

ORDER NO. 1746

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Reseller Expedited Package Contracts
Negotiated Service Agreements

Docket No. MC2013-51

Competitive Product Prices
Global Reseller Expedited Package Contracts 2
(MC2013-51)
Negotiated Service Agreements

Docket No. CP2013-64

ORDER ADDING GLOBAL RESELLER EXPEDITED PACKAGE
CONTRACTS 2 TO THE COMPETITIVE PRODUCT LIST
NEGOTIATED SERVICE AGREEMENT

(Issued June 13, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Global Reseller Expedited Package (GREP) Contracts 2 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Global Reseller Expedited Package Contracts 2 to the Competitive Products List and Notice of Filing a Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 24, 2013 (Request).

II. BACKGROUND

On May 24, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents and the negotiated service agreement that the Postal Service seeks to have designated as the baseline agreement for the GREP Contracts 2 product (Agreement). In the Request, the Postal Service asserts that GREP Contracts 2 is a competitive product that establishes prices and classifications “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. In support of its Request, the Postal Service submitted a copy of Governors’ Decision No. 11-6,² proposed Mail Classification Schedule (MCS) language, a statement supporting the Request, and the Agreement. The Postal Service later separately filed a certification of compliance with 39 U.S.C. § 3633(a) and supporting financial workpapers.³ In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the Agreement, customer-identifying information, and related financial information filed under seal. Request, Attachment 1.

On May 29, 2013, the Commission issued Order No. 1733, establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ Notice of the United States Postal Service of Filing Supplemental Materials, May 28, 2013 (Supplement). As noted in Order No. 1733, for purposes of 39 C.F.R. § 3015.5(a), the Commission considers May 28, 2013 (the day the Postal Service submitted all information required under that section), to be the date of filing of the Request. Notice and Order Concerning Filing of Global Reseller Expedited Package Contracts 2 Negotiated Service Agreement, May 29, 2013, at 2 (Order No. 1733). In the future, the Postal Service should file all of its supporting information contemporaneously with its Request.

Chairman's Information Request No. 1 was issued with respect to the Request.⁴ The Postal Service responded to CHIR No. 1 on June 10, 2013.⁵

III. COMMENTS

Comments were filed by the Public Representative.⁶ No other interested person submitted comments.

The Public Representative concludes that the Postal Service's Request to add GREP Contracts 2 to the competitive product list is appropriate and that the prices under the Agreement satisfy the requirements of 39 U.S.C. § 3633(a). PR Comments at 3. She notes that the proposed GREP Contracts 2 product differs from the existing GREP Contracts 1 product in that the GREP Contracts 2 product includes Outbound Single-Piece First-Class Package International Service prices as well as Express Mail International and Priority Mail International prices. *Id.* She finds that it would be reasonable to designate the Agreement as the baseline agreement for the GREP Contracts 2 product. *Id.*

The Public Representative identifies several concerns with the MCS language proposed by the Postal Service. The Public Representative asserts that the MCS language should include information about the baseline agreement for GREP Contracts 2, use consistent language to describe the meaning of "FCPIS," and reflect the expiration date for the Agreement and the contract approved in Docket No. CP2011-55. *Id.* at 4.

Additionally, the Public Representative argues that the Postal Service should be required to notify the Commission of the effective date of the Agreement. *Id.* at 4-5.

⁴ Chairman's Information Request No. 1, June 6, 2013 (CHIR No. 1).

⁵ Response of the United States Postal Service to Chairman's Information Request No. 1, June 10, 2013 (Response to CHIR No. 1).

⁶ Public Representative Comments on Postal Service Request to Add Global Reseller Expedited Package Contracts 2 to the Competitive Products List, June 4, 2013 (PR Comments).

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, the supporting data filed under seal, the Response to CHIR No. 1, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning GREP Contracts 2 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must give due regard to the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service states that other shippers who provide services similar to GREP Contracts 2 constrain its bargaining position and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment 3 at 3. The Postal Service states that analogous international delivery services are available from private consolidators, freight forwarders, and integrators. *Id.* at 4. It further states that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner but opines that the "net impact on small businesses is positive," because a GREP agreement offers small businesses "an additional option for shipping articles internationally, beyond the services offered by competitors." *Id.* at 5. Although the Postal Service asserts that it has no specific data relating to customer views regarding the Request, it reasons that the contract partner is "presumably aware" that other entities offer competitive services. *Id.* at 4-5.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that GREP Contracts 2 is appropriately classified as competitive and is added to the competitive product list.

