

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 188

Docket No. MC2016-80

Competitive Product Prices  
Priority Contract 188 (MC2016-80)  
Negotiated Service Agreement

Docket No. CP2016-105

PUBLIC REPRESENTATIVE COMMENTS ON  
REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD  
PRIORITY MAIL CONTRACT 188 TO THE COMPETITIVE PRODUCT LIST

(February 26, 2016)

**I. Introduction**

The Public Representative hereby provides comments pursuant to Order No. 3087.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's request to add Priority Mail Contract 188 to the competitive products list.<sup>2</sup>

Under 39 U.S.C. § 3642(b) the criteria governing Commission review are whether the product (1) qualifies as market dominant, (2) is covered by the postal monopoly and therefore precluded from classification as a competitive product, and (3) reflects certain market considerations, including private sector competition, the impact on small businesses, and the views of product users.

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<sup>1</sup> PRC Order No. 3087. Notice and Order Concerning the Addition of Priority Mail Contract 188 to the Competitive Product List, February 19, 2016 (Notice).

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Contract 188 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 18, 2016 (Request).

Pursuant to 39 U.S.C. § 3633(a), the criteria for the Commission's review are that the Postal Service's 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.

## **II. Comments**

The Public Representative has reviewed Priority Mail Contract 188 along with all related financial data filed under seal with the Postal Service's Notice. The financial workpapers show, based on the Postal Service's assumptions, that Priority Mail Contract 188 will likely meet the requirements of 39 U.S.C. § 3633 in the first year of the contract. However, there are several issues that the Public Representative would like to highlight.

First, the Public Representative observes that the contract includes terms that permit the contract partner to extend contract prices to third party customers. See Attachment B to the Request at 4. The Postal Service's Request should be more transparent in explaining the terms of the contract, especially terms that differ from other types of Priority Mail contracts. In this proceeding, the Request should have indicated that the instant agreement allows the contract partner to extend prices to third party customers. Increased transparency enables interested parties to better understand the filings, especially those that were redacted.

Second, contracts that allow for the extension of contract prices to third parties have traditionally been designated as a separate type of contract. For example, there are international competitive contracts known as "Global Reseller Expedited Package Services" that allow for the contract partner to extend price to third party customers are distinguished from "Global Expedited Package Services" contracts, which do not allow contract partners to extend contract prices to third parties.<sup>3</sup> The Commission should consider whether a separate designation is appropriate in this instance.

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<sup>3</sup> See Mail Classification Schedule Sections 2510.3 and 2510.7.

Finally, it is not clear from the supporting financial model if the estimated volumes are expected to be mailed by the contract party, or third party customers. For future reviews of this contract, the Postal Service should ensure that its financial model reflects the terms of the agreement and distinguishes between contract partner volumes and third party customer volumes.

### **III. Conclusion**

The Public Representative has reviewed the Postal Service's Request, Statement of Supporting Justification, attached contract, Certification of Compliance with 39 U.S.C. 3633(a), and the Postal Service's proposed revised changes to the Mail Classification Schedule (MCS). The Public Representative has also reviewed the supporting financial models for the contract filed separately under seal. Based upon that review, the Public Representative concludes that the Priority Mail Contract 188 satisfies the criteria of section 3642(b), concerning the classification of new competitive products, and complies with the requirements of section 3633(a), concerning rates for competitive products.

The contract is expected to remain in effect for a period of three years.<sup>4</sup> The Postal Service provides no definite evidence to demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the second and third years of the contract. This concern is mitigated by the fact that the terms of the contract provide a formula for an annual adjustment in the contract prices that should permit revenues to cover costs during years two and three. The Commission also has an opportunity to conduct an annual compliance review in its Annual Compliance Determination.

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<sup>4</sup> The contract may be (1) terminated by the Postal Service with 5 business days' notice, pursuant to Section II of this contract, (2) terminated or cancelled in writing by either party with 30 calendar days' notice to the other party, (3) renewed by mutual agreement in writing, (4) amended in writing mutually agreed to by the Parties, superseded by a subsequent contract between the parties, (5) ordered by the Commission or a court, (6) required to comply with subsequently enacted legislation. Request, Attachment B at 4.

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

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