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ORDER NO. 291

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

Before Commissioners:

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

Competitive Product Prices
Global Expedited Package Services 1 (CP2008-4)
Negotiated Service Agreement

Docket No. CP2009-60

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(Issued August 28, 2009)

I. INTRODUCTION

The Postal Service proposes to add a specific Global Expedited Package Service (GEPS) contract to the Global Expedited Package Services 1 (GEPS 1) product established in Docket No. CP2008-4. For the reasons discussed below, the Commission approves the proposed contract, but in lieu of adding it to the GEPS 1 product, it will be included within the Global Expedited Package Services 2 product.

II. BACKGROUND

On August 13, 2009, the Postal Service filed a notice announcing that it has entered into an additional GEPS 1 contract.¹ GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 1 contracts, and is supported by the Governors' Decision filed in Docket No. CP2008-4.² Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are functionally equivalent to previously submitted GEPS 1 contracts.³ Notice at 1-2.

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 instant contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

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

- Attachment 1—an application for non-public treatment of materials to maintain the contract and supporting documents under seal;
- Attachment 2—a redacted copy of Governors' Decision No. 08-7, which establishes prices and classifications for GEPS contracts, certification of the Governor's vote, proposed Mail Classification Schedule language, and price formulas along with an analysis;
- Attachment 3—redacted copy of the contract and supporting material; and

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 13, 2009 (Notice).

² See Docket No. CP2008-4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

³ See Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

- Attachment 4—a certified statement required by 39 CFR 3015.5(c)(2).

The Postal Service asserts that the instant contract is functionally equivalent to prior GEPS 1 contracts. It contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08-7. It asserts that the instant contract and all GEPS 1 contracts have similar cost and market characteristics and, except for tender locations, is essentially the same as the contract in Docket No. CP2009-50.⁴ *Id.* at 3. In Docket No. CP2009-50, the tender provisions in the contract require a specific tender location; however, the instant contract permits tender at any location designated by the Postal Service. The Postal Service incorporates by reference the arguments made for functional equivalence in Docket No. CP2009-50 with previous GEPS 1 contracts. *Id.* The Postal Service also requests that the contract in Docket No. CP2009-50 be considered the baseline for determining functional equivalence with GEPS 1 contracts. *Id.* at 4.

The Postal Service concludes that this contract is in compliance with 39 U.S.C. 3633, and requests that this contract be included within the GEPS 1 product. *Id.*

The Postal Service provided an initial copy of the instant contract with this filing which was not signed by the mailer in the absence of the mailer's designated signatory but indicated that the mailer confirmed that it would sign the contract in the same form as presented to the Commission. The Postal Service submitted the contract in this manner in the interest of having it reviewed by the Commission in a timely manner and committed to file the signed version of the contract upon final execution. On August 21, 2009, the Postal Service filed an executed copy of the instant contract which has been reviewed as part of the Commission's analysis.⁵

⁴ See Docket No. CP2009-50, Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 29, 2009 (Order No. 262). The Postal Service states that the instant contract is the same as the contract approved by the Commission in Docket No. CP2009-50. It asserts the only differences are the designation of tender locations as determined by the Postal Service. *Id.* at 3.

⁵ Notice of United States Postal Service of Filing Additional Materials Under Seal, August 21, 2009 (Executed Contract).

In Order 280, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.⁶

III. COMMENTS

Comments were filed by the Public Representative.⁷ No other interested person submitted comments. The Public Representative states that each element of 39 U.S.C. 3633(a) appears to be met by this additional GEPS 1 contract. *Id.* at 2. He affirms that his review of the materials filed under seal indicates that the instant contract complies with the pricing formula for GEPS 1 contracts established in Governors' Decision No. 08-7, is functionally equivalent to the other contracts within the GEPS 1 (CP2008-4) classification, and is appropriately established as a competitive product. *Id.* at 3.

