

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

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

Docket No. CP2009-1

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
FILING OF ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT
(October 14, 2008)

In response to Order No. 113¹, the Public Representative hereby comments on the October 3 Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement (“Notice”), a negotiated service agreement (NSA) with an individual mailer. For this competitive products pricing schedule *not of general applicability*,² the Postal Service must demonstrate that the contract will be in compliance with 39 USC 3633(a): It will not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and enable competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service’s total institutional costs).

¹ Commission Order 113, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, October 6, 2008.

² See 39 CFR 3015.5.

The Notice is persuasive. Each element of 39 USC 3633(a) appears to be met by this GEPS contract.

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter, documentation in its original (not redacted) version. Discussion of the salient issues follows.

Accountability and Confidentiality

The Postal Service Notice contains a rationale for maintaining confidentiality concerning pricing, processes which enable discounted pricing, the attendant formulae and other contractual terms which are matters of commercial sensitivity.³ Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in this matter, providing a brief explanation for maintaining the confidentiality of each aspect of the matters remaining under seal.

The Postal Accountability and Enhancement Act of 2006 (P.L. 109-435), (“PAEA”) provided the Commission with expanded oversight powers and set in place a regulatory framework for increased transparency and accountability. Ultimately, the Commission shall be the arbiter of what information, in matters before it, shall be under seal or made public.⁴ The Postal Service has demonstrated a willingness to establish facts for public scrutiny and justify the extent of confidentiality prudent in recent dockets

³ Postal Service Notice, at 2-3.

⁴ 39 U.S.C. 504(g)(3)(A).

for GEPS contracts. The Public Representative acknowledges the cooperative and artful manner in which the Postal Service has sought increased clarity in these GEPS contracts. With such assistance from the Postal Service, the Commission may be able to review such requests with “celerity, certainty, and security.”⁵ The Postal Service should be encouraged to seek additional GEPS negotiated service agreements (NSAs), because they can benefit the parties to the NSAs and the general mailing public.

The Public Representative notes respectfully that there are currently two *fora* in which the public can follow the Commission docket: the Postal Regulatory website (on the World Wide Web at *prc.gov*), and the *Federal Register*, both of which predated the PAEA, and both of which are somewhat arcane to the general public. “Accountability” and “enhancement” might suggest much more openness.

In *Comments in Response to Notice of Price Adjustment for Market-Dominant Postal Products and Limited Classification Changes* (Docket No. R2008-1) (March 3, 2008, at 1-2), Public Representative Kenneth E. Richardson noted that:

Among the factors listed in §3622 of the PAEA to be considered by the Commission is “the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters.” (§3622(c)(3).) Thus, the PAEA distinguishes the interests of the general public from the interests of business mail users and enterprises in the private sector

⁴ Nineteenth-century legislation called for contractors to carry the mail with “celerity, certainty, and security.” Rather than repeatedly enter this phrase in ledgers, postal officials devised the shorthand symbol of three asterisks — (* * *) — giving rise to the phrase, “Star Route.” See Postal Act of 1845, March 3, 1845, Ch 43, 2 Stat. 738 (28th Congress, 2d Session) §18.

engaged in the delivery of mail matter other than letters. Having been designated to represent the interests of the general public, the Public Representative focused on the interests of the general public as distinct from the interests of the other groups included in §3622(c)(3) of the PAEA.

The general public has not purchased “obstructed-view” seating, “cargo” or “coach” passage for these proceedings. These First-Class customers deserve more open access to the processes by which their Postal Service is operated and regulated. Commission filings should be accessible to any interested Americans. Postal Service filings with the Commission (like wanted posters) should be available for public perusal at Postal Service retail outlets, and available through the Postal Service website.

Functional Equivalency

The Postal Service presents the instant contract as functionally equivalent to the Global Express Package Services 1 (GEPS 1) product established in Docket No. CP2008-5. Commission Order 113 acknowledges the Postal Service’s cite of Order No. 86, which established GEPS 1 as a product. The Commission held that additional contracts may be included as part of the GEPS 1 product provided they meet the requirements of 39 U.S.C. 3633 and if they are functionally equivalent to the initial GEPS 1 contract filed in Docket No. CP2008-5.⁶

⁶ See Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86); See also Docket No. CP2008-5, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts (Governors’ Decision No. 08-7), May 6, 2008, and Docket No. CP2008-5, United States Postal Service Notice of Filing Redacted Copy of Governors’ Decision No. 08-7, July 23, 2008.

The Notice proposes that this contract fully comports with materials filed in accordance with 39 CFR § 3015.5, under the Rules of Practice and Procedure regarding requests to modify the product lists within the Mail Classification Schedule. Specifically, GEPS 1 meets the description of services provided in Attachment A, and falls between the price floor and ceiling formulae proposed in Attachment B to the Governors' Decision No. 08-7 (CP2008-5).⁷ Because this contract does fall with these parameters and pricing guidelines, it would appear to be a functionally equivalent GEPS agreement.

These are contracts that provide for incentives for Express Mail International and Priority Mail International. Preparation requirements include using USPS-supplied labeling software (or a software that has the same functionality as the USPS-supplied labeling software). The software allows for preparation of address labels and Customs declarations and submission of electronic shipment information to the Postal Service, as well as prepayment of Customs duties and taxes and pre-advice for foreign Customs authorities by the Postal Service. Most importantly, for a mailer to qualify, the contract must cover its attributable costs. In these functions, it would appear that the GEPS 1 agreement complies with the template proposed in Docket No. CP2008-5. In other words, this agreement appears to be functionally equivalent to the contract the Commission approved in that docket.

A model to examine the functional equivalency of GEPS contracts might appear to track principles on congruency proposed by Euclid: "Things that are equal to the

⁷ *Op. cit.*; Note: The Commission consolidated Docket No. CP2008-4 with CP2008-5.

same thing are equal to one another;” and “if two angles of a triangle are equal, then the sides opposite them will be equal.”⁸ One can note that, if a proposed GEPS contract falls within the pricing shell established by the Governors’ Decision No. 08-7, then it should cover its attributable costs. If such a contract covered its attributable costs, that would comport with 39 USC 3633(a)(2) (“ensure that each competitive product covers its costs attributable”), and enable parts (1) and (3) of 39 USC 3633(a) – prohibiting subsidization of competitive products by market dominant products; and ensuring that all competitive products collectively cover their share of institutional costs. In this case, all requisite conditions are met.

Conclusion

The Public Representative acknowledges that the pricing in the present GEPS 1 contract comports with provisions of title 39. This contract appears to be able to generate sufficient revenue to cover its attributable costs, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service’s total institutional costs.⁹ In addition to having the mailer prepare mailings for less costly handling by the Postal Service, the contract employs pricing incentives based upon volumes and other provisions favorable to both the Postal Service and the public.

⁸ See, generally, Euclid’s *Elements*, Book One, Common Notions (from *Euclid’s Elements*, Trans. Thomas L. Heath, 2002, 2007, Green Lion Press, Sheridan Books Inc, Ann Arbor, MI ISBN 978-188809-18-7, Library of Congress Card No. 2002 107461).

⁹ 39 C.F.R. § 3015.7(c).

The Public Representative respectfully submits the preceding Comments for the Commission's consideration.

Paul L. Harrington
Public Representative

901 New York Ave., NW Suite 200
Washington, D.C. 20268-0001
(202) 789-6867; Fax (202) 789-6883
e-mail: paul.harrington@prc.gov