

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

COMPETITIVE PRODUCT PRICES
GLOBAL EXPEDITED PACKAGE SERVICES 1 (CP2008-5)
NEGOTIATED SERVICES AGREEMENT

Docket No.
CP2009-19

**NOTICE OF UNITED STATES POSTAL SERVICE FILING OF FUNCTIONALLY
EQUIVALENT GLOBAL EXPEDITED PACKAGE SERVICES 1 NEGOTIATED
SERVICE AGREEMENT**

December 23, 2008

In accordance with 39 C.F.R. § 3015.5 and Order No. 86,¹ the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract. 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).² 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 U.S.C. § 3633 and if they are functionally equivalent to the previously submitted GEPS contracts.³ The contract and supporting documents establishing compliance with 39

¹ PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, July 23, 2008.

² 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.

³ PRC Order No. 86, at 7.

U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission, although a redacted copy of the certified statement required by 39 C.F.R. § 3015.5(c) (2) is attached for the contract.⁴ The Postal Service demonstrates below that the agreement is functionally equivalent to the previously submitted GEPS agreements.⁵ Accordingly, this contract should be included within the GEPS 1 product.

Identification of the Additional GEPS 1 Contract

The Postal Service believes that this additional GEPS contract fits 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.⁶ This agreement is 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,⁷ the Postal Service maintains that the contract, related financial information, names of GEPS 1 customers, and certain portions of the certified statement required by 39 C.F.R. § 3015.5(c)(2) should remain confidential. The contract contains pricing and

⁴ As indicated in its response to Order No. 95, the Postal Service believes that the redacted information concerns sensitive, commercial information relating to pricing factors and customer identities and that this information should therefore remain confidential. United States Postal Service Response to Notice and Order Concerning Global Expedited Package Services 1 Negotiated Service Agreements and Notice of Filing Redacted Copy of Certifications, Docket Nos. CP2008-11, CP2008-12, and CP2008-13, August 13, 2008.

⁵ 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. Additional GEPS contracts were filed subsequently. .

⁶ PRC Order No. 86, at 6.

⁷ *Id.* at 7. See also PRC Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, August 13, 2008.

other information related to mailer and Postal Service processes and procedures for handling the mail tendered under the contract. Related financial data and portions of the certified statement contain cost and pricing information showing how prices are developed. Prices and other contract terms relating to the parties' processes and procedures are highly confidential in the business world, and 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.

Furthermore, 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. 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.

Functional Equivalency of GEPS 1 Contracts

The GEPS 1 contract under consideration is functionally equivalent to the GEPS 1 contracts filed previously, in that they share similar cost and market characteristics, and they therefore should be classified as a single product.⁸ With their earlier GEPS Decision, the Governors established a pricing formula and classification that ensure each contract meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated

⁸ 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." PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9 and CP2008-10, June 27, 2008, at 8.

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 contract at issue here meets the Governors' criteria and thus exhibits similar cost and market characteristics to the previous GEPS 1 contracts.

In a concrete sense as well, this GEPS 1 contract shares the same cost and market characteristics as the previous GEPS 1 contracts. First, the customers for GEPS 1 contracts, including this one, are smaller or medium-sized businesses which mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. The term of GEPS contracts is the same – basically a one-year period. The contracts also require payment through permit imprint. 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, due to the incorporation of updated costing information. These differences, however, do not alter the contracts' functional equivalency 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 this GEPS 1 contract and the previously filed contracts.

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.⁹ In addition, language was added to clarify this agreement's purpose, in that other Postal Service products and services are

⁹ Some of 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. This is a new customer, however, so this provision is not included.

available to the customer, but under the same regulatory standards as applied to mailers in general. Also, the proposed agreement contains a simpler notice requirement, changing the mailer's advance notification of mailing obligation. In some previously approved contracts, the mailer was required to provide at least a one week advance notice of mailing. But with this new agreement, the mailer is required to provide notice of intent to mail and to conform to acceptance times and scheduling procedures at the acceptance site. The modified language will allow individual mailers and acceptance sites to work together to accommodate their respective scheduling needs.

The liquidated damages provision also differs from other previously approved agreements, but only as a result of negotiations with individual mailers and a general balancing of case-specific 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. The Postal Service does not view any such differences as affecting the fundamental nature or structure of the contracts.

As demonstrated, the cost and market characteristics of this agreement are substantially similar to those of previously filed GEPS contracts. Incidental differences to accommodate the respective mailers do nothing to detract from the conclusion that these agreements are "functionally equivalent in all pertinent respects."¹⁰

Conclusion

For the reasons discussed and as demonstrated by the financial data filed under seal, the Postal Service has established that this new GEPS 1 contract is in compliance

¹⁰ PRC Order No. 85, at 8.

with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to other GEPS 1 contracts. Accordingly, this contract should be added to the existing GEPS 1 product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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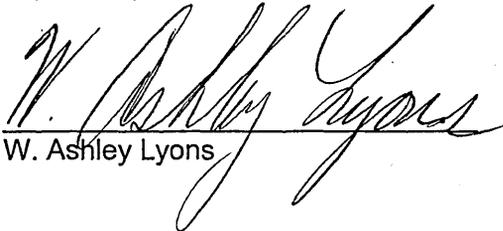
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Certification of Prices for the Global Expedited Package Services Contract with
[REDACTED]

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department am familiar with the prices for the Global Expedited Package Services Contract with [REDACTED]. The prices contained in this Contract were 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), which established prices by means of price floor and ceiling formulas.

I hereby certify that the numerical [REDACTED] values underlying the prices in the [REDACTED] [REDACTED] Contract are the appropriate [REDACTED] to use in the formulas and represent the best available information. The prices, resulting in a [REDACTED] coverage of [REDACTED] percent for the applicable prices, exclusive of pickup on demand and international ancillary services fees, are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the Agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from Global Expedited Package Services Contracts should be much smaller. The Agreement with [REDACTED] [REDACTED] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.


W. Ashley Lyons