

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 Nos. CP2010-33
CP2010-34
CP2010-35

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

(Issued April 9, 2010)

I. INTRODUCTION

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

II. BACKGROUND

On March 26, 2010, the Postal Service filed a notice announcing that it has entered into three additional Global Expedited Package Services 2 (GEPS 2) contracts.¹ The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS 2 contracts, and are supported by Governors' Decision No. 08-7, attached to the Notice and originally filed in Docket No. CP2008-4. *Id.* at 1, Attachment 3. 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 contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 2-3.

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

- Attachments 1A, 1B and 1C—redacted copies of the three contracts and applicable annexes;
- Attachments 2A, 2B and 2C—a certified statement required by 39 CFR 3015.5(c)(2) for each of the three contracts;
- Attachment 3—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; and

¹ Notice of United States Postal Service Filing of Three Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, March 26, 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).

- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 2 contracts fit within the Mail Classification Schedule language for GEPS 2. The Postal Service identifies customer-specific information, general contract terms and other differences that distinguish the instant contracts from the baseline GEPS 2 agreement, all of which are highlighted in the Notice. *Id.* at 3-6. These modifications as described in the Postal Service’s Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to the GEPS 2 contracts filed previously notwithstanding these differences. *Id.* at 6-7.

The Postal Service asserts that several factors demonstrate the contracts’ functional equivalence with previous GEPS 2 contracts, including the product being offered, the market in which it is 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 each of the new GEPS 2 contracts comply with the requirements of 39 U.S.C. 3633(a) and is functionally equivalent to previous GEPS 2 contracts. It also requests that the contracts be included within the GEPS 2 product. *Id.* at 7.

In Order No. 431, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.³

³ Notice and Order Concerning Filing of Three Additional Global Expedited Package Services 2 Negotiated Service Agreements, March 30, 2010 (Order No. 431).

III. COMMENTS

Comments were filed by the Public Representative.⁴ No other interested person submitted comments. The Public Representative states that her review of the materials under seal indicates that each contract appears to comply with 39 U.S.C. 3633(a) and should not lead to the subsidization of competitive products by market dominant products, should cover its attributable costs, and should have a positive net contribution to institutional costs. *Id.* at 2-3. She also affirms that the contracts' cost and market attributes comport with the pricing structure of Governors' Decision No. 08-7. *Id.* at 2. The Public Representative observes that the instant contracts have incidental differences from prior GEPS 2 contracts because of negotiation with individual mailers. She urges the Commission to review the modifications to the instant contracts and ascertain whether the changes are significant enough to alter their functional equivalency with prior GEPS 2 contracts. *Id.*

Additionally, the Public Representative encourages the Postal Service to augment its current method of documenting and verifying mailers' compliance with minimum volume/revenue requirements and its audit structure for use of penalty provisions. *Id.* at 3. The Public Representative concludes that her review of the materials indicates that the instant contracts comport with applicable provisions of title 39 and Commission rules. *Id.* at 3.

⁴ Public Representative Comments in Response to United States Postal Service Filing of Three Additional Global Expedited Package Services 2 Negotiated Service Agreements, April 6, 2010 (Public Representative Comments).

IV. COMMISSION ANALYSIS

The Postal Service proposes to add three additional contracts under the GEPS 2 product that was created in Docket No. CP2009-50.

First, the Commission reviews the contracts to ensure that they are substantially equivalent to the pre-existing contracts classified as part of the GEPS 2 product and thus belong as part of that product. Second, the Commission must ensure that the contracts at issue in this proceeding satisfy the requirements of rules 3015.5 and 3015.7 and 39 U.S.C. 3633.

Functional equivalence. The Postal Service states that the instant contracts differ from the contract in Docket No. CP2009-50 in two ways: (1) 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 (2) revisions in general terms which address treatment of confidential information, reference updates, optional acceptance of non-qualifying mail including postage and penalties, availability of pickup service, definitions, title changes, postage due and penalties for improper tender, and fraud. Notice at 3-6. 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 6. The modifications appear to be minor edits.

The instant contracts appear to be similar to that filed in Docket No. CP2009-50. They differ 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 contracts may be included in the GEPS 2 product. The Public Representative's suggestion that the Postal Service should have independent, objective monitoring and certification of the mailer's volume and revenue, to properly assess the minimum revenue commitment and related penalties in the instant contracts is sound. Public Representative Comments at 3. The

Commission urges the Postal Service to implement metrics to verify contract performance.⁵

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 contracts submitted should cover their 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 contracts indicates that they comport with the provisions applicable to rates for competitive products.

Other considerations. Each of the instant contracts states that the Postal Service will notify the mailer of its 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 each of these contracts. If any of the contracts terminate earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.

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

In conclusion, the Commission finds that the contracts submitted in Docket Nos. CP2010-33, CP2010-34 and CP2010-35 are appropriately included within the GEPS 2 product.

⁵ See, e.g., Docket No. MC2010-21 and CP2010-36, Request of the United States Postal Service to Add Global Reseller Expedited Package Contracts to the Competitive Product List, and Notice of Filing (Under Seal) of Contract and Enabling Governors' Decision, March 29, 2010, Attachment 3 at 5.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contracts filed in Docket Nos. CP2010-33, CP2010-34 and CP2010-35 are included within the product Global Expedited Package Services 2 (CP2009-50).
2. The Postal Service shall notify the Commission of the effective date of each contract and update the Commission if any of the termination dates change as discussed in this Order.
3. Within 30 days of the expiration of each contract, the Postal Service shall file cost, volumes and revenues disaggregated by weight and country group associated with that contract, including any penalties paid.

By the Commission.

Judith M. Grady
Acting Secretary