

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

Before Commissioners:

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

Competitive Product Prices
Global Expedited Package Services 1 (CP2008-5)
Negotiated Service Agreement

Docket No. CP2008-25

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(Issued October 8, 2008)

In this docket, the Postal Service proposes to add a specific Global Expedited Package Service (GEPS) contract to the Global Expedited Package Services 1 (GEPS 1) product established in Docket No. CP2008-5. For the reasons discussed below, the Commission approves the Postal Service's proposal.

I. BACKGROUND

On September 22, 2008, the Postal Service filed a notice, docketed as Docket No. CP2008-25, announcing that it has entered into an additional GEPS 1 contract with

an individual mailer.¹ The Postal Service believes the contract, which was filed pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5, is functionally equivalent to the GEPS 1 product established in Docket No. CP2008-5. *Id.* at 3-5.

In addition, the Postal Service contends that the contract is in accord with Order No. 86. *Id.* at 1. In Order No. 86, the Commission found that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633 and if they are substantially equivalent to the initial GEPS 1 contract.²

In support of its proposal, the Postal Service filed the contract and supporting materials under seal. The Governors' Decision supporting the GEPS 1 product was filed in consolidated Docket No. CP2008-5.³

In Order No. 110, the Commission gave notice of the initiation of this docket, appointed a Public Representative, and provided the public with an opportunity to comment.⁴

II. COMMENTS

Comments were filed by the Public Representative.⁵ The Public Representative's comments focus on three areas: (1) functional equivalency; (2) confidentiality; and (3) pricing, cost coverage, and contribution. The Public Representative concludes that the contract at issue satisfies the requirements of title 39. Public Representative Comments at 1. The Public Representative also believes that

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, September 22, 2008 (Notice).

² Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

³ Docket No. CP2008-5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, July 23, 2008.

⁴ PRC Order No. 110, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, September 24, 2008 (Order No. 110).

⁵ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, October 2, 2008 (Public Representative Comments).

the contract is substantially equivalent and functionally equivalent to the contract approved by the Commission in Docket No. CP2008-5 and that the contract's pricing appears to comport with title 39. *Id.* at 2-5. Accordingly, the Public Representative contends that this contract should be included as part of the GEPS 1 product. *Id.* The Public Representative's comments also address the short time span for responses to the Postal Service's proposal. *Id.* at 5.

III. COMMISSION ANALYSIS

The Postal Service proposes to add an additional contract under the GEPS 1 product that was created in Docket No. CP2008-5. In Order No. 86, the Commission noted that:

If the Postal Service determines that it has entered into an agreement substantially equivalent to GEPS 1 with another mailer, it may file such a contract under rule 3015.5. In each case, the individual contract must be filed with the Commission, and each contract must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new contract and the pre-existing product group, GEPS 1. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.

Order No. 86 at 7. First, the Commission reviews the contract to ensure that it is substantially equivalent to the pre-existing contracts classified as part of the GEPS 1 product and thus belongs as part of that product. Second, the Commission must ensure that the contract at issue in this proceeding independently satisfies the requirements of rules 3015.5 and 3015.7 and of 39 U.S.C. 3633.

Functional equivalence. The Postal Service contends that the instant contract is functionally equivalent to the one submitted in Docket No. CP2008-5 and that, accordingly, it should be grouped under the GEPS 1 product. Notice at 3-5. It argues this contract shares the same cost and market characteristics as the previously classified GEPS 1 contracts, in particular, those of small or medium-sized businesses

that mail products directly to foreign destinations using either Express Mail International, Priority Mail International, or both. *Id.* at 4.

The Postal Service also identifies potential “incidental” and “minor” differences between the proposed new contract and the pre-existing product group, GEPS 1. *Id.* at 4-5. In particular, it points out that prices may vary due to volume commitments, signing dates of the agreements, existence of previous agreements, and other case specific and negotiation related factors. *Id.* The Postal Service concludes that these minor differences do not affect the fundamental nature or structure of the contract. *Id.* at 5-7.

The Postal Service’s general description of differences between the proposed GEPS 1 contract and that approved in Docket No. CP2008-5 does not sufficiently inform the Commission (or the public) of the specific differences between them. Future notices should identify with greater particularity the “relatively minor differences” (*id.* at 4) between the contracts. This should be possible without revealing information the Postal Service deems confidential, but, if not, such information may be filed under seal.

The Public Representative notes that in Order No. 110, the Commission uses the term “substantially equivalent” as the standard for assessing the comparability of the instant contract to the initial GEPS 1 contract. Public Representative Comments at 3. Referencing Commission Order No. 43, he recommends that the term “functionally equivalent” be used when discussing negotiated service agreements. *Id.* at 3-4.

In Order No. 86, the Commission used the term “substantially equivalent.” Order No. 86 at 7. The term “functionally equivalent” was employed to consider negotiated service agreements arising under the Postal Reorganization Act. When the Postal Service files a contract which, as in this proceeding, it argues should be grouped within a pre-existing product, the Commission examines the contract to determine whether there are significant differences that might preclude such a classification. Beyond this, however, any distinction between the terms is not material to the Commission’s

conclusions in this proceeding. The Commission has reviewed the contract and finds that it may be appropriately classified within the GEPS 1 product.⁶

Cost considerations. The Commission reviews new competitive products to ensure that they meet the requirements of rules 3015.5 and 3015.7 and of 39 U.S.C. 3633. The Commission has reviewed the financial analysis provided under seal that accompanies the agreement in this docket 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.

The Postal Service shall notify the Commission of the effective date of the instant contract. In addition, the Postal Service shall promptly notify the Commission when the contract terminates no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

Notice. The Public Representative expresses concern that the public notice, as published in the *Federal Register*, provided little time for the public to respond to the Postal Service filing. Public Representative Comments at 8. The Commission is sympathetic to that concern. However, under the Postal Accountability and Enhancement Act an abbreviated comment period is contemplated. See 39 U.S.C. 3632(b)(3). Interested persons can access more timely information as the

⁶ The differences between the contract at issue in this case and the originally classified GEPS 1 contract do not appear to be substantial. However, this initial finding does not preclude the Commission from revisiting this issue at a future date if circumstances warrant.

Commission's website (www.prc.gov) provides immediate notification of filings with the Commission.

It is Ordered:

1. The contract filed in Docket No. CP2008-25 is included within the product category Global Expedited Package Services 1 (CP2008-5).
2. The Postal Service shall notify the Commission of the effective date and the termination date of the contract as discussed in this Order.

By the Commission.

Steven W. Williams
Secretary