

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

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. 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. CP2009-35

NOTICE AND ORDER CONCERNING FILING OF ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(Issued June 4, 2009)

I. BACKGROUND

On June 1, 2009, 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 contracts, and is supported by the Governors' Decision filed in Docket No. CP2008-5.² Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, June 1, 2009 (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.

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 contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 1 and 2, respectively.⁴ *Id.* at 1-2. On June 3, 2009, the Postal Service filed revised information under seal to replace information originally filed under seal and an updated Certification of Compliance with 39 U.S.C. 3633.⁵ The term of the contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice addresses reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service explains that the instant contract is functionally equivalent to the GEPS 1 contracts filed previously because it shares similar cost and market characteristics and, therefore, the contracts should be classified as a single product. *Id.* at 3. It states that in Governors' Decision No. 08-7, a pricing formula and classification system was established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service affirms that the instant contract demonstrates its functional equivalence with the previous GEPS 1 contracts because of several factors: the contract term of one year which applies to all GEPS 1 contracts, requirement of payment through permit imprint, and its total costs are volume variable as are the total costs associated with all GEPS 1 contracts. *Id.* at 4. It explains that even though prices may be different based

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

⁴ Attachment 1 to the Notice consists of a redacted version of the contract. Attachment 2 is a redacted Certification of Compliance with 39 U.S.C. 3633.

⁵ Notice of United States Postal Service Filing (Under Seal) of Revised Information and Revised Certification, June 3, 2009.

on volume or postage commitments made by the customers, these differences do not affect the contracts' functional equivalency because the total costs associated with GEPS 1 contracts are volume variable.

The Postal Service also states the instant contract has minor differences reflected in the language of this agreement compared to other GEPS 1 contracts. *Id.* These differences include provisions which reflect differences between the mailers including: (1) language which addresses the connection between completion of the regulatory review process and expiration of a previous or existing agreement, if applicable;⁶ (2) terms which clarify that other Postal Service products are available to the customer subject to the same regulatory standards as other mailers in general; (3) exclusion of certain flat rate products from the mail qualifying for discounts; (4) requiring the mailer to provide notice of intent to mail and to conform with the acceptance times and scheduling procedures at the acceptance site; (5) specific liquidated damages terms negotiated with this mailer; (6) terms to explain the mailer's volume and revenue commitment calculation upon early termination of the contract; and (7) clarifying language for regulatory entity obligations related to the contract or revisions to update terms or references from a prior agreement. *Id.* at 4-6.

The Postal Service states that these differences related to particular mailers are "incidental differences" and do not change the conclusion that these agreements are functionally equivalent in a substantive aspect. *Id.* at 6.

The Postal Service requests that this contract be included within the GEPS 1 product. *Id.*

II. NOTICE OF FILING

The Commission establishes Docket No. CP2009-35 for consideration of matters related to the contract identified in the Postal Service's Notice.

⁶ The Postal Service states that some of the contracts generally provide that if all applicable reviews have not been completed at the time an older contract expires, the mailer must pay published prices until some alternative becomes available. Because in the instant contract the mailer is a new customer, this provision is not included.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than June 11, 2009. The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

It is Ordered:

1. The Commission establishes Docket No. CP2009-35 for consideration of the matters raised in this docket.
2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than June 11, 2009.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary