

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 1 (CP2008-4)
Negotiated Service Agreement

Docket No. CP2009-52

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
FILING OF ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(July 31, 2009)

In response to Order No. 253¹, the Public Representative hereby comments on the July 21 Notice of United States Postal Service Filing of an additional Functionally Equivalent Global Expedited Package Services 1 (GEPS-1) Negotiated Service Agreement (Notice). This negotiated service agreement (NSA) was forged with an individual mailer for handling of a group of competitive products.

The Notice is persuasive. This NSA is consistent with the policies of 39 U.S.C. 3632, with regard to "Action of the Governors"; section 3622, "Modern rate regulation"; and section 3642, with regard to adding new products to the Mail Classification List (MCL), notice and publication. Furthermore, each pertinent element of 39 USC 3633(a) appears to be met by this GEPS-1 contract.

¹ Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 22, 2009.

Compliance with Statutory Requirements

The instant Notice is the third of four GEPS-1 NSAs recently submitted to the Commission for review. Like its predecessors in Dockets No. CP2009-50 and -51, this Notice and supporting data (as filed, under seal) indicate that the proposed CP2009-52 contract is appropriately categorized as a Competitive Product, and is functionally equivalent (*f ~*) to the other contracts within the GEPS-1 (CP2008-4) rubric. Analysis reveals this product to be a GEPS-1 product. Additionally, all its terms fall within the guidelines set by Governors' Decision No. 08-7, regarding Docket No. CP2008-4 and its follow-up CP2008-5, filed July 23, 2008. The NSA, and its accompanying Notice comply with all relevant requirements of title 39 and the Commission's procedural rules as codified in 39 CFR.

For a competitive products pricing schedule *not of general applicability*,² the Postal Service must demonstrate that the contract will be in compliance with 39 USC 3633(a): It will not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and enable competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs).

Like its Docket CP2009-50 and -51 antecedents, this NSA is a one-year contract, with minimum mailing volume requirements for the customer to earn discounts. GEPS-1

² See 39 CFR 3015.5.

products also stipulate mail preparation and electronic data exchange requirements for the customer. The GEPS-1 formula appears to be beneficial to both parties in this NSA. The pricing, while updated to reflect appropriate increases in costs, still comports with the pricing shell in Governors' Decision 08-7. Accordingly, this NSA is (indirectly) beneficial to the general public.

To comply with Order No. 247 in Docket[s] MC2009-30 and CP2009-40,³ the Postal Service should include with its filing a redacted copy of the Governors' Decision and certification