

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

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(Issued June 22, 2009)

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 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 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 Notice at 1.

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 the information originally filed under seal and provided an updated certification of compliance with 39 U.S.C. 3633.⁵

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.

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.

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 advances reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service contends 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. Notice at 3. It states in Governors' Decision No. 08-7 a pricing formula and classification system were established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service suggests that several factors demonstrate the functional equivalence of the instant contract with the previous GEPS 1 contracts, including (1) the cost of each contract conforms to a common description; (2) the customers represent small and medium-sized firms that send products to foreign destinations using EMI and PMI; (3) the contracts last for one year;⁶ and (4) postage must be paid through permit imprint. *Id.* at 4. The Postal Service explains that even though prices may be different based on volume or postage commitments made by the customers, or because of when the agreement is signed due to updated costing information, these differences do not affect the contracts' functional equivalency because the agreements incorporate the same cost attributes and methodology. *Id.*

The Postal Service acknowledges that the instant contract provisions reflect minor differences between the mailers. *Id.* In particular, it points out the following distinctions in the instant contract: terms which define the correlation between completion of regulatory obligations of the parties and the expiration of a previous or

⁶ The Postal Service states that the definition of the "effective" date in Article 2 is somewhat different than the first GEPS agreement but this does not have a significant impact on the term of the agreement, the product cost or its market characteristics.

existing agreement are not included;⁷ clarification of the customer's ability to obtain additional Postal Service products under the same standards applicable to mailers in general; exclusion of certain flat rate products from mail eligible for discounts; simpler notice requirements, particular liquidated damage provisions; specific terms which explain the conditions applicable to early termination; and language explaining regulatory obligations and updated terms. *Id.* at 6. The Postal Service asserts that these differences do not disqualify the instant contract from being grouped with the GEPS 1 product. *Id.*

In Order No. 221, the Commission gave notice of this docket, appointed a Public Representative, and provided the public with an opportunity to comment.⁸

II. COMMENTS

Comments were filed by the Public Representative.⁹ No other interested parties submitted comments. The Public Representative states that each element of 39 U.S.C. 3633(a) appears to be met by this additional GEPS 1 contract. Public Representative Comments at 1. He determines that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2. The Public Representative states that the Postal Service provided sufficient data for Commission review and states that the pricing in the instant GEPS 1 contract appears to comport

⁷ See Errata to Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, June 5, 2009 (Errata). The Postal Service filed the Errata to its original notice which corrected a footnote applicable to the review of the instant contract by the Commission which states that the contract does not reference expiration of any existing or previous contracts because this is the first agreement filed with the Commission on behalf of this customer; therefore, the provision was not required.

⁸ Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, June 4, 2009 (Order No. 221).

⁹ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, June 12, 2009 (Public Representative Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Comments on United States Postal Service Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, June 12, 2009. The motion is granted.

with provisions of title 39. *Id.* at 3. He affirms that his review of the materials filed under seal indicates that the instant contract complies with the pricing formula for GEPS 1 contracts. The Public Representative concludes that the contract appears to be functionally equivalent to the other contracts within the GEPS 1 (CP2008-5) classification. *Id.* at 5. He also states that the terms of the agreement appear beneficial to the general public. *Id.* at 5-6.

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 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 3-6. It asserts 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 EMI, PMI, or both. *Id.* at 4. As stated above, the Postal Service also affirms that the instant contract and all other GEPS 1 contracts have a duration of one year and require payment through permit imprint. *Id.*

Also, as stated previously, the Postal Service identifies various differences between the instant contract and the pre-existing product group, GEPS 1. *Id.* at 4-6. These differences in contract provisions, which the Postal Service characterizes as minor, reflect particular distinctions between the mailers. For example, the contract clarifies that other Postal Service products are available to the customer subject to the same regulatory standards as other mailers in general, but exclude certain flat rate products from the mail qualifying for discounts. *Id.* at 5. The contract also includes a simpler advance notice of mailing requirement. *Id.* Further, the Postal Service states that the liquidated damages terms negotiated with this mailer are different from some, but not all, previously approved contracts. *Id.*

Additionally, the Postal Service added terms to explain the mailer's volume and revenue commitment calculation upon early termination of the contract and language which clarifies regulatory obligations related to the contract or revisions to update terms or references from a prior agreement. *Id.* at 5-6. Finally, language which addresses the connection between completion of the regulatory review process and expiration of a previous or existing contract is not included in the instant contract. The Postal Service concludes that these differences are minor and do not affect the conclusion that these contracts are "functionally equivalent in all pertinent respects." *Id.* at 6.

Initially, GEPS 1 was characterized as a shell classification to provide pricing incentives for EMI and/or PMI for all destinations served by EMI and PMI. To qualify for GEPS 1 service, mailers must be capable of tendering on an annual basis either at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in

international postage to the Postal Service. The pricing incentives are based on the volume or revenue commitment above a specified cost floor. Each of the principal features of these contracts appears to be largely the same.

Against this backdrop, the Commission has grouped specific GEPS 1 contracts within the GEPS 1 product. In doing so, however, the Commission has routinely signaled the preliminary nature of this finding and that it may revisit the issue in the future if circumstances warrant. See, e.g., Docket Nos. CP2009-11 *et seq.*, Order Concerning the Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements, August 22, 2008, at 5, n.8. Notwithstanding some differences among GEPS 1 contracts and different market characteristics of mailers, the Commission finds it appropriate to group the instant contract within the GEPS 1 product.

¹⁰ In large part, this conclusion is influenced by the nature of the service provided by the Postal Service, essentially a transport service initially to a domestic office of exchange and subsequently to a foreign office of exchange for delivery by a foreign post. Moreover, no opposition or concerns have been expressed to grouping these contracts within one product.

Cost considerations. The Commission reviews new competitive products to ensure that they meet the applicable 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 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

¹⁰ 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.

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 of the scheduled termination date of this agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2009-35 is appropriately included within the GEPS 1 product.

It is Ordered:

1. The contract filed in Docket No. CP2009-35 is included within the product category Global Expedited Package Services 1 (CP2008-5).
2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if the termination date changes as discussed in this Order.

By the Commission.

Steven W. Williams
Secretary