

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Dan G. Blair;  
Tony L. Hammond; and  
Nanci E. Langley

Competitive Product Prices  
Global Expedited Package Services 3 (MC2010-28)  
Negotiated Service Agreement

Docket No. CP2011-54

ORDER APPROVING GLOBAL EXPEDITED PACKAGE SERVICES 4  
NEGOTIATED SERVICE AGREEMENT

(Issued January 24, 2011)

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.<sup>1</sup> For the reasons discussed below, the Commission approves the contract, but designates the proposed contract as a new product, Global Expedited Package Services 4 (GEPS 4).

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<sup>1</sup> 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, December 28, 2010 (Notice). See also Notice of the United States Postal Service of Errata to Notice of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 30, 2010.

## II. BACKGROUND

On December 28, 2010, the Postal Service filed a notice announcing its intent to enter into an additional GEPS 3 contract. In its initial filing, the Postal Service included a draft of the contract, noting that a final agreement would be executed soon. *Id.* at 1 n.2. On December 29, 2010, it submitted a redacted signed copy of the contract.<sup>2</sup> The Postal Service also submitted a non-public version of the signed agreement separately under seal. *Id.* at 1-2.

The Postal Service filed the instant contract in accordance with 39 CFR 3015.5. The term of the instant agreement will commence no sooner than February 17, 2011 and expire 5 years thereafter, unless either party terminates the agreement sooner. Contract, Attachment 1 at 7.

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

- Attachment 1—a redacted copy of the contract and an applicable annex;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08-7 (with attachments) establishing prices and classifications for GEPS contracts and a certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract, related financial information, and customer-identifying information under seal.

The Notice contends that the instant contract is functionally equivalent to the GEPS 3 baseline agreement in Docket No. CP2010-71. Notice at 3. It also asserts that the instant contract fits within the parameters outlined by Governors' Decision No. 08-7 establishing the rates for GEPS agreements. *Id.* at 4.

The Postal Service identifies several differences between the instant contract and the GEPS 3 baseline agreement, including customer-specific information, payment

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<sup>2</sup> Notice of the United States Postal Service of Filing a Signed Global Expedited Package Services 3 Negotiated Service Agreement, December 29, 2010, at 1 (Contract).

method, minimum revenue commitment, and term. *Id.* at 4-6. The Postal Service does not view these differences as affecting the fundamental structure of the contracts. *Id.* at 6

The Postal Service concludes that its filing demonstrates that the instant GEPS 3 contract complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the GEPS 3 baseline agreement. *Id.* Therefore, it requests that the Commission add the instant contract to the GEPS 3 product grouping. *Id.*

In Order No. 631, the Commission gave notice of the dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>3</sup> On January 6, 2011, Chairman's Information Request (CHIR No. 1) sought clarification of the Postal Service's filing. The Postal Service responded January 10, 2011.<sup>4</sup>

### III. COMMENTS

Comments were filed by the Public Representative.<sup>5</sup> No other interested person submitted comments. The Public Representative states that the contract appears to comply with 39 U.S.C. 3633(a) and 39 CFR 3015.5. *Id.* at 1. He notes that some terms of the instant contract differ from previous GEPS contracts, but concludes that the differences do not appear to render it not functionally equivalent. *Id.* at 2. He concludes that the instant contract comports with the pricing formula established in Governors' Decision No. 08-7, satisfies the relevant provisions of title 39, and is beneficial to the general public. *Id.* at 2-3.

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<sup>3</sup> Notice and Order Concerning Filing of Additional Global Expedited Package Services 3 Negotiated Service Agreement, December 30, 2010 (Order No. 631).

<sup>4</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, January 10, 2011, question 1 (Response). See *also* Notice of the United States Postal Service of Filing Nonpublic Materials in Response to Chairman's Information Request No. 1, January 10, 2011.

<sup>5</sup> Public Representative Comments in Response to United States Postal Service Filing of an Additional Global Expedited Package Services 3 Contract Negotiated Service Agreement, January 10, 2011 (PR Comments).

#### IV. COMMISSION ANALYSIS

As filed, the Postal Service's Notice presents two issues for the Commission to consider: (1) whether the instant contract is functionally equivalent to the baseline GEPS 3 contract filed in Docket No. CP2010-71; and (2) whether the contract satisfies 39 U.S.C. 3633.

