

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

Competitive Product Prices
Global Expedited Package Services 7 Contracts
Negotiated Service Agreements

Docket No. MC2016-196

Competitive Product Prices
Global Expedited Package Services 7 (MC2016-196)
Negotiated Service Agreement

Docket No. CP2016-280

PUBLIC REPRESENTATIVE COMMENTS ON
NOTICE AND ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 7
NEGOTIATED SERVICE AGREEMENT

(September 22, 2016)

The Public Representative hereby provides comments pursuant to Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings¹. In that Notice, the Commission established the above referenced dockets to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service request to add Global Expedited Package Services 7 (GEPS 7) contracts to the competitive products list (Request).²

In its Request the Postal Service states that this contract is “similar to contracts that the Postal Service has filed with the Commission as GEPS 6 contracts.” *Request at 3*. The Request also stipulates that the instant contract differs from GEPS 6 contracts in that the contract does not include a penalty for failure to meet the agreed-upon minimum commitment. *Id.*

According to the Postal Service, GEPS 7 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3633(b)(3). *Request at 1*. The Postal Service also maintains that the prices and classification underlying the instant contract

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, September 15, 2016.

² Request of the United States Postal Service to Add Global Expedited Package Services 7 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, September 14, 2016.

are justified by Governors' Decision No. 11-6.³ The Postal Service further asserts that the Statement of Supporting Justification provides support for adding GEPS 7 to the competitive product list and the compliance of the contract with 39 U.S.C. § 3633(a). *Attachment D* at 1.

The duration of the contract extends for one calendar year from the effective date, unless terminated sooner. *Id* at 3. The Postal requests that the agreement be added to the Mail Classification Schedule as the baseline reference agreement for the GEPS 7 Contract product. *Id*.

DISCUSSION

Requirements of 39 U.S.C. § 3642. Pursuant to 39 U.S.C. § 3642(b)(1), the Commission must 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.” Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), 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.

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that GEPS 7 should be categorized as a competitive product and added to the competitive product list. Additionally, the instant contract should

³ Decision of the Governors of the United States Postal Service on Establishment of 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).

generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

Although the Public Representative finds that the contract meets all the necessary requirements for approval, the Postal Service should clarify the following:

- In Article 14 (1), it is unclear whether the phrase “increase in costs ... associated with providing this service,” refers to the cost of the service provided under the contract (i.e. mailer specific cost) or the cost of the underlying products (e.g., the cost associated with First-Class Package International Service)?
- Article 10 of the proposed contract does not include a penalty for failure to meet the agreed-upon minimum commitment. However, it is unclear whether the mailer would be charged the contract prices regardless of meeting the commitment, or if the mailer would be required to pay the non-discounted prices, if it failed to meet the minimum commitment.

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

Katalin Clendenin
Public Representative

901 New York Ave., NW Suite 200
Washington, D.C. 20268-0001
(202) 789-6860
e-mail: katalin.clendenin@prc.gov