

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 2 (CP2009-50)
Negotiated Services Agreement

Docket No. CP2009-64

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 2
NEGOTIATED SERVICE AGREEMENT

(Issued September 30, 2009)

I. INTRODUCTION

The Postal Service proposes to add a specific Global Expedited Package Services contract to the Global Expedited Package Services 2 product established in Docket No. CP2009-50. For the reasons discussed below, the Commission approves the proposed contract.

II. BACKGROUND

On September 15, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.¹ GEPS 2 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 the previously submitted GEPS 2 contracts and is supported by the Governors' Decision filed in Docket No. CP2008-4.² *Id.* at 1.

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. 290.³ The term of the instant contract is one year beginning October 1, 2009. Notice at 2-3.

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, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote;
- Attachment 3 — a redacted copy of the contract, applicable annexes, and a provision to modify the mailer's tender requirements; and
- Attachment 4 — a certified statement required by 39 CFR 3015.5(c)(2).

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, September 15, 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. 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 asserts that the instant contract is functionally equivalent to the contract in Docket No. CP2009-50 and prior GEPS 2 contracts. *Id.* at 3-5. The Postal Service states that there are two essential changes in the instant contract from the contract in Docket No. CP2009-50; customer specific information and modifications for clarity that will be included in future contracts.⁴ These distinctions include the customer name, address, representative to receive notices, identity of the signatory, and provisions clarifying tender locations, minimum revenue or volume requirements, liquidated damages, confidentiality, and reference updates. *Id.* at 3-4. The Postal Service contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08-7 and, except for the customer-specific information and clarifying provisions, is the same as the contract in Docket No. CP2009-50. *Id.* at 3. It contends that the instant contract and all GEPS 2 contracts have similar cost and market characteristics and is functionally equivalent in all relevant aspects. *Id.* at 5. 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 2 product. *Id.*

In Order No. 300, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.⁵ Additionally, the Commission directed the Postal Service to file an executed copy of a modification provision to supplement the record and replace the unsigned version attached to its notice. The Postal Service filed the executed modification provision with the Commission on September 21, 2009.

⁴ The Postal Service's Notice states the clarification provisions included in this contract are "intended to be incorporated into all subsequent agreements in exactly the same terms." *Id.* at 3. However, the Commission notes that in the contract filed in Docket No. CP2009-65, also filed on September 15, 2009, these clarifying provisions are not included.

⁵ PRC Order No.300, Notice and Order Concerning Additional Global Expedited Package Services 2 Negotiated Service Agreement, September 17, 2009 (Notice).

III. COMMENTS

Comments were filed by the Public Representative.⁶ No other interested person submitted comments. The Public Representative states that each applicable element of 39 U.S.C. 3633(a) appears to be met by this additional GEPS 2 contract. Public Representative Comments at 1. He affirms that his review of the materials filed under seal indicates that the instant contract complies with the pricing formula established in Governors' Decision No. 08-7, is functionally equivalent to the other contracts within the GEPS 2 (CP2009-50) classification, and is appropriately established as a competitive product. *Id.* at 2.

The Public Representative states that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 3. He also affirms that the Postal Service's filing complies with applicable Commission rules. *Id.* He concludes that the proposed contract appears to satisfy 39 U.S.C. 3633(a). *Id.* at 1.

IV. COMMISSION ANALYSIS

The Postal Service proposes to add an additional contract under the GEPS 2 product that was created in Docket No. CP2009-50. In Order No. 290, the Commission noted that:

Following the current practice, the Postal Service shall identify all significant differences between any new GEPS contract and the GEPS 2 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

⁶ Public Representative Comments in Response to United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement, September 28, 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 Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Services Agreement, September 28, 2009. The motion is granted.

should be Docket No. CP2009-50, in lieu of Docket No. CP2008-4...a redacted copy of Governors' Decision 08-7 should be included in the new filing along with an electronic link to it.

Order No. 290 at 3.

First, the Commission reviews the contract to ensure that it is substantially equivalent to the pre-existing contracts classified as part of the GEPS 2 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 identical to that in Docket No. CP2009-50 in terms of their market and cost characteristics. Notice at 3. It identifies two types of differences between the contract in Docket No. CP2009-50 and the instant contract: (1) customer-specific information, e.g., name and address, minimum revenue or volume commitment, and amount of liquidated damages, and (2) new general provisions that it indicates will be added to “all subsequent agreements in exactly the same terms.” *Id.* at 3-4. The new provisions concern confidentiality (updating the GEPS contract template to reflect elements of the Commission’s rules on non-public treatment of confidential information) and reference updates (clarifying references to the International Mail Manual). *Id.* at 4. The Postal Service contends that the differences are not material. *Id.* at 5.

The instant contract appears to be substantially the same as that filed in Docket No. CP2009-50. Accordingly, the Commission concludes that it 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's Notice indicates that the contract is set to begin October 1, 2009; however, the contract states that the Postal Service will notify the mailer of the effective date within 30 days after receiving all necessary regulatory approvals and will remain in effect for one year from the effective date. The Postal Service shall notify the Commission of effective dates of this contract. If it terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2009-64 is appropriately included within the GEPS 2 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The contract filed in Docket No. CP2009-64 is included within the product Global Expedited Package Services 2 (CP2009-50).
2. The Postal Service shall notify the Commission of the effective dates of the contract and update the Commission if the termination date changes as discussed in this order.

By the Commission.

Judith M. Grady
Acting Secretary