

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. CP2010-37

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 2
NEGOTIATED SERVICE AGREEMENT

(Issued April 21, 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 April 7, 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 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 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. 86. The Postal Service submitted the contract and supporting materials under seal, a redacted copy of the contract as Attachment 1, a certified statement required by 39 CFR 3015.5(c)(2) as Attachment 2, Governors' Decision No. 08-7 and an application for non-public treatment of materials as Attachments 3 and 4, respectively. *Id.* 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 identifies customer-specific information, general contract terms and other differences that distinguish the instant contract from the baseline GEPS 2 agreement, all of which are highlighted in the Notice. *Id.* at 3-6. It contends that the instant contract is functionally

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, April 7, 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).

equivalent to the GEPS 2 contracts filed previously notwithstanding these differences. *Id.* at 6-7.

The Postal Service asserts 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. 440, 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 the instant contract comports with the applicable requirements of 39 U.S.C. 3632, 3633 and 3642. *Id.* at 1-2. She also affirms that the Postal Service's filing complies with applicable Commission rules. *Id.* at 2. The Public Representative states that her review of the materials indicates that the instant contract complies with the pricing formula established in Governors' Decision No. 08-7, and is functionally equivalent to the other contracts within the GEPS 2 (CP2009-50) classification. *Id.* at 2-3.

The Public Representative relates that the instant contract has amendments to the pricing table, but the modifications are not significant enough to alter its functional

³ Notice and Order Concerning Filing of Additional Global Expedited Package Services 2 Negotiated Service Agreement, April 8, 2010 (Order No. 440).

⁴ Public Representative Comments in Response to Order No. 440, April 15, 2010.

equivalency with prior GEPS 2 contracts. *Id.* at 2-3. She states that the instant contract is functionally equivalent in all pertinent respects. *Id.* at 3.

The Public Representative concludes that her review of the Postal Service's filing indicates that the 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 3-4.

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: (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, and availability of pickup service. Notice at 3-5. There are also other modifications which the Postal Service characterizes as minor and include reference to mail exclusions, website changes, deletion of liquidated damages provisions, optional use of electronic data, and editing of provisions for clarity. *Id.* at 5-6. The modifications appear to be minor edits that 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 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 date of this contract. If it terminates 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 the instant contract, the Postal Service shall file cost, volume and revenue disaggregated by weight and country group associated with the contract, including any penalties paid.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2010-37 is appropriately included within the GEPS 2 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2010-37 is included within the product Global Expedited Package Services 2 (CP2009-50).
2. The Postal Service shall notify the Commission of the effective date of the contract and update the Commission if the termination date changes as discussed in this Order.
3. Within 30 days of the expiration of the contract, the Postal Service shall file cost, volume and revenue disaggregated by weight and country group associated with the contract, including any penalties paid.

By the Commission.

Shoshana M. Grove
Secretary