*Functional equivalency.* The Postal Service asserts that the instant contract is substantially similar to the contract approved in Docket No. CP2010-71, and further that its "functional terms" are the same as the GEPS 3 contract approved in that docket. Notice at 3. As required when claiming a contract is functionally equivalent with an existing baseline contract, the Postal Service identifies all differences between the instant contract and the baseline GEPS 3 product. These include, among others things, the 5-year term of the contract (compared to 1 year), a high minimum revenue commitment tied to a more substantial penalty provision for not meeting the commitment, and a provision authorizing subsidiaries and affiliates, as defined in the contract, to mail at prices set forth in the contract. *Id.* at 4-5; Contract, Attachment 1 at 5. Another difference, as clarified by the Postal Service in response to CHIR No. 1, is that the pricing methodology differs from what was used to establish prices in the baseline contract.

Based on a comparison of the relevant contracts, the Commission is not persuaded that the instant contract is functionally equivalent to the baseline agreement approved in Docket No. CP2010-71. First, in its request to add GEPS 3 to the competitive product list, the Postal Service asserted, *inter alia*, that "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."<sup>6</sup> Notably, the Notice filed in this proceeding does not make that claim. Had such

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<sup>6</sup> Docket Nos. MC2010-28 and CP2010-71, Notice and Request of the United States Postal Service to Add Global Expedited 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, at 4.

a claim been made, however, it would not have been reasonable given the minimum revenue commitment under the instant contract.

Second, as the Postal Service clarified in its response to CHIR No. 1, prices established under the instant contract employ a different methodology than used in the baseline GEPS 3 agreement. Response, question 1.

Lastly, differences in contract terms distinguish this contract from the baseline GEPS 3 agreement, including the provisions extending the agreement to the mailer's subsidiaries, increasing the penalty, eliminating the option of permit imprint, and extending the duration of the contract.

Taken as a whole, these differences support the conclusion that the instant contract has market characteristics distinct from those of the baseline GEPS 3 contract. Thus, the two contracts are not functionally equivalent.

As a consequence of this conclusion, the Commission will designate the instant contract as a new product, Global Expedited Package Services 4, and add it to the competitive product list.<sup>7</sup> In addition, the Commission will treat the instant contract as the baseline for any future GEPS contracts having characteristics similar to the instant contract. Should the Postal Service wish to file additional GEPS 4 contracts, it shall, consistent with the current practice, identify all significant differences between any new GEPS 4 contract and the instant contract. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The docket referenced in the caption should be Docket No. CP2011-54. Lastly, as is customary, a redacted copy of Governors' Decision No. 08-7 should be included in the new filing along with an electronic link to it.

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<sup>7</sup> Given the long history of the GEPS product, the Commission finds it appropriate to classify GEPS 4 as a competitive product without requiring the Postal Service to amend its filing to include information pursuant to 39 CFR 3020.30 *et seq.* See, e.g., Order No. 86, Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008; and Order No. 290, Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009.

*Cost considerations.* The Postal Service contends that the instant contract and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2. It asserts that the rates set forth in the instant contract meet the criteria specified in Governors' Decision No. 08-7. *Id.* at 3.

The Public Representative concurs that the contract appears to satisfy section 3633 of title 39. PR Comments at 1.

Based on its review of the record, the Commission finds that the contract 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, an initial review of the proposed contract indicates that it comports with the provisions applicable to rates for competitive products.

*Other considerations.* The contract is scheduled to take effect no sooner than February 17, 2011 and expire 5 years thereafter, unless terminated by either party on 30 days' written notice to the other. Contract, Attachment 1 at 7. The Postal Service shall inform the Commission of the effective dates of the contract and promptly notify the Commission if the contract terminates earlier than scheduled.

In addition, within 30 days of termination 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 adds the GEPS 4 product to the competitive product list and finds that the negotiated service agreement submitted in Docket No. CP2011-54 is appropriately included within the GEPS 4 product.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. The GEPS contract filed in Docket No. CP2011-54 is added to the competitive product list as a new product, Global Expedited Package Services 4 (Docket No. CP2011-54), under Negotiated Service Agreements, Outbound International.
2. The Postal Service shall inform the Commission of the effective date of this contract and notify it if the contract terminates earlier than scheduled, as discussed in this Order.
3. Within 30 days of the expiration of the instant contract in Docket No. CP2011-54, 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 Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket No. CP2011-54. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

PART B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

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Outbound International

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Global Expedited Package Services 4 (CP2011-54)

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