

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Tony L. Hammond, Vice Chairman;
Mark Acton;
Dan G. Blair; and
Nanci E. Langley

Competitive Product Prices
Global Expedited Package Services 3
Negotiated Service Agreement

Docket Nos. MC2010-28
CP2010-71

ORDER APPROVING
GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued July 29, 2010)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Global Expedited Package Services 3 (GEPS 3) to the competitive product list. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

On July 14, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services (GEPS) contract and seeks to

add it as GEPS 3 to the competitive product list.¹ The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 2 contracts, and is supported by Governors' Decision No. 08-7, attached to the Notice and originally filed in Docket No. CP2008-4. *Id.* at 1, Attachment 4. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent contracts to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.²

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. The term of the contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. The Postal Service relates that the instant contract is for the same mailer as in Docket No. CP2009-50. It states the mailer's current contract ends July 31, 2010, and it expects the new contract to begin August 1, 2010.

In support of its Notice, the Postal Service filed five attachments as follows:

- Attachment 1—Statement of Supporting Justification required by 39 CFR 3020.32;
- Attachment 2—a redacted copy of the contract;
- Attachment 3—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 4—a redacted copy of Governors' Decision No. 08-07, which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis of the formulas and certification of the Governors' vote; and

¹ Notice and Request of the United States Postal Service to Add Global Expedited Package Services 3 to the Competitive Products List and Notice of Filing of Functionally Equivalent Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 14, 2010 (Notice); see *also* Notice of Errata Concerning Electronic Filing, July 15, 2010.

² 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).

- Attachment 5—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contract fits within the Mail Classification Schedule (MCS) language for GEPS contracts. It asserts that the instant contract shares the same cost and market characteristics as the previously filed GEPS 2 contracts and the same customers, small or medium-size businesses, that mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. *Id.*

The Postal Service identifies customer-specific information, general contract terms and other differences that distinguish the instant contract from the baseline GEPS 2 contract, all of which are highlighted in the Notice. *Id.* at 5-8.

The Postal Service contends that, in spite of these differences, the instant contract is functionally equivalent to previously filed GEPS contracts and fits within the requirements of the Governors' Decision for GEPS contracts. *Id.* at 5. *See also id.* (“[T]he relevant characteristics are similar, if not the same, for this GEPS contract and the previously filed contracts.”).

The Postal Service also contends that its filings demonstrate that the new GEPS 3 contract complies with the requirements of 39 U.S.C. 3633, is functionally equivalent to other GEPS contracts and should be considered the baseline for future GEPS contracts. It requests approval for the contract to be included within the GEPS 3 product. *Id.* at 8.

The Postal Service states that the instant contract takes the place of its immediate predecessor which served as the baseline contract for the GEPS 2 product. It requests that the instant contract be considered the new baseline contract for consideration of future GEPS 3 contracts' functional equivalency. *Id.*

In Order No. 492, 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.⁴ No other interested person submitted comments. The Public Representative states that it appears that the contract complies with 39 U.S.C. 3633(a) and 39 CFR 3015.5. *Id. at 1.* He notes that while some of the terms of the instant contract are different than previous GEPS contracts this does not alter its functional equivalency. *Id. at 2.* He observes that the instant contract complies with applicable provisions of title 39, is functionally equivalent to prior GEPS contracts, and its pricing structure appears to comport with the pricing formula established in Governors' Decision No. 08-7. *Id. at 3.* The Public Representative affirms that his review of the contract and supporting materials filed under seal indicates that it meets its attributable costs and there is no cross-subsidization of this competitive product by market dominant products. *Id.*

The Public Representative concludes that the instant contract's terms are in compliance with statutory requirements for a competitive product and are beneficial to the general public. *Id.*

IV. COMMISSION ANALYSIS

The Postal Service's filing presents several issues for the Commission to consider: (1) the addition of a new product to the MCS in accordance with 39 U.S.C. 3642; (2) whether the contract satisfies 39 U.S.C. 3633; and (3) treatment of the GEPS 3 contract as the baseline contract as requested by the Postal Service. In

³ Notice and Order Concerning Filing of Additional Global Expedited Package Services Negotiated Service Agreement, July 16, 2010 (Order No. 492).

⁴ Public Representative Comments in Response to United States Postal Service Filing of an Additional Global Expedited Package Services Negotiated Service Agreement, July 27, 2010 (Public Representative Comments).

reaching its conclusions, the Commission has reviewed the Notice, the contract and the financial analyses provided under seal, and the Public Representative's comments.

Product classification. The Commission's statutory responsibilities in this instance entail assigning the contract to either the market dominant product list or to the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

The Postal Service notes that in Order No. 86 the Commission reviewed the shell classification of the GEPS product and found that these contracts are properly classified as competitive. In lieu of a separate statement relative to the instant contract, it provides the supporting justification for the shell classification and contract in Dockets Nos. CP2008-4 and CP2008-5.

The Commission finds this an acceptable method for the Postal Service to support its Notice.

Cost considerations. The Postal Service contends that the instant contract and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2. It asserts that the Governors' Decision No. 08-7 supporting this contract establishes a pricing formula and classification that ensures each contract meets the criteria of 39 U.S.C. 3633 and the regulations promulgated thereunder. *Id.*, Attachment 4.

The Public Representative concurs that the contract appears to satisfy section 3633 of title 39. Public Representative Comments at 1.

Based on the data submitted and the Commission's analysis, the Commission finds that the contract should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products'

contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed contract indicates that it comports with the provisions applicable to rates for competitive products.

Filing under part 3020. In this proceeding, the Postal Service seeks to add a new product to the competitive product list. Its filing, however, was not submitted pursuant to part 3020.30 *et seq.* of the Commission's rules, although it did include supporting documentation from the underlying product docket and a redacted version of the Governors' decision for the product classification. To avoid any confusion, future filings which involve, as here, a new product that is the successor to an existing product, should be filed pursuant to part 3020.30 *et seq.*

Baseline contract. The Postal Service seeks to add a new product, GEPS 3 to the competitive product list. The Postal Service contends that the instant contract is functionally equivalent to previous GEPS 2 contracts and should be added to the competitive product list as GEPS 3 to replace GEPS 2 contracts as they expire. Notice at 4. At the same time, it requests that the instant contract be considered a new baseline for future GEPS 3 contracts. *Id.* at 2. Because GEPS 3 is being added as a new product, the Commission finds it unnecessary to address the issue of functional equivalency with previous contracts.

The Postal Service notes that the GEPS 3 contract differs from the previously submitted GEPS 2 baseline contract, *e.g.*, pertaining to the treatment of confidential information, payment method options and related conforming postage payment provisions, minimum commitments, penalties, pickup service, deletion of liquidated damages and reference updates. *Id.* at 5-6. It also cites new provisions that add clarity or update terms, but contends that they do not alter the essential service being offered. *Id.* at 8. Finally, it asserts that in spite of these differences the cost and market characteristics of the instant contract are fundamentally similar to those of the prior GEPS contracts. *Id.*

Having evaluated the instant GEPS 3 contract along with the supporting financial analyses, the Commission finds that GEPS 3 is properly added as a new product to the competitive product list. In response to the Postal Service's request, the instant contract will be considered the baseline agreement for future functional equivalency analyses for the GEPS 3 product.

Following the current practice, the Postal Service shall identify all significant differences between any new GEPS 3 contract and the GEPS 3 product. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The docket referenced in the caption should be Docket No. MC2010-28. In conformity with the current practice, a redacted copy of Governors' Decision 08-7 should be included in the new filing along with an electronic link to it.

The Postal Service shall inform the Commission of the effective dates of the contract and promptly notify the Commission if the contract terminates earlier than scheduled.

Other considerations. The Postal Service states that the precursor contract to the instant contract expires July 31, 2010. It is directed to file costs, volumes and revenues disaggregated by weight and country group associated with the current contract including any penalties paid within 30 days of its expiration.

In addition, within 30 days of termination of the instant contract, the Postal Service shall file costs, volumes and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

In conclusion, the Commission adds GEPS 3 to the competitive product list and finds that the negotiated service agreement submitted in Docket No. CP2010-71 is appropriately included within the GEPS 3 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The GEPS contract filed in Docket No. CP2010-71 is added to the competitive product list as a new product, Global Expedited Package Services 3 (Docket Nos. MC2010-28 and CP2010-71), under Negotiated Service Agreements, Outbound International.
2. The Postal Service shall inform the Commission of the effective date of this contract and notify it if the contract terminates earlier than scheduled, as discussed in this Order.
3. Within 30 days of the expiration of the current contract expiring July 31, 2010, in Docket No. CP2009-50, the Postal Service shall file costs, volumes and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.
4. Within 30 days of the expiration of the instant contract in Docket No. CP2010-71, 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.

Shoshana M. Grove
Secretary

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. MC2010-28 and CP2010-71. 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

2000 Competitive Product List

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Negotiated Service Agreements

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Outbound International

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* * * * * Global Expedited Package Services 3 (MC2010-28 and CP2010-71)