

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. CP2009-15

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(Issued December 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 December 2, 2008, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.¹ GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS agreements, and is supported by the Governors' Decision filed in Docket No. CP2008-5.² *Id.* at 1-2. It further notes that in 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 if 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. CP2008-5.³ *Id.* at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. It submitted the contract and supporting material under seal, and attached a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2) to the Notice. *Id.* at 1-2. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department certifies that the contract complies with 39 U.S.C. 3633(a).

The Notice addresses reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1, explains expiration terms, and discusses the Postal Service's interest in confidential treatment for the contract and

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, December 2, 2008 (Notice).

² See 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 United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, July 23, 2008.

³ See PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

related material.⁴ *Id.* at 2-3. It also provides the Postal Service's rationale for concluding that the instant contract is functionally equivalent to the initial contract filed in Docket No. CP2008-5. The Postal Service requests that this contract be included within the GEPS 1 product. *Id.* at 3-5.

In Order No. 144, the Commission gave notice of this docket, appointed a Public Representative, and provided the public with an opportunity to comment.⁵

II. COMMENTS

Comments were filed by the Public Representative.⁶ The Public Representative's comments concluded 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 competitive product requirements in 39 U.S.C. 3633(a). Public Representative Comments at 2. The Public Representative also notes that the contract may represent new or increased volume and could provide additional opportunities for sale of merchandise to other countries. *Id.*

Comments were also filed by the Express Delivery and Logistics Association (XLA).⁷ XLA does not object to the "merits" of the agreement under consideration, but rather it alleges the Postal Service receives "unequal regulatory treatment" compared to other international mail or delivery services. XLA asserts that the Postal Service has regulatory advantages in terms of customs clearance.

⁴ Contract expiration is tied to one year after the Postal Service notifies the customer that all necessary approvals and reviews have been obtained. *Id.* at 2.

⁵ Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, December 5, 2008.

⁶ Public Representative Comments in Response to Order No. 144 December 12, 2008 (Public Representative Comments).

⁷ Comments of Express Delivery and Logistics Association Pursuant to PRC Order 144, December 12, 2008 (XLA Comments).

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 term of GEPS contracts is the same in the instant case; a one year period. Additionally, the Postal Service states that the contract also requires payment through permit imprint. *Id.*

The Postal Service also identifies potential “incidental” or “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 or postage commitments, signing dates of the agreements which may result in the inclusion of updated costing information or the existence of previous or existing agreements.⁸ Language was included in the instant agreement to clarify the intent of the agreement to offer other products and services to the customer under the same regulatory standards as apply to mailers in general. *Id.* at 5. Also, the proposed agreement has a different notice requirement which changes the mailers advance notification of mailing obligation which requires the mailer to provide notice of intent to mail and to comply with acceptance times and scheduling procedures at the acceptance site. *Id.* The Postal Service represents this will allow the mailer and acceptance sites to work together to accommodate their respective scheduling requirements. *Id.*

The Postal Service notes in the instant contract, the liquidated damages provision is different from agreements previously approved based upon negotiation with individual mailers and the effort to balance case-specific factors identified during the process of development of the agreement such as volume or postage commitment, customer’s prior mailing history and the potential for future business from the customer. *Id.* It concludes that these differences are minor and do not affect the “fundamental nature or structure of the contracts.” *Id.*

The Commission has reviewed the contract and finds that it may be appropriately classified within the GEPS 1 product.⁹

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.

⁸ The Postal Service notes that some of the agreements may provide that if all applicable reviews have not been completed at the time a previous agreement expires, the mailer must pay published prices until some alternative becomes available. In the instant case, this provision is not included because this is a new customer.

⁹ 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 finding does not preclude the Commission from revisiting this issue at a future date if circumstances warrant.

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 indicates that this contract will terminate one year after it notifies the customer that it has received all necessary regulatory approvals. The Postal Service shall notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

XLA's Comments. XLA asserts that the Postal Service enjoys regulatory advantages in terms of inbound and outbound customs treatment. XLA Comments, at 1. It does not object to the instant agreement. The issue raised by XLA is beyond the scope of this proceeding. The issues presented by the Postal Service's filing are whether the proposed agreement is consistent with the policies of sections 3632, 3633, and 3642 of title 39 and with the Commission's standards for functional equivalence in Docket No. CP2008-5. If XLA believes that the regulatory advantages it cites fall within the Commission's purview, it would need to develop its claim more fully.

In conclusion, the Commission approves this Global Expedited Packages Services 1 contract as a new contract within the GEPS 1 product.

It is Ordered:

1. The contract filed in Docket No. CP2009-15 is included within the product category Global Expedited Package Services 1 (CP2008-5).
2. The Postal Service shall notify the Commission when the contract terminates.

By the Commission.

Steven W. Williams
Secretary