

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 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2011-19

ORDER APPROVING AN ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued October 25, 2010)

I. INTRODUCTION

The Postal Service proposes to add a specific Global Expedited Package Services contract to the Global Expedited Package Services 3 (GEPS 3) product established in Docket No. MC2010-28. For the reasons discussed below, the Commission approves the proposed contract.

II. BACKGROUND

On October 14, 2010, the Postal Service filed a notice announcing that it has entered into an additional GEPS 3 contract.¹ The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 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 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 1-2. In Order No. 290, the Commission approved the GEPS 2 product.² In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010-71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contract. 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. 86. The Postal Service states the instant contract is the immediate successor to the contract in Docket No. CP2010-10 that is scheduled to expire November 30, 2010. It explains that the mailer has already met the minimum commitment under its current contract and upon regulatory approval of the instant contract, the current contract will be terminated and an effective date for the new contract will be confirmed. Notice at 3. The term of the instant contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. *Id.* at 3.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, October 14, 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).

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);
- 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
- 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 GEPS 3 contract fits within the Mail Classification Schedule language for the GEPS 3 product. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contract from the baseline GEPS 3 agreement. *Id.* at 4-5. It 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 GEPS contract is similar, if not the same, as the relevant characteristics of previously filed contracts.” *Id.* at 4.

The Postal Service concludes that its filing demonstrates that this new GEPS 3 contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contract be included within the GEPS 3 product. *Id.* at 5.

In Order No. 562, 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 An Additional Global Expedited Package Services 3 Negotiated Service Agreements, October 15, 2010 (Order No. 562).

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 3 contract. *Id.* at 1. She also affirms that the Postal Service's filing complies with applicable Commission rules. *Id.* The Public Representative observes that the instant contract has differences from prior GEPS 3 contracts because of negotiation with individual mailers. She relates that the modifications to the instant contract is not significant enough to alter its functional equivalence with the baseline contract. *Id.* at 2. The Public Representative urges the Postal Service to continue to distinguish between the baseline GEPS 3 contract and subsequent GEPS contracts to ensure that the next GEPS product is established when appropriate. *Id.* Additionally, she supports the Commission's request for cost, revenue and volume data from the Postal Service at the conclusion of the instant contract to demonstrate that the product meets the requirements of 39 U.S.C. 3633. *Id.* She relates that the instant contract complies with the pricing formula established in Governors' Decision No. 08-7, 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. The Public Representative concludes that the Postal Service's use of price incentives for the mailer based upon volumes, revenues, and other terms results in benefits to both parties and lower costs for the general public. *Id.*

IV. COMMISSION ANALYSIS

The Postal Service proposes to add an additional contract to the GEPS 3 product that was created in Docket No. MC2010-28. First, the Commission reviews the contract to ensure that it is substantially equivalent to the contract approved in Docket

⁴ Public Representative Comments in Response to Order No. 562, October 25, 2010 (Public Representative Comments).

No. CP2010-71, and thus belongs as part of the GEPS 3 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. CP2010-71 pertaining to customer-specific information, e.g., customer's name, address, representative, signatory, payment method, mail tender options, and minimum revenue commitment. Notice at 4-5.

The instant contract appears to be similar to the contract filed in Docket No. CP2010-71, 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 GEPS 3 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 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 the instant contract. If the contract terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.

The Postal Service indicates that the current contract may be terminated prior to its actual expiration date of November 30, 2010. *Id.* at 3. Within 30 days of the termination date of the current contract in Docket No. CP2010-10, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with that contract, including any penalties paid.

In addition, within 30 days of the expiration of the instant contract in Docket No. CP2011-19, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the instant contract, including any penalties paid.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2011-19 is appropriately included within the GEPS 3 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2011-19 is included within the Global Expedited Package Services 3 (MC2010-28) 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 termination date of the current contract in Docket No. CP2010-10, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the current contract, including any penalties paid.

4. Within 30 days of the expiration of the instant contract in Docket No. CP2011-19, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the instant contract, including any penalties paid.

By the Commission.

Shoshana M. Grove
Secretary