

ORDER NO. 2169

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

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

Docket No. CP2014-71

ORDER APPROVING ADDITIONAL GLOBAL RESELLER EXPEDITED PACKAGE
CONTRACTS 2
NEGOTIATED SERVICE AGREEMENT

(Issued August 26, 2014)

I. INTRODUCTION

The Postal Service seeks to include an additional Global Reseller Expedited Package Contracts 2 (GREP 2) agreement (Agreement) within the GREP 2 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of Filing a Functionally Equivalent Global Reseller Expedited Package Contracts 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 15, 2014 (Notice).

II. BACKGROUND

Agreements included within the GREP Contracts 2 product offer discounted prices for Priority Mail Express International, Priority Mail International, and Outbound Single-Piece First-Class Package International Service to U.S.-based consolidators, freight forwarders, and large shipping companies. These companies in turn serve as resellers that market shipping services at discounted prices to their customers, especially small- and medium-size businesses.

On August 15, 2014, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the GREP 2 product and requests that the Agreement be added to the existing GREP 2 product. Notice at 4. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the GREP 2 product, the Agreement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that redacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Notice, Attachment 4.

The Postal Service will notify the Mailer of the effective date of the Agreement no later than 30 days after receiving the approval of the entities that have oversight responsibilities for the Postal Service. Notice, Attachment 1 at 7. The Agreement is set to expire one calendar year after the effective date. *Id.*

In Order No. 2158, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; and appointed a Public Representative.²

² Notice and Order Concerning Additional Global Reseller Expedited Package Contracts 2 Negotiated Service Agreement, August 18, 2014 (Order No. 2158).

III. COMMENTS

The Public Representative filed comments on August 25, 2014.³ No other comments were received.

Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes the instant contract should be added to the existing GREP 2 product. PR Comments at 2 The Public Representative states that the financial workpapers filed by the Postal Service indicate that the prices in the instant contract are sufficient to generate revenues that cover costs and satisfy 39 U.S.C. § 3633. *Id.*

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the GREP 2 product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. In Order No. 1746, the Commission approved the addition of GREP Contracts 2 to the competitive product list and designated an agreement as the baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the GREP Contracts 2 product.⁴

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the GREP 2 product. Notice at 4. It asserts that the Agreement fits within the draft Mail Classification Schedule language for the GREP 2 product. *Id.* at 3.

³ Public Representative Comments on Postal Service Notice Concerning Filing of a Functionally Equivalent Global Reseller Expedited Package Contracts 2 Negotiated Service Agreement, August 25, 2014 (PR Comments).

⁴ See Docket Nos. MC2013-51 and CP2013-64, Order Adding Global Reseller Expedited Package Contracts 2 to the Competitive Product List Negotiated Service Agreement, June 13, 2013, at 8-10 (Order No. 1746).

The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms, but states that prices may differ. *Id.* The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁵

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission therefore finds that the Agreement may be included within the GREP 2 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

⁵ Differences include, among others, effective dates, language in an article describing the scope of the agreement and surviving obligations, identity of persons to receive legal notice under article 27, intellectual property marks, and minor corrections to the annexes. *Id.* at 3.

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. The addition of the Agreement to the GREP 2 product will not cause cost coverage for the product to fall below 100 percent because, as the Commission found in the FY 2013 Annual Compliance Determination (ACD), the product as a whole covers its attributable costs.⁶ Consequently, the Commission finds that the addition of the Agreement to the GREP 2 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the GREP 2 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the GREP 2 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the GREP 2 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The contract is set to expire one calendar year after the effective date. Notice, Attachment 1 at 7.

The Postal Service shall promptly notify the Commission of the effective date of the Agreement. Upon termination of the Agreement by either party, the Postal Service shall promptly 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

⁶ Docket No. ACR2013, Annual Compliance Determination Report, March 27, 2014, at 86-91.

file costs, volumes, and revenues associated with the Agreement, disaggregated by weight and country group.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2014-71 is included within the Global Reseller Expedited Package Contracts 2 (MC2013-51) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
3. The Postal Service shall promptly notify the Commission of the date of termination if the Agreement is terminated early by either party.
4. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues.

By the Commission.

Shoshana M. Grove
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2500 **Negotiated Service Agreements**

2510 **Outbound International**

2510.7 **Global Reseller Expedited Package Contracts**

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 2

Baseline Reference

Docket Nos. MC2013-51 and CP2013-64

PRC Order No. 1746, June 13, 2013

Included Agreements

CP2014-71, expires TBD
