

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail
Priority Mail Contract 169

Docket No. MC2016-43

Competitive Product Prices
Priority Mail Contract 169 (MC2016-43)
Negotiated Service Agreement

Docket No. CP2016-52

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
REQUEST TO ADD PRIORITY MAIL CONTRACT 169
TO COMPETITIVE PRODUCT LIST

(January 22, 2016)

I. INTRODUCTION AND BACKGROUND

The Public Representative hereby provides comments pursuant to Order No. 2886.¹ In that Order, the Commission established the above-referenced docket to receive comments from interested persons on the Postal Service's Request to add Priority Mail Contract 169 to the competitive product list.²

On December 17, 2015 the Commission established January 7, 2016 as the date to submit comments. Order No. 2886 at 3. On December 18, 2015, the Commission issued Order No. 2899 designating the undersigned to serve as the substitute Public Representative for this proceeding.³ The Commission also issued CHIR No. 1 to clarify

¹ Notice and Order Concerning the Addition of Priority Mail Contract 169 to the Competitive Product List, December 17, 2015 (Order No. 2886).

² Request of the United States Postal Service to Add Priority Mail Contract 169 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 15, 2015 (Request).

³ Notice and Order Designating Substitute Public Representative, December 18, 2015 (Order No. 2899).

the Postal Service's request on December 18, 2015 and directed the Postal Service to respond by December 28, 2015.⁴

On December 28, 2015, the Postal Service filed a motion requesting to extend the deadline to respond to CHIR No. 1 to January 5, 2016.⁵ On December 29, 2015, the Commission issued Order No. 2953 granting the request to extend the CHIR response deadline and also extending the comment deadline from January 7, 2016 to January 12, 2016.⁶ On January 5, 2016, the Postal Service filed its responses to CHIR No. 1 under seal.⁷

On January 7, 2016, the Postal Service filed revised Attachments B and D to its Request.⁸ Attachment B contains the redacted shipping services contract, and Attachment D contains the Postal Service's statement of supporting justification. Errata Notice at 1. On January 8, 2016, the Commission issued an order extending the comment deadline from January 12, 2016 to January 22, 2016 to give interested parties time to consider the revised attachments.⁹

On January 13, 2016, the Commission issued CHIR No. 2 seeking further clarification on the Postal Service's request and directed the Postal Service to respond by January 20, 2015.¹⁰

⁴ Chairman's Information Request No. 1 and Notice of Filing Under Seal, December 18, 2015 (CHIR No. 1).

⁵ Motion of the United States Postal Service for an Extension of Time to Respond to Chairman's Information Request No. 1, December 28, 2015.

⁶ Order Granting Extension of Deadline to Respond to Chairman's Information Request No. 1 and Extending Comment Deadline, December 29, 2015 (Order No. 2953).

⁷ Response of the United States Postal Service to Chairman's Information Request No. 1, Filed Under Seal, January 5, 2016.

⁸ Notice of the United States Postal Service of Filing Errata to Request, January 7, 2016. (Errata Notice).

⁹ Order Extending Comment Deadline, January 8, 2016 (Order No. 3015).

¹⁰ Chairman's Information Request No. 2 and Notice of Filing Under Seal, January 13, 2016 (CHIR No. 2). The Postal Service had not yet filed its responses to CHIR No. 2 as of the time of this filing. However, the responses should not materially change the Public Representative's comments as outlined in section III below.

II. POSTAL SERVICE'S REQUEST

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 the contract, and proposed changes to the Mail Classification Schedule. The Postal Service also filed (under seal) unredacted versions of Governors' Decision No. 11-6, the contract, and the supporting financial model.

Priority Mail Contract 169 provides the contract partner with negotiated rates for Priority Mail packages "tendered to the Postal Service for same day delivery." Errata Notice, Attachment B. The Postal Service states that Priority Mail Contract 169 is a competitive product with prices "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 contract are supported by Governors' Decision No. 11-6.¹¹

III. COMMENTS

The Public Representative has reviewed the Request, including the Statement of Supporting Justification, the instant contract, and the financial model filed under seal with the Request, as well as the responses to CHIR No. 1 and CHIR No. 2. Based upon that review, the Public Representative concludes that Priority Mail Contract 169 should be categorized as a competitive product and added to the competitive product. In addition, it appears that Priority Mail Contract 169 should generate sufficient revenues to cover costs, and thereby satisfy 39 U.S.C. § 3633(a). However, the Public Representative offers two recommendations for the Commission's consideration.

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 169 be added to the competitive product list. 39

¹¹ 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).

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 39 U.S.C. § 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 169 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633(a). 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; must ensure that each competitive product will cover its attributable costs; and must ensure that competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Request and the responses to CHIR No. 1 and CHIR No. 2, it appears that the negotiated prices for Priority Mail Contract 169 should generate sufficient revenues to cover costs, and therefore meet the requirements of 39 U.S.C. § 3633(a).

Recommendations. While it appears that Priority Mail Contract 169 will meet the requirements of 39 U.S.C. § 3633(a), the Public Representative offers two recommendations for the Commission’s consideration. First, the Postal Service’s Notice should be more transparent in explaining the provisions offered under this contract, particularly provisions that differ from other types of Priority Mail contracts.¹²

¹² The Public Representative takes no issue with including this agreement under the Priority Mail Contracts grouping. The Postal Service uses a similar practice for Priority Mail Open and Distribute negotiated service agreements that provide dropship service for Priority Mail packages. See Docket Nos. MC2016-53 and CP2016-68, Request of the United States Postal Service to Add Priority Mail Contract 175 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision

In this proceeding, the Postal Service's Notice should have indicated that the instant agreement provides same-day delivery for Priority Mail packages tendered by the contract partner. The Notice should have also stated that the Postal Service developed the agreement from the Metro Post market test. Such language would have enabled interested parties to better understand the filings, especially those that were redacted.

Second, the Commission should direct the Postal Service to provide contract-specific data in each Annual Compliance Determination proceeding during the life of the contract; including revenues, volumes by weight step, workhours, and miles. The Chairman Information Requests included questions concerning the Postal Service's ability to identify specific costs related to this Priority Mail contract that offers same-day delivery. In order to evaluate whether the product complies with 39 U.S.C. § 3633(a), the Commission should have access to financial models that accurately account for all costs associated with the product. See 39 U.S.C. § 3652(a)(1). Specifically, for each competitive negotiated service agreement, the Commission requires the Postal service to provide estimates for that agreement's costs, volumes, and revenues. 39 C.F.R. § 3050.21(g)(2).

IV. CONCLUSION

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

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Contract, and Supporting Data, December 23, 2015. However, Priority Mail negotiated service agreements that have unique characteristics, such as Priority Mail Open and Distribute contracts or Priority Mail contracts offering same-day delivery, should be better identified in the Postal Service's Notice.