

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 Reseller Expedited Package Contracts 1
(MC2010-21)
Negotiated Service Agreement

Docket No. CP2011-1

ORDER APPROVING AN ADDITIONAL
GLOBAL RESELLER EXPEDITED PACKAGE CONTRACT
NEGOTIATED SERVICE AGREEMENT

(Issued October 15, 2010)

I. INTRODUCTION

The Postal Service proposes to add a specific Global Reseller Expedited Package contract to the Global Reseller Expedited Package (GREP) Contracts 1 product established in Docket No. MC2010-21. For the reasons discussed below, the Commission approves the proposed contract.

II. BACKGROUND

On October 1, 2010, the Postal Service filed a notice announcing that it has entered into an additional GREP contract.¹ The Postal Service believes the instant contract is functionally equivalent to the previously submitted GREP contract, and is supported by Governors' Decision No. 10-1, attached to the Notice and originally filed in Docket No. CP2010-36. *Id.* at 1, Attachment 3. The Notice explains that Order No. 445, which established GREP Contracts 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 1-2. Additionally, the Postal Service requested to have the contract in Docket No. CP2010-36 serve as the baseline contract for future functional equivalence analyses of the GREP Contracts 1 product.

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the instant contract is in accordance with Order No. 445. The term of the contract is three years from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3. It may, however, be terminated by either party on not less than 30 days' written notice. *Id.*, Attachment 1, at 5.

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

- Attachment 1—a redacted copy of the contract and applicable annexes;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Negotiated Service Agreement and Application For Non-Public Treatment of Materials Filed Under Seal, October 1, 2010 (Notice).

- Attachment 3—a redacted copy of Governors’ Decision No. 10–1 which establishes prices and classifications for GREP contracts, a description of applicable GREP contracts, formulas for prices, an analysis of the formulas, and certification of the Governors’ vote; and
- Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Notice advances reasons why the instant GREP contract fits within the Mail Classification Schedule language for GREP Contracts 1. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contract from the baseline GREP agreement. The Postal Service states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contract’s functional equivalency. *Id.* at 3-4. The Postal Service asserts that “[b]ecause the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this GREP contract are similar, if not the same, as the relevant characteristics of the contract filed in Docket No. CP2010-36.” *Id.* at 4.

The Postal Service concludes that its filing demonstrates that the new GREP contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GREP contract. It states that the differences do not affect the services being offered or the fundamental structure of the contract. Therefore, it requests that the instant contract be included within the GREP Contracts 1 product. *Id.* at 6.

In Order No. 551, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.²

² Notice and Order Concerning An Additional Global Reseller Expedited Package Contract Negotiated Service Agreements, October 4, 2010 (Order No. 551).

III. COMMENTS

Comments were filed by the Public Representative.³ 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 GREP contract. *Id.* at 1. He also affirms that the Postal Service's filing complies with applicable Commission rules. *Id.* The Public Representative observes that the instant contract has incidental differences from the previous GREP contract because of negotiation with individual mailers. He relates that the modifications to the instant contract are not significant enough to alter its functional equivalence with the prior GREP contract. *Id.* at 2. The Public Representative states that his review of the materials under seal indicates that the instant contract complies with the pricing formula established in Governors' Decision No. 10-1, 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. He concludes that the instant contract's terms are favorable 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 GREP Contracts 1 product that was created in Docket No. MC2010-21. First, the Commission reviews the contract to ensure that it is substantially equivalent to the contract approved in Docket No. CP2010-36, and thus belongs as part of the GREP Contracts 1 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 contract shares similar cost and market characteristics with the baseline contract. It asserts that the

³ Public Representative Comments in Response to United States Postal Service Regarding Entry Into an Additional Global Reseller Expedited Package Contract Negotiated Service Agreement, October 12, 2010 (Public Representative Comments).

instant contract meets the pricing formula and classification established in Governors' Decision No. 10-1 which comport with 39 U.S.C. 3633 and the Commission's rules. The Postal Service states that the instant contract differs from the contract in Docket No. CP2010-36 regarding customer-specific information, *e.g.*, customer's name, address, and representative, and regarding certain more general provisions, *e.g.*, payment method, applicable discounts, mail tender options, minimum revenue commitment and provisions clarifying the periodic review of the reseller's mail volume. Notice at 4-5.

The instant contract appears to be similar to the contract filed in Docket No. CP2010-36, although it differs in some minor respects relative to customer-specific information and general terms. These differences notwithstanding, the Commission concludes that the instant contract may be included in the GREPS Contracts 1 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 analyses provided under seal that accompanies the instant contract 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 contract provides that if the Postal Service's costs increase above a certain threshold, it may modify the prices under the contract. *Id.*, Attachment 1, at 4. Additionally, the contract provides that if the non-discounted published postage for Express Mail International and Priority Mail International should change, the mailer's prices may change unless the Postal Service notifies the reseller otherwise. *Id.* Both of the provisions provide the Postal Service with the flexibility to

change rates without the need to enter into a new agreement. Rate changes not of general applicability are subject to a minimum 15-day notice requirement as provided in 39 CFR part 3015. If either provision is exercised, the Postal Service must file the changed rates with the Commission under 39 CFR 3015.5. See 39 U.S.C. 3632(b)(3); see *also* Docket Nos. MC2009-24 and CP2009-20, Order No. 178, February 5, 2009. The Commission will review the revised prices for conformity with 39 U.S.C. 3633. Unless the changed rates raise new issues, additional review should not be necessary. Changes in rates should be filed in Docket No. CP2011-1.

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 three years from the effective date. The Postal Service shall notify the Commission of the effective date of the instant contract. If the instant contract 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 costs, volumes, and revenues 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. CP2011-1 is appropriately included within the GREP Contracts 1 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2011-1 is included within the Global Reseller Expedited Contracts 1 (MC2010-21) product.
2. The Postal Service shall notify the Commission of the effective date of the instant contract and update the Commission if the termination date changes as discussed in this Order.
3. Within 30 days of the expiration of the instant contract, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.
4. The Postal Service shall provide notice of changes in rates as described in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary