during the first year.

¹ Order No. 2831, Notice and Order Concerning the Addition of Priority Mail Express Contract 29 to the Competitive Product List, November 23, 2015.

² Request of the United States Postal Service to Add Priority Mail Express Contract 29 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 20, 2015 (Request).

The Postal Service states that Priority Mail Express Contract 29 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 Contract 29 are authorized by Governors’ Decision No. 11-6.³ The Postal Service further asserts that the Statement provides support for adding Contract 29 to the competitive product list and the compliance of the Contact 29 with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D at 1.

The effective date of Contract 29 is two business days following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 6 (Article II). Contract 29 is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification, or other specific events. *Id.* at 6-7 (Article III).

COMMENTS

The Public Representative has reviewed the Postal Service’s Request, Priority Mail Express Contract 29, the Statement of Supporting Justification, and financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Contract 29 should be classified as a competitive product and added to the competitive product list. In addition, Contract 29 is projected to generate sufficient revenues to cover costs in its first year and thereby satisfy 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 29 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.

³ Decision of the Governors of the United States Postal Service on Establishment of 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).

§ 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Express Contract 29 to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), competitive prices 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 model, it appears the Postal Service's negotiated prices for Contract 29 should generate sufficient revenues to cover costs during its first year and therefore meet the requirements of 39 U.S.C. § 3633(a).

As indicated above, Contract 29 is expected to remain in effect for a period of three years. Contract 29 includes a mechanism for the adjustment of contract prices during this 3-year period. The adjustments to contract prices are linked to the prices of general applicability for Priority Mail Express Commercial Plus. Increases in prices of general applicability for Commercial Plus will result in an increase in contract prices. More importantly, however, if the Postal Service does not seek a price adjustment, or proposes a decrease in generally applicable prices for Commercial Plus, there will be no change in contract prices or contract prices will decrease. Under such circumstances, if generally applicable prices for Commercial Plus rise at a slower pace than the increase in contract costs, or such prices are unchanged or decrease during the term of the contract, the cost coverage for Contract 29 would decline.

This concern is mitigated somewhat by the fact that the Postal Service must file revenue and cost data for Contract 29 in its Annual Compliance Report. This data will permit the Commission to review the financial performance of Contract 29 in its Annual Compliance Determination (ACD) report 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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