The Public Representative states that the Postal Service's Notice supports transparency for the general public through the use of updated financial data and a certification that prices comply with Governor's Decision No. 08-7. *Id.* He also states the Postal Service has provided adequate justification for maintaining confidentiality in this case. The Public Representative compares the instant contract with the contract in Docket No. CP2009-50 and determines that the modification in the instant contract of a provision which allows tender at any location that the Postal Service designates is a minor change, not a material alteration resulting in a new product. *Id.* at 4. He concludes that the Postal Service's filing complies with applicable Commission rules of practice and procedure and the terms of the agreement appear beneficial to the Postal Service and the general public. *Id.* at 5.

⁶ PRC Order No. 280, Notice and Order Concerning Additional Global Expedited Package Services 1 Negotiated Service Agreement, August 17, 2009 (Order No. 280).

⁷ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, August 26, 2009 (Public Representative Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Notice of Filing Changes for Inbound International Expedited Services 2, August 26, 2009. The motion is granted.

IV. COMMISSION ANALYSIS

The Postal Service proposes to add an additional contract under the GEPS 1 product that was created in Docket No. CP2008-5. In Order No. 86, the Commission noted that:

If the Postal Service determines that it has entered into an agreement substantially equivalent to GEPS 1 with another mailer, it may file such a contract under rule 3015.5. In each case, the individual contract must be filed with the Commission, and each contract must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new contract and the pre-existing product group, GEPS 1. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.

Order No. 86 at 7.

First, the Commission reviews the contract to ensure that it is substantially equivalent to the pre-existing contracts classified as part of the GEPS 1 product and thus belongs as part of that product. Second, the Commission must ensure that the contract at issue in this proceeding independently satisfies the requirements of rules 3015.5 and 3015.7 and 39 U.S.C. 3633.

Functional equivalence. The Postal Service asserts that the instant contract is virtually identical to that in Docket No. CP2009-50, incorporating by reference its arguments regarding functional equivalence. Notice at 3. It notes that, unlike the contract in Docket No. CP2009-50, the instant contract permits tender at any location that the Postal Service designates. It contends that the differences are not material and that the relevant cost and market characteristics are the same. *Id.* Finally, it renews its

request that the contract in Docket No. CP2009-50 be treated as the baseline for future functional equivalency comparisons. *Id.* at 4.⁸

In its Request, the Postal Service sought clarification “concerning the contract and docket number that it should use for future filings of additional contracts to be added to the GEPS 1 product.” Request at 2. In Order No. 290, the Commission granted clarification and established Global Expedited Package Services 2 (GEPS 2) as a new product.⁹ The instant contract is, as the Postal Service notes, virtually identical to that filed in Docket No. CP2009-50. Accordingly, the Commission concludes that it is functionally equivalent and may be included in the GEPS 2 product.

Cost considerations. The Commission reviews competitive products to ensure that they meet the applicable requirements of rules 3015.5 and 3015.7 and 39 U.S.C. 3633. The Commission has reviewed the financial analysis provided under seal that accompanies the agreement as well as the comments filed in this proceeding.

Based on the information provided, the Commission finds that the contract submitted 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, a preliminary review of the proposed contract indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service indicates that the instant contract will terminate one year after it notifies the customer that it has received all necessary regulatory approvals. The Postal Service shall notify the Commission of the scheduled termination date of this agreement. If the agreement terminates earlier than anticipated,

⁸ See Docket No. CP2009-50, United States Postal Service Response to Order No. 262 Concerning Termination Date of Additional Global Expedited Package Services 1 Negotiated Service Agreement and Request for Clarification, July 30, 2009, at 1-2 (Request).

⁹ See 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).

the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the contract from the Mail Classification Schedule.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2009-60 is appropriately included within the GEPS 2 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2009-60 is included within the product Global Expedited Package Services 2 (CP2009-50).
2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if the termination date changes as discussed in this Order.

By the Commission.

Judith M. Grady
Acting Secretary