Product list and MCS language. The Postal Service asserts that the Agreement is the immediate successor to a contract the Commission approved for inclusion in the GREP Contracts 1 product in Docket No. CP2011-55 (2010 Contract). Request at 4. As such, the Postal Service submitted proposed MCS language adding the GREP Contracts 2 product to the Global Reseller Expedited Package Contracts group described in section 2510.7 of the draft MCS. Request, Attachment 2B. The proposed MCS language is drafted as a series of amendments to section 2510.7 (Global Reseller Expedited Package Contracts).

As the Public Representative notes, section 2510.7 of the draft MCS lists the 2010 Contract as scheduled to expire in February 2016. PR Comments at 4. Article 14, paragraph 2, of the Agreement specifies that “[i]f an Effective Date for this Agreement is established, the 2010 Global Reseller Agreement [that is, the 2010 Contract] shall terminate at 11:59pm on the day prior to the Effective Date of this Agreement.” Request, Attachment 4 at 9. However, Article 14, paragraph 2, also refers to “applicable obligations arising under” the 2010 Contract. *Id.* CHIR No. 1 sought to clarify which terms of the 2010 Contract will continue in effect after the termination date of the 2010 Contract. See CHIR No. 1. The Response to CHIR No. 1 discusses particular terms of the 2010 Contract that do not continue in effect, but does not identify or explain which terms do continue in effect.⁷ The only term of the 2010 Contract explicitly identified by the Postal Service as continuing in effect is Article 19, concerning governing law. *Id.* at 6.

The Response to CHIR No. 1 suggests that the 2010 Contract specifically provides that certain terms will continue in effect even if the 2010 Contract is terminated early. For instance, Article 12, paragraph 3, of the 2010 Contract provides that “[i]n the event of early termination under this Article, the Reseller shall notify its PC Postage Provider and the Resellers’ Designated Customers of the date the discounted prices will

⁷ See, e.g., Response to CHIR No. 1 at 5 (“Reseller is *released* from the obligation set forth in Paragraph 2 of Article 8 of the 2010 Global Reseller Agreement” (emphasis added)).

no longer be available to then [sic] through this Agreement.”⁸ The Response to CHIR No. 1 also indicates that the Postal Service expects that at least one other term of the 2010 Contract, Article 19, will also continue in effect in the event of early termination, even though the 2010 Contract includes no specific statement to that effect. Response to CHIR No. 1 at 6.

Article 14, paragraph 2, of the Agreement appears to provide that certain terms that the 2010 Contract specifically stated would continue in effect in the event of early termination will not, in fact, continue in effect when the 2010 Contract is terminated by the Agreement.⁹ Thus, although the 2010 Contract terminates on the day before the Agreement takes effect, certain of its terms will continue in effect after termination. To clarify the continuing obligations of the parties, the Postal Service shall file with the Commission a list of the terms of the 2010 Contract that continue in effect after termination (that is, on and after the effective date of the Agreement).¹⁰ The Postal Service shall file the list contemporaneously with its notice of the effective date of the Agreement.

For purposes of the draft MCS, however, because the 2010 Contract’s termination date is set by the Agreement filed in these dockets, it is appropriate to remove the 2010 Contract from the draft MCS.

⁸ Docket No. CP2011-55, 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, December 28, 2010, Attachment 1 at 8 (2010 Notice).

⁹ The 2010 Contract contains no specific provision concerning the survival of Article 10 (customs duties and taxes), but Article 14, paragraph 2 of the Agreement provides that Article 10 will not continue in effect. See 2010 Notice, Attachment 1 at 8; Request, Attachment 4 at 9. The Postal Service explains that this is because Article 10 of the 2010 Contract is supplanted by an identical Article 10 contained in the Agreement. Response to CHIR No. 1 at 5.

¹⁰ For instance, the Postal Service argues that there is no need for Article 10 of the 2010 Contract to continue in effect because the Agreement contains an identical Article 10. Response to CHIR No. 1 at 5. This rationale would appear to apply equally to Article 19 of the 2010 Contract which is identical to Article 19 in the Agreement, but which the Postal Service states will continue in effect. *Id.* at 6; 2010 Notice, Attachment 1 at 10; Request, Attachment 4 at 10. In its filing, the Postal Service should reconcile this apparent inconsistency.

The Public Representative identified two concerns with the Postal Service's proposed MCS language. PR Comments at 4. The first is that the proposed MCS language includes no indication that the Agreement would become the baseline agreement for the GREP 2 product. As discussed below, the Commission designates the Agreement as the baseline agreement for purposes of the GREP Contracts 2 product. Language to that effect will be included in the GREP Contracts 2 draft MCS product description.

