

ORDER NO. 3148

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

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Contract 77 (MC2014-18)
Negotiated Service Agreement

Docket No. CP2014-31

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued March 11, 2016)

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 77, March 1, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2010, the Commission approved the Priority Mail Contract 77 negotiated service agreement (Existing Agreement).² On March 1, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On March 2, 2016, 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 two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *Id.* Attachment B at 1.

II. COMMENTS

Comments were filed by the Public Representative.⁴ The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. PR Comments at 2. Based on that review, he concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.* He also notes that the Commission will have an opportunity to review the amended agreement's financial results each contract year in future Annual Compliance Determination (ACD) reports. *Id.*

² See Docket Nos. MC2014-18 and CP2014-31, Order Adding Priority Mail Contract 77 to the Competitive Product List, March 7, 2014 (Order No. 2010). The contract was later amended. See Order No. 2456, Order Approving Amendment to Priority Mail Negotiated Service Agreement, April 23, 2015.

³ Order No. 3123, Notice and Order Concerning Amendment to a Priority Mail Negotiated Service Agreement, March 2, 2016.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Contract 77, March 9, 2016 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the 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 expires in three years.⁵ The Amendment replaces sections I.E., I.F., and I.G., and Table 2 of the Existing Agreement, which govern contract prices and price adjustments. Notice, Attachment A at 1-2. The Amendment also changes the Existing Agreement's duration to six years by replacing section III, which governs the expiration, termination, and extension of the contract. *Id.* at 1, 2.

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 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

⁵ Docket Nos. MC2014-18 and CP2014-31, Request of the United States Postal Service to Add Priority Mail Contract 77 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 25, 2014, Attachment B at 3; Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 77, April 10, 2015, Attachment A (amending prices and price adjustments only).

consistent with section 3633(a). The annual rate adjustment provision in section I.F. of the amended agreement should allow the amended agreement's revenue to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its ACD to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two days after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire six 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.⁶

The Amendment also contains a provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing Agreement expiring.⁷ During the extension periods, prices will increase by the most recent average increase in prices of general applicability, as described in the Amendment. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices automatically increase in the extension period, making it likely that the Existing Agreement, as amended, will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

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

⁶ See *id.* Attachment A at 2. 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.

⁷ *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within at least seven (7) calendar days of the Contract's expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

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

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 77 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.

By the Commission.

Ruth Ann Abrams
Acting Secretary