

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. CP2010-25

ORDER CONCERNING FILING OF ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 2
NEGOTIATED SERVICE AGREEMENT

(Issued March 4, 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 February 19, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.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 3, Attachment 2. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements 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 Postal Service submitted the contract and supporting materials under seal along with an application for non-public treatment as Attachment 1, and attached a redacted copy of the contract and a certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 3 and 4, respectively. Notice at 1-2. 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 Notice advances reasons why the instant GEPS 2 contract fits within the Mail Classification Schedule language for GEPS 2. The Postal Service contends that the instant contract is functionally equivalent to the GEPS 2 contracts filed previously, despite minor differences in both the general language and customer-specific information, all of which are highlighted in the Notice. *Id.* at 3-7.

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, February 19, 2010 (Notice).

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).

The Postal Service contends that several factors demonstrate the contract's functional equivalence with previous GEPS 2 contracts, including the general terms of the contract, the market to which it is being offered, and its cost characteristics. *Id.* at 3. The Postal Service concludes that because the "GEPS agreements incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same..." despite any incidental differences. *Id.* at 6.

The Postal Service contends that its filings demonstrate that this new GEPS 2 contract is established in compliance with the requirements of 39 U.S.C. 3633, is functionally equivalent to previous GEPS 2 contracts, and requests that this contract be included within the GEPS 2 product. *Id.* at 7.

In Order No. 411, the Commission gave notice of the docket, 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 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.

³ Notice and Order Concerning Filing of Additional Global Expedited Package Services 2 Negotiated Service Agreement, February 22, 2010 (Order No. 411).

⁴ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 2 Negotiated Service Agreement, March 2, 2010 (Public Representative Comments).

The Public Representative relates that the modifications to the instant contract are not significant enough to alter its functional equivalency with prior GEPS 2 contracts. *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. The Postal Service states that the instant contract differs from the contract in Docket No. CP2009-50 in two ways: (a) customer-specific information, *e.g.*, customer's name, address, representative, signatory and provisions clarifying tender locations, minimum revenue and/or volume commitment and related penalties; and (b) revisions in general terms which address treatment of confidential information, reference updates, availability of pickup service, definitions, title changes, optional acceptance of non-qualifying mail including postage and penalties, postage due and penalties for improper tender, and fraud. Notice at 3-5. There are also other modifications which the Postal Service characterizes as minor and include reference to mail exclusions, website changes, and editing of provisions for clarity. *Id.* at 5-6. 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 that add negotiated terms or clarify specific provisions. 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 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. CP2010-25 is appropriately included within the GEPS 2 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2010-25 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