

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

Before Commissioners:

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

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

Docket No. CP2009-1

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(Issued October 17, 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 October 3, 2008, the Postal Service filed a notice, docketed as Docket No. CP2009-1, 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. 113, 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

The Public Representative filed comments concluding that the contract is functionally equivalent to the contract approved by the Commission in Docket No. CP2008-5 and that the new GEPS 1 contract's pricing appears to comport with 39 U.S.C. 3633(a).⁵ The Public Representative also suggests that the Postal Service filings with the Commission be made more accessible to the general public by requiring

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, October 3, 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. 113, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, October 6, 2008 (Order No. 113).

⁵ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, October 14, 2008, at 2, 4-6. (Public Representative Comments).

that they be posted at Postal Service retail outlets and on the Postal Service website. *Id.* at 4.

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 5.⁶

The Commission has reviewed the contract and finds that it may be appropriately classified within the GEPS 1 product.⁷

Cost considerations. The Commission reviews new competitive products to ensure that they meet the requirements of rules 3015.5 and 3015.7 and 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 suggests that accessibility to Postal Service filings would be improved if they were posted at Postal Service retail facilities and on its

⁶ In Order No. 114, issued after the Postal Service filed the instant Notice, the Commission found that the Postal Service's general description of these differences deficient. PRC Order No. 114, October 8, 2008, at 4. To reiterate, future notices must provide greater specificity. *See id.*

⁷ 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.

website. Public Representative Comments at 4. The suggestion fails to adequately consider the nature of the filing (a contract not of general applicability). Posting notice of such filings at retail facilities would not appear to be necessary and, in any event, would appear to be administratively burdensome. The Commission is confident that interested persons receive sufficient notice of these filings through the Commission's website (*www.prc.gov*) and through the *Federal Register*. In addition, the Public Representative serves an important public policy in these proceedings by representing the interests of the general public.

It is Ordered:

1. The contract filed in Docket No. CP2009-1 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