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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES GLOBAL EXPEDITED PACKAGE SERVICES 3 NEGOTIATED SERVICES AGREEMENT	Docket Nos. MC2010-28 CP2010-71

NOTICE AND REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD GLOBAL EXPEDITED PACKAGE SERVICES 3 TO THE COMPETITIVE PRODUCTS LIST AND NOTICE OF FILING OF FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL
(July 14, 2010)

In accordance with 39 C.F.R. § 3015.5 and Order No. 86,[1] the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional Global Expedited Package Services (GEPS) contract. Prices and classifications not of general applicability for GEPS contracts were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts, issued May 6, 2008 (Governors' Decision No. 08-7).[2] Subsequently, GEPS 2 was added to the competitive product list, and the contract filed in PRC Docket No. CP2009-50 served as the baseline agreement for subsequently filed functionally equivalent agreements under the GEPS 2 grouping. The Postal Regulatory Commission (Commission) determined that individual GEPS contracts may be included

[1] PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, July 23, 2008.
[2] A redacted copy of the Governors' Decision was filed on July 23, 2008. *See* United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, Docket No. CP2008-5, July 23, 2008. An unredacted copy of this Governors' Decision was filed earlier under seal. Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, Docket No. CP2008-4, May 20, 2008.

as part of the GEPS product if they meet the requirements of 39 U.S.C. § 3633 and if they are functionally equivalent to the previously submitted GEPS contracts.[3] With this request, as advised by the Commission in Order 290, the Postal Service seeks to add the GEPS 3 product grouping to the competitive products list with a new baseline agreement filed herein.[4] The contract and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. Redacted copies of the materials supporting this request include:

- Attachment 1 Statement of Supporting Justification of Frank Cebello[5]
- Attachment 2 Baseline GEPS 3 Negotiated Service Agreement
- Attachment 3 Certified statement required by 39 C.F.R. § 3015.5(c)(2)
- Attachment 4 Governors' Decision 08-7
- Attachment 5 Application for non-public treatment of materials filed under seal

I. Background

The first GEPS contract was filed on May 20, 2008.[6] Subsequently, the Commission reviewed many additional GEPS contracts with minor differences not

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[3] PRC Order No. 86, at 7.

[4] PRC Order No. 290, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, Docket No. CP2009-50, August 28, 2009. In Order No. 290, the Commission identified requirements for the establishment of new baseline instruments. In particular, the Commission advised that "[f]uture requests to implement a new baseline agreement should be filed as an MC docket since it will result in adding a new product to the product list and may result in removing a product from the product list." Id. at 3. The Postal Service is not undertaking to remove GEPS 2 from the product list at this time, because the arrangements for GEPS 2 described in Docket No. CP2009-50, which are functionally equivalent to the GEPS 1 product, are ongoing.

[5] United States Postal Service Response to Order No. 78 and Notice of Filing Information Responsive to Part 3020 of the Commission's Rules of Practice and Procedure, Docket No. CP2008-5, June 10, 2008, at Attachment A. This document is available at http://prc.gov/Docs/60/60118/CP08-5Order78resp.pdf.

[6] Notice of United States Postal Service of Filing a Global Expedited Package Services Contract, Docket No. CP2008-5, May 20, 2008.

affecting the similarity of the cost and market characteristics. This filing is on behalf of the same customer as in Docket No. CP2009-50. The contract reviewed in that docket will come to the end of its one-year term on July 31, 2010.[7] The Postal Service demonstrates below that this agreement is functionally equivalent to the previously submitted GEPS agreements. The Postal Service respectfully requests that the instant contract be considered the new "baseline" contract for future functional equivalency analyses concerning the GEPS product.[8]

II. Identification of the Additional GEPS Contract

The Postal Service believes that this additional GEPS contract fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 08-7, but understands that the Commission considers this language illustrative until the MCS is completed.[9] This agreement is set to expire one year after the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained, culminating with a favorable conclusion on review by the Commission. Because the term of the current contract ends on July 31, the anticipated implementation date of this contract is August 1, 2010.

III. Functional Equivalency of GEPS Contract

The GEPS contract currently under consideration is functionally equivalent to the GEPS 2 contracts filed previously in that it shares similar cost and market characteristics. In Governors' Decision No. 08-7, the Governors established a pricing

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[7] United States Postal Service Response to Order No. 262 concerning Termination Date of Additional Global Expedited Package Services 1 Negotiated Service Agreement and Request for Clarification, Docket No. CP2009-50, July 30, 2009.
[8] See PRC Order No. 85, Order concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9, and CP2008-10, June 27, 2008, at 8 (applying standards for the filing of functionally equivalent contracts).
[9] PRC Order No. 86, at 6.

formula and classification that ensure each GEPS contract meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each contract conform to a common description. In addition, the GEPS language proposed for the MCS requires that each GEPS contract must cover its attributable costs. The contract at issue here meets the Governors' criteria and thus exhibits similar cost and market characteristics to the previous GEPS contracts.

