

ORDER NO. 3216

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 80 (MC2014-23)
Negotiated Service Agreement

Docket No. CP2014-38

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued April 6, 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 Amendment to Priority Mail Contract 80, with Portions Filed Under Seal, March 24, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2056, the Commission approved the Priority Mail Contract 80 negotiated service agreement (Existing Agreement).² On March 24, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On March 29, 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 asserts that the Amendment does not materially affect cost coverage and that the supporting financial documentation and certification originally filed in this docket remain applicable. *Id.*

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, the financial model filed under seal with the Existing Agreement, and the financial analysis filed under seal in the FY 2015 Annual Compliance Report (ACR). PR Comments at 2. Based on that review, she observes that the Amendment will affect Priority Mail Contract 80's unit revenue and therefore its cost coverage. *Id.* She 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.* at 3.

² See Docket Nos. MC2014-23 and CP2014-38, Order Adding Contract Priority Mail Contract 80 to the Competitive Product List, April 16, 2014 (Order No. 2056). The contract was later amended twice. See Order No. 2171, Order Approving Amendment to Priority Mail Negotiated Service Agreement, August 26, 2014, at 3 (modifying the customer's first-year minimum volume commitment); Order No. 2526, Order Approving Amendment to Priority Mail Negotiated Service Agreement, June 3, 2015, at 3 (modifying the customer's total volume commitment for subsequent contract years and presentation of packages for shipment).

³ Order No. 3182, Notice and Order Concerning Amendment to a Priority Mail Negotiated Service Agreement, March 29, 2016.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Contract 80, March 31, 2016 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Amendment filed under seal, the Existing Agreement, the financial model filed under seal with the Existing Agreement, the financial analysis filed under seal in the FY 2015 ACR,⁵ and the comments filed by the Public Representative.

Cost coverage 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 adjusts prices annually by the most recent average increase in prices of general applicability.⁶ The Amendment introduces an upper limit on the annual price adjustment. Notice, Attachment A at 1.

Based on a review of the record and the financial analysis filed in the FY 2015 ACR, 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

⁵ Docket No. ACR2015, Library Reference USPS-FY15-NP27, December 29, 2015.

⁶ Docket Nos. MC2014-23 and CP2014-38, Request of the United States Postal Service to Add Priority Mail Contract 80 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, April 4, 2014, Attachment B at 2 (Request); see also Order No. 2056 at 5 (approving price adjustment provision).

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 consistent with section 3633(a). The Commission will continue to review the cost coverage of the Existing Agreement, as amended, in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire three 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.⁷

The Existing Agreement, as amended 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.⁸ During the extension periods, prices will increase by the lesser of (1) the most recent average increase in prices of general applicability or (2) a negotiated amount, as described in the Amendment. See Notice, Attachment A at 1. 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.

⁷ Request, Attachment B at 3. 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.

⁸ *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) 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.

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

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

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 80 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.

Stacy L. Ruble
Secretary