The Public Representative also asserts that the proposed MCS language and the Request assign different meanings to the abbreviation "FCPIS." *Id.* The proposed MCS language refers to the FCPIS product as "Outbound Single-Piece First-Class Package International Service," while the Request refers to it as "First-Class Package International Service."¹¹ The product name preferred by the Postal Service appears to be "Outbound Single-Piece First-Class Package International Service."¹² To eliminate future confusion on this point, the competitive product list shall be revised to refer to "Outbound Single-Piece First-Class Package International Service." No change to the proposed MCS language for the GREP Contracts 2 product relating to FCPIS is necessary.

The Commission will make the conforming changes discussed above and other minor changes to the draft MCS language regarding the GREP Contract 2 product and the Global Reseller Expedited Package Contracts group product description proposed

¹¹ Request, Attachment 2B; Request at 5. This inconsistency is reflected in the inconsistency between the competitive product list and the draft MCS. As a result of Order No. 1461, the name of the product that appears on the competitive product list is "First-Class Package International Service." Docket No. MC2012-44, Order No. 1461, Order Approving Request for Product List Transfer, September 10, 2012, at 12 (Order No. 1461). The name of the product that appears on the Draft MCS competitive product list is "Outbound Single-Piece First-Class Package International Service." (Draft) Mail Classification Schedule, Revision Date April 1, 2013, at 205, available at http://www.prc.gov/prc-docs/home/whatsnew/Draft%20MCS%2004012013_3114.pdf.

¹² See Docket No. MC2012-44, Request of the United States Postal Service to Transfer Outbound Single-Piece First-Class Mail International Packages and Rolls to the Competitive Product List, August 10, 2012, Attachment C at 9 (2012 Request). *But see* 2012 Request at 1, where the Postal Service requests that the Commission "add a nearly identical new product, titled 'First-Class Package International Service™' (FCPIS), to the competitive product list."

by the Postal Service. The Commission's revisions to the draft MCS to reflect approval of the proposal are shown below the signature line of this Order.

Cost considerations. Because GREP Contracts 2 is a competitive product, the Postal Service must show that a negotiated service agreement included within the product covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

After it filed its Request, the Postal Service submitted a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Supplement, Attachment 2C. In addition, the Postal Service subsequently filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on its analysis of the supporting data, the Commission finds that the Agreement comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the GREP Contracts 2 product.¹³ Following current practice, in any future request to add a negotiated service agreement to the GREP Contracts 2 product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and conditions that impose new obligations or new requirements on any party to the negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2013-51. In conformity with current practice, a redacted copy of Governors' Decision No. 11-6 should be included with the request.

¹³ The Postal Service requested that the Agreement "be considered as the new 'baseline' contract for future functional equivalency analysis concerning the Global Reseller Expedited Package Contracts product." Request at 5. Because baseline agreements are generally established for each product within a grouping, this appears to be a request to consider the Agreement as the baseline agreement for the GREP Contracts 2 product, not for the GREP Contract group as a whole. See, e.g., section 2510.3.6 of the draft MCS (establishing separate baseline agreements for GEPS 3 and GEPS 4) and section 2510.6.6 of the draft MCS (establishing separate baseline agreements for Global Plus 1C and Global Plus 2C).

Follow-up submissions. The Agreement is scheduled to expire one year after the expiration or effective date of the Agreement, unless either party terminates the Agreement earlier. Request, Attachment 4 at 7. The Postal Service shall promptly notify the Commission of the effective date of the Agreement and the termination date of the contract that is the subject of Docket No. CP2011-55 as discussed above. Upon termination of the Agreement by either party, the Postal Service shall inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the Agreement, including any penalties paid.

In conclusion, the Commission approves GREP Contracts 2 as a new product and designates the Agreement as the baseline agreement for the GREP Contracts 2 product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Global Reseller Expedited Package Contracts 2 (MC2013-51 and CP2013-64) is added to the competitive product list as a new product under Negotiated Service Agreements, International. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The competitive product list is amended to refer correctly to "Outbound Single-Piece First-Class Package International Service." The revision to the competitive product list appears below the signature of this Order and is effective immediately.

3. The Postal Service shall notify the Commission of the effective date of the Agreement and notify it if the Agreement terminates earlier than scheduled, as discussed in this Order.
4. Contemporaneously with its notice of the effective date of the Agreement, the Postal Service shall file with the Commission a list of the terms of the contract approved in Docket No. CP2011-55 that continue in effect after the termination of that contract.
5. Within 30 days of the expiration or termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.
6. The draft Mail Classification Schedule will be modified as discussed in the body of this Order and as shown below the signature line of this Order.
7. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the changes made in this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2013-51 and CP2013-64. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Outbound Single-Piece First-Class Package International Service

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Global Reseller Expedited Package Services 2

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Global Reseller Expedited Package Contracts

2510.7.1 Description

- a. Global Reseller Expedited Package Contracts provide discounted prices to a reseller for Priority Mail Express International (PMEI), ~~and/or~~ Priority Mail International (PMI), and Outbound Single-Piece First-Class Package International Service (FCPIS) for destinations serviced by ~~Express Mail International and Priority Mail International~~ PMEI, PMI, and FCPIS. The reseller offers prices based on its contract to its customer (reseller's customers).
- b. Preparation requirements are the same as for all ~~Express Mail International and/or Priority Mail International~~ PMEI, PMI, and FCPIS shipments with the following exceptions:
 - The reseller's customers are required to use PC Postage from an authorized PC Postage vendor for payment of postage.
 - The reseller's customers may be required to prepare specific shipments according to country specific requirements.
 - The reseller's customers may be required to tender shipments through limited acceptance channels.
- c. The reseller must be capable of either tendering at least 5,000 pieces on international mail to the Postal Service, or paying at least \$100,000.00 in international postage to the Postal Service.
- d. For a reseller to qualify, the contract must cover its attributable costs.

2510.7.2 Size and Weight Limitations

Priority Mail Express International

	Length	Height	Thickness	Weight
Minimum	none	none	none	See Note 1
Maximum	36 inches			
	79 inches in combined length and girth			

Notes

1. Country-specific restrictions may apply as specified in the International Mail Manual.

Priority Mail International

	Length	Height	Thickness	Weight
Minimum ²	5.5 inches	none	3.5 inch	none
Maximum	42 inches			70 pounds
	79 inches in combined length and girth			

Notes

1. Weight and other exceptional size limits based on shape and destination country restrictions may apply as specified in the International Mail Manual.
2. Items must be large enough to accommodate postage, address and other required elements on the address side.

Outbound Single-Piece First-Class Package International Service

Packages (Small Packets)

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	<u>Large enough to accommodate postage, address, and other required elements on the address side</u>			<u>none</u>
<u>Maximum</u>	<u>24 inches</u>			<u>4 pounds</u>
	<u>Length plus height plus thickness of 36 inches</u>			

Rolls

	<u>Length</u>	<u>Length plus twice the diameter</u>	<u>Weight</u>
<u>Minimum</u>	<u>4 inches</u>	<u>6.75 inches</u>	<u>none</u>
<u>Maximum</u>	<u>36 inches</u>	<u>42 inches</u>	<u>4 pounds</u>

2510.7.3 Minimum Volume or Revenue Requirements

The reseller must commit to varying minimum volumes or postage of ~~Express Mail International, Priority Mail International, or both,~~ PMEI, PMI, and/or FCPIS, on a quarterly or annualized basis.

2510.7.4 Price Categories

The incentives are based on the volume or revenue commitment above a specified cost floor.

The following price categories are available for the product specified in this section:

- Global Reseller Expedited Package Contracts – Priority Mail Express International
- Global Reseller Expedited Package Contracts – Priority Mail International
- Global Reseller Expedited Package Contracts – Outbound Single-Piece First-Class Package International Service

2510.7.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand Service: PMEI and PMI only
- International Ancillary Services (2615)
 - International Certificate of Mailing: FCPIS, PMI Flat Rate Envelopes, PMI Small Letter Post Flat Rate Boxes, PMI parcels purchased without insurance only (2615.1)

- International Insurance: PMEI merchandise, PMI parcels, PMI Large and Medium Flat Rate Boxes only (2615.5)
- Outbound Competitive International Registered Mail: FCPIS, PMI Flat Rate Envelopes and Small Letter Post Flat Rate Boxes only (2615.2)
- International Return Receipt: subject to availability in the destination country for registered FCPIS, PMI Flat Rate Envelopes, PMI Small Letter Post Flat Rate Boxes, and insured PMI parcels only (2615.3)

2510.7.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Global Reseller Expedited Package Services 1
Baseline Reference
Docket Nos. MC2010-21 and CP2010-36
PRC Order No. 445, April 22, 2010
Included Agreements
CP2011-1, expires November 30, 2013
CP2011-55, expires February 16, 2016
CP2012-14, expires June 30, 2014
~~CP2012-21, expires TBD~~
CP2013-20, expires January 26, 2014
CP2013-49, expires TBD
- Global Reseller Expedited Package Services 2
Baseline Reference
Docket Nos. MC2013-51 and CP2013-64
PRC Order No. ^, June ^, 2013
Included Agreements
CP2013-64, expires June ^, 2014