The functional terms of the current contract and the one used as the baseline for GEPS 2 are also the same, although other terms not directly changing the nature of the agreements basic obligations vary. The benefits of the two contracts to the Postal Service are comparable as well. Therefore, the Postal Service submits that the new contract is functionally equivalent to GEPS 2 contracts and should be added to the competitive product list as GEPS 3 to replace GEPS 2 as those agreements expire.[10]

In a concrete sense as well, this GEPS contract shares the same cost and market characteristics as the previous GEPS contracts. First, the customers for GEPS contracts are small- or medium-sized businesses that mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. In fact, this is a business that currently mails under a PRC-reviewed GEPS agreement. Prices offered under the contracts may differ depending on the volume or postage

[10] In Order No. 227, the Commission concluded, that the identified differences between the agreement presented in Docket No. CP2009-35 and the baseline agreement presented in Docket No. CP2008-5 did "not appear to be substantial." PRC Order No. 227, Order Concerning Additional Global Expedited Package Services 1 Negotiated Service Agreement, June 22, 2009, at 7 In Order No. 290, the Commission stated that the "Commission's expectation in labeling the initial GEPS contract (in Docket No. CP2008-5) as GEPS 1 was that it would be followed sequentially by additional GEPS contracts, *.e.g.*, GEPS 2, GEPS 3, etc., that exhibited sufficient variation from the initial contract to warrant being classified as a new product. Given that the initial GEPS 1 contract is expiring and that the instant contract contains additional provisions, the Commission will label the latter as GEPS 2." PRC Order No. 290, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28. 2009, at 3.

commitments made by the customers. Prices also may differ depending upon when the agreement is signed, due to the incorporation of updated costing information. These differences, however, do not alter the contracts' functional equivalency. Because the agreements incorporate the same cost attributes and methodology, the relevant characteristics are similar, if not the same, for this GEPS contract and the previously filed contracts.

Like the contract that is the subject of Docket No. CP2009-50 ("baseline agreement"), this contract also fits within the parameters outlined by the Governors' Decision establishing the rates for GEPS agreements. There are, however, differences in general terms between this contract and the CP2009-50 GEPS baseline agreement. These differences are outlined in the following paragraphs:

- Article 2 Choice of Payment Method has been added, to allow the Mailer to make a selection between two postage payment methods, through a PC Postage Provider (Option A) or through a Permit Imprint (Option B). Previous GEPS contracts filed with the Commission either included just the Permit Imprint payment method or the PC Postage Provider payment method. As a result, provisions relevant to each form of postage payment are incorporated into the GEPS contract under consideration. Such provisions include Article 6 concerning Specific Preparation Requirements under Option B, Article 9 concerning Additional Obligations of the Mailer under Option A, Article 10 concerning Additional Obligations of the Mailer under Option B, as well as Article 33 concerning Penalty for the Improper

Tender of Mail and Article 34 concerning Fraud, which apply under Option A.

- The consequences of the Mailer not meeting its minimum commitment as set forth in Article 11, paragraphs 2 and 3, have been changed, and mention of liquidated damages has been deleted.
- Confidentiality provisions. Three new provisions were added to the basic GEPS contract template to integrate elements of the Commission's rules on non-public treatment of confidential information as announced in PRC Order No. 225.[11] These are found at Article 7, paragraph 5; Article 8, paragraph 4; and Article 20.
- Pickup service. An obligation of the USPS to provide pickup service for Qualifying Mail according to an applicable local agreement, if any, was added, at Article 7, paragraph 4. Such local agreements are standard and common, enabling local postal managers to make the most efficient use of their resources and to adapt to changes in customers' and Postal Service needs within the well-established boundaries of their authority. While many GEPS customers tender mail in accordance with such agreements, such agreements were not previously referred to in the terms and conditions of the GEPS contracts. The addition of paragraph 6 to Article 17 of the Agreement maintains the *status quo* of the local parties to pickup service agreements insofar as modifications to those agreements are concerned.

[11] PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

- Reference updates. Language has been added to Article 29 to clarify that references within the agreement to International Mail Manual (IMM) or Domestic Mail Manual (DMM) provisions are intended to relate to the substance of those provisions, not to the specific numbered provision, in the event that the numbering should change while the agreement is in effect. Also, in the last sentence of Article 22, paragraph 2, "IMM 221.3" has been changed to "IMM 222.71."

Minor changes

- In Article 3, paragraphs 1 and 2, the top level domain of the website was changed.
- In Article 4(1), the definition of "Qualifying Mail," excludes Express Mail International Flat-Rate Envelope, Priority Mail International Flat-Rate Envelope, the Priority Mail International Small Flat-Rate Box, the Priority Mail International Regular/Medium Flat-Rate Box, and the Priority Mail International Large Flat-Rate Box. These exclusions were listed in Article 1 of the GEPS contract in Docket No. CP2009-50.
- Article 5's title has been changed to "Treatment of Non-Qualifying Mail." The titles of Annex 1 have been simplified.
- In Article 5, the option of the USPS accepting Non-Qualifying Mail and imposing a penalty upon the Mailer has been added.
- In Article 13(2), "shall be calculated" has been changed to "shall be enforceable and shall be calculated."
- The title of Article 18 has been changed to "Entire Agreement and

Survival." In addition, the article has been changed so that it states that the Agreement, including all Annexes and any corresponding written local pickup agreement, shall constitute the entire agreement between the Parties. Also, a final sentence has been added, which provides for the expiration of the confidentiality terms.

- In Article 22, Limitation of Liability; Insurance, paragraphs 2, 3 and 4 "rifling" has been replaced by "missing contents."

The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contract. Nothing detracts from the conclusion that the agreement is "functionally equivalent in all pertinent respects" to the CP2009-50 agreement with the same customer.[12]

Conclusion

For the reasons discussed and as demonstrated by the financial data filed under seal, the Postal Service has established that this new GEPS 3 contract is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to other GEPS contracts. Accordingly, this contract should be listed as GEPS 3 product and should be considered the baseline agreement for determining functional equivalence for additional agreements.

Respectfully submitted,

[12] PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket No. CP2008-8, June 27, 2008, at 8.

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