

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

FILING OF ADDITIONAL GLOBAL EXPEDITED PACKAGE  
SERVICES 1 NEGOTIATED SERVICE AGREEMENTS

Docket Nos.  
CP2008-11  
CP2008-12  
CP2008-13

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING OF FUNCTIONALLY  
EQUIVALENT GLOBAL EXPEDITED PACKAGE SERVICES 1 NEGOTIATED  
SERVICE AGREEMENTS**  
(August 5, 2008)

In accordance with 39 CFR § 3015.5 and Order No. 86,<sup>1</sup> the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into three additional Global Expedited Package Services 1 (GEPS 1) contracts. Prices and classifications not of general applicability for GEPS 1 contracts were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts, issued May 6, 2008 (Governors' Decision No. 08-7).<sup>2</sup> The Postal Regulatory Commission (Commission) has determined that individual GEPS contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 USC § 3633 and if they are functionally equivalent to the GEPS contract submitted previously.<sup>3</sup> The

<sup>1</sup> Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, July 23, 2008.

<sup>2</sup> A redacted copy of the Governors' Decision was filed on July 23, 2008. See United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, Docket No. CP2008-5, July 23, 2008. An unredacted copy of this Governors' Decision was filed earlier under seal. Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, Docket No. CP2008-4, May 20, 2008.

<sup>3</sup> Order No. 86, at 7.

contracts and supporting documents establishing compliance with 39 USC § 3633 and 39 CFR § 3015.5 are being filed separately under seal with the Commission. The Postal Service demonstrates below that the agreements are functionally equivalent to the GEPS agreement submitted previously and to each other.<sup>4</sup> Accordingly, these contracts should be included within the GEPS 1 product.

### ***Identification of the Additional GEPS 1 Contracts***

The Postal Service believes that the three additional GEPS contracts fit within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 08-7, but understands that the Commission considers this language illustrative until the MCS is completed.<sup>5</sup> All three agreements are set to expire one year after the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained, culminating with a favorable conclusion on review by the Commission.

### ***Confidentiality***

While the Commission intends to address broader confidentiality issues in the future,<sup>6</sup> the Postal Service maintains that the contracts, related financial information, names of GEPS 1 customers and certain portions of the Governors' Decision should remain confidential. The contracts contain pricing and other information related to mailer and Postal Service processes and procedures for handling the mail tendered under each contract. Related financial data contain cost and pricing information showing how prices are developed. Prices and other contract terms relating to the

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<sup>4</sup> The first GEPS contract was filed on May 20, 2008. See Notice of United States Postal Service of Filing of a Global Expedited Package Services Contract, Docket No. CP2008-5, May 20, 2008.

<sup>5</sup> Order No. 86, at 6.

<sup>6</sup> *Id.* at 7.

parties' processes and procedures are highly confidential in the business world so the Postal Service protects them in accordance with industry standards. The ability of the Postal Service to negotiate individual contracts would be severely compromised if prices and other information pertaining to these types of agreements were publicly disclosed. Also, public disclosure would compromise the ability of respective shippers to negotiate favorable shipping services contracts in the future. Names of customers should remain confidential due to the substantial likelihood that the Postal Service's competitors would use such information to target their efforts and undercut the Postal Service's prices.

The Governors' Decision authorizes management to execute contracts containing prices that fall within a range determined by formulas that the Governors have established, producing results that comply with 39 USC § 3633(a)(1)-(3). Public disclosure of these formulas and related information would seriously undermine postal management's leverage in negotiations with customers. This pricing information is clearly of a commercial nature, and the Postal Service is aware of no competitor or private company of comparable size and scope that releases such information to the public. The specific information about price calculations in the Governors' Decision thus continues to merit confidential treatment.

### ***Functional Equivalency of GEPS 1 Contracts***

The three GEPS 1 contracts under consideration are functionally equivalent in that they share similar cost and market characteristics and therefore should be classified as a single product, along with the GEPS 1 contract filed previously.<sup>7</sup> With

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<sup>7</sup> In Order No. 85, for example, the Commission concluded, that despite different revenue thresholds, the two Global Plus 1 contracts at issue, were "functionally equivalent in all pertinent respects." Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9 and CP2008-10, June 27, 2008, at 8.

their earlier GEPS Decision, the Governors have established a pricing formula and classification that ensure each contract meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each contract conform to a common description. In addition, the GEPS language proposed for the MCS requires that each GEPS 1 contract must cover its attributable costs. The contracts at issue here meet the Governors' criteria and thus exhibit similar cost and market characteristics.

In a concrete sense as well, these GEPS 1 contracts share the same cost and market characteristics. First, the customers for the GEPS 1 contracts are smaller or medium-sized businesses who mail their products directly to foreign destinations using either Express Mail International, Priority Mail International or both. Prices offered under the contracts may differ depending on the volume or postage commitments made by the customers. Prices also may differ depending upon when the agreement is signed, as updated costing information is incorporated. These differences, however, do not change the fact that the contracts are functionally equivalent, because the total costs associated with GEPS 1 contracts are volume-variable. Because the agreements incorporate the same cost attributes and methodology, the relevant characteristics are similar, if not the same, for the three GEPS 1 contracts currently presented, as well as the contract filed previously.

Other provisions reflect relatively minor differences between the mailers, including a link between completion of the regulatory review process and expiration of a

previous or existing agreement, where applicable.<sup>8</sup> Liquidated damages provisions differ as a result of negotiations with individual mailers and a general balancing of subjective factors such as the volume or postage commitment made by the customer, the customer's prior mailing history and the potential for future business from the customer. Other differing provisions may reflect syntax distinctions and addition or deletion of provisions dealing with legal mechanics reached in the three sets of negotiations. The Postal Service does not view any such differences as affecting the fundamental structure of the contracts.

As demonstrated, the cost and market characteristics of these agreements are thus substantially similar. Accommodation of the respective mailers does nothing to detract from the conclusion that these agreements are "functionally equivalent in all pertinent respects."<sup>9</sup>

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<sup>8</sup> The agreements generally provide that if all applicable reviews have not been completed at the time an older agreement expires, then the mailer must pay published prices until some alternative becomes available.

<sup>9</sup> Order No. 85, at 8.

**Conclusion**

For the reasons discussed and as demonstrated by the financial data filed under seal , the Postal Service has established that the three new GEPS 1 contracts are in compliance with the requirements of 39 USC § 3633 and are functionally equivalent. Accordingly, these contracts should be added to the existing GEPS 1 product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorneys:

Anthony F. Alverno  
Chief Counsel, Global Business

Kenneth N. Hollies  
Susan M. Duchek

475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2990; Fax -5329  
susan.m.duchek@usps.gov  
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