

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 L. Hammond

Competitive Product Prices
Global Expedited Package Services 6 Contracts
Negotiated Service Agreement

Docket No. MC2016-149

Competitive Product Prices
Global Expedited Package Services 6 Contracts (MC2016-149)
Negotiated Service Agreement

Docket No. CP2016-188

ORDER ADDING GLOBAL EXPEDITED PACKAGE SERVICES 6 CONTRACTS
TO THE COMPETITIVE PRODUCT LIST AND
APPROVAL OF DESIGNATION AS BASELINE AGREEMENT

(Issued June 14, 2016)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Global Expedited Package Services 6 (GEPS 6) Contracts to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Global Expedited Package Services 6 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, May 31, 2016 (Request); see *also* Notice of the United States Postal Service of Filing Errata Concerning Global Expedited Package Services 6 Negotiated Service Agreement, June 10, 2016.

II. BACKGROUND

On May 31, 2016, the Postal Service filed the Request, supporting documents, and the negotiated service agreement (Agreement) it seeks to have designated as the baseline agreement of the GEPS 6 Contracts product. In the Request, the Postal Service asserts that the GEPS 6 Contracts product is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1-2. The supporting documents include a copy of the Agreement, a copy of the Governors’ Decisions No. 11-6, a certification of compliance with 39 U.S.C. § 3633(a),² and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Request, Attachment 6.

In its Request, the Postal Service states that the Agreement is similar to contracts that the Postal Service has filed with the Commission as GEPS 3 contracts. Request at 3. However, the Agreement “includes not only Priority Mail International and Priority Mail Express International, but also First[-]Class Package International Service.” *Id.* The Postal Service states that it considers the Agreement to fit within the existing Mail Classification Schedule (MCS) language for GEPS Contracts. *Id.* The Postal Service requests that the Agreement be added to the MCS as the baseline reference agreement for the GEPS 6 contract product. *Id.* It requests that any additional equivalent GEPS 6 contracts be listed as one product within the MCS. *Id.* at 2.

The Agreement is intended to take effect June 15, 2016. *Id.* at 3. According to the Agreement’s terms, it is set to expire June 30, 2017. Request, Attachment 4 at 3.

² The certification of compliance filed with the Request referred to Governors’ Decision 08-7. *Id.* Attachment 5. The Postal Service later filed an errata clarifying that the certification of compliance should have referred to Governors’ Decision 11-6. Notice of the United States Postal Service of Filing Errata Concerning Global Expedited Package Services 6 Negotiated Service Agreement, June 10, 2016 (Errata).

In Order No. 3335, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.³

III. COMMENTS

Comments were filed by the Public Representative on June 1, 2016.⁴ No other interested person submitted comments. The Public Representative acknowledges the differences between this GEPS 6 contract and previous GEPS contracts. PR Comments at 3. He observes that the contract appears able to generate sufficient revenue to cover its attributable costs based on information provided by the Postal Service. *Id.* He concludes the pricing comports with relevant provisions of title 39. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement and the financial analyses provided under seal, and the Public Representative's comments.

Product classification. The Commission's statutory responsibilities when evaluating the Request include assigning the GEPS 6 Contracts product to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product,

³ Notice and Order Concerning Global Expedited Package Services 6 Negotiated Service Agreement, June 1, 2016 (Order No. 3335).

⁴ Public Representative Comments on Notice and Order Concerning Additional Global Expedited Package Services 6 Negotiated Service Agreement, June 8, 2016 (PR Comments).

and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f)-(h).

The Postal Service states that it does not maintain a position of dominance in the market for postal services of the kind provided under the Agreement. Request, Attachment 1 at 2-3. The Postal Service notes that Priority Mail International, Priority Mail Express International, and First-Class Package International Service have all been classified as competitive. *Id.* at 3. The Postal Service contends that the impact on small businesses will be positive because the GEPS 6 product will allow the Postal Service to “more quickly provide ... small businesses access to pricing incentives that will help them reduce their own cost of doing business.” *Id.* at 5.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. This finding is supported by the fact that the GEPS 6 Contracts product is a bundling of existing competitive product offerings. The availability of other private sector providers also supports this conclusion. The contract partner requested the specific grouping of products and it supports the addition of the GEPS 6 Contracts product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements and the Postal Service’s supporting justification, the Commission finds that the GEPS 6 Contracts product is appropriately classified as competitive and adds it to the competitive product list.

Product list. The Commission added GEPS 1 Contracts, GEPS 2 Contracts, GEPS 3 Contracts, GEPS 4 Contracts, and GEPS 5 Contracts to the competitive product list by operation of Order Nos. 86, 290, 503, 657, 2844 respectively.⁵ The Postal Service states that the proposed classification change adding GEPS 6 Contracts to the MCS is consistent with the requirements of 39 U.S.C. § 3642 and proposes conforming revisions to MCS section 2510.3, which covers GEPS Contracts. See Request at 2, 3, 5, and Attachment 3.

Cost considerations. Because the Commission finds GEPS 6 Contracts is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, 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 Agreement exceeds its attributable costs, the Agreement 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 the Agreement covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Request includes a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Errata; see *also* Request, Attachment 5. In addition, the Postal Service filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on its review of the record, the Commission finds that the rates should cover the Agreement's attributable costs.

⁵ See, *respectively*, Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86); Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290); Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010 (Order No. 503); Docket No. CP2011-54, Order Approving Global Expedited Package Services 4 Negotiated Service Agreement, January 24, 2011 (Order No. 657); Docket Nos. MC2016-15 and CP2016-20, Order Adding Global Expedited Package Services 5 Contracts to the Competitive Product List and Approval of Designation as Baseline Agreement, November 25, 2015 (Order No. 2844).

39 U.S.C. § 3633(a)(2). For this reason, the Commission concludes that the Agreement 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, the Commission finds that the 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).

The Commission will review the Agreement's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

In conclusion, a preliminary review of the Agreement indicates that it is consistent with section 3633(a).

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the GEPS 6 Contracts product. Following current practice, in any future request to add a negotiated service agreement to the GEPS 6 Contracts product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and conditions that impose new obligations or new requirements on any party to the negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2016-149. In conformity with the current practice, a redacted copy of Governors' Decision 11-6 should be included with the request.

Other considerations. The Agreement is intended to take effect June 15, 2016. Request at 3. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement. According to the Agreement's terms, it is set to expire June 30, 2017. Request, Attachment 4 at 3. If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

Follow up submissions. Within 30 days after the instant contract terminates, the Postal Service shall file costs, volumes, and revenue disaggregated by weight and country group associated with the Agreement, including any penalties paid.

In conclusion, the Commission approves GEPS 6 Contracts as a new product and designates the Agreement as the baseline agreement for the GEPS 6 Contracts. Revisions to the competitive product list appears below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Global Expedited Package Services 6 (MC2016-149 and CP2016-188) is added to the competitive product list as a new product. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement.
3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.
4. Within 30 days of the expiration of the Agreement in Docket No. CP2016-188, the Postal Service shall file costs, volumes and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2016-149 and CP2016-188. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Outbound International*

Global Expedited Package Services (GEPS) Contracts

GEPS 6

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2016-149 and CP2016-188. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

Part B—Competitive Products

2500 **Negotiated Service Agreements**

2510 **Outbound International**

2510.3 **Global Expedited Package Services (GEPS) Contracts**

2510.3.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 6
Baseline Reference
Docket Nos. MC2016-149 and CP2016-188
PRC Order No. 3365, June 14, 2016
Included Agreements
