

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 2
(CP2009-50)
Negotiated Service Agreement

Docket No. CP2010-20

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 2
NEGOTIATED SERVICE AGREEMENT

(Issued February 3, 2010)

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 January 21, 2010, 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 instant contract. 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. 290.² 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.³ 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, January 21, 2010 (Notice).

² 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).

³ The Postal Service states its intent is to begin this contract on February 8, 2010, at the expiration of the customer's current contract. The contract provides that the Postal Service will give notice to the mailer of the effective date within 30 days of regulatory approval.

Functional equivalency. 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 3-4. It also contends that the instant contract meets the requirements of Governors' Decision No. 08-7 for rates for GEPS contracts. *Id.* at 2.⁴ The Postal Service indicates that the instant contract differs from the contract in Docket No. CP2009-50 in two ways, namely, (a) customer specific information, e.g., the customer's name, address, representative, signatory and provisions clarifying tender locations, minimum revenue and/or volume commitment; and (b) revisions intended to be included in all subsequent agreements. *Id.* at 3-4. The latter revisions address, for example, the treatment of confidential information, reference updates and the availability of pickup service. The Postal Service also notes other minor changes which modify or delete certain provisions. *Id.*

The Postal Service contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08-7. *Id.* at 2-3. It asserts 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 3. 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.* at 6.

In Order No. 397, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.⁵

⁴ 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.

⁵ Notice and Order Concerning Additional Global Expedited Package Services 2 Negotiated Service Agreement, January 22, 2010 (Order No. 397).

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. *Id.* at 1. He also affirms that the Postal Service's filing complies with applicable Commission rules. *Id.* The Public Representative states that his review of the materials 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 2-3.

The Public Representative relates that the modifications to the instant contract are not significant enough to alter its functional equivalency. *Id.* at 2. He concludes that the instant contract's terms are beneficial to the Postal Service and the general public. *Id.* at 3.

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.

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 satisfies the requirements of rules 3015.5 and 3015.7 and 39 U.S.C. 3633.

Functional equivalence. As noted above, the Postal Service states that the instant contract differs from the contract in Docket No. CP2009-50 in two ways:

⁶ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 2 Negotiated Service Agreement, February 1, 2010 (Public Representative Comments).

(a) customer specific information, e.g., customer's name, address, representative, signatory and provisions clarifying tender locations, minimum revenue and/or volume commitment; and (b) revisions intended to be included in all subsequent agreements which address treatment of confidential information, reference updates and availability of pickup service. Notice at 3-4. There are also other differences which the Postal Service characterizes as minor which change the applicability of certain provisions and delete others. *Id.* at 5. These modifications appear to be technical rather than substantive and include updated terms and references to the International Mail Manual (IMM), qualifying mail exclusions, revisions in the top level domain of the website, and transmission of specific electronic data upon request. *Id.* The modifications appear to be minor edits which should not affect the functional equivalence of this contract.

The instant contract appears to be similar to that filed in Docket No. CP2009-50. It differs in some minor respects relative to customer specific information and revisions to be included in future contracts. These differences notwithstanding, the Commission concludes that the instant contract 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 in its notice that this filing is on behalf of the same customer as in Docket No. CP2009-19. The instant contract supersedes the contract in Docket CP2009-19. Given that, the Postal Service

shall, no later than 30 days after the effective date of the new contract, provide cost, revenue, and volume data associated with the current contract. Such data are to be filed in Docket 2009-19.

The instant 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 the 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. CP2010-20 is appropriately included within the GEPS 2 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2010-20 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.

Shoshana M. Grove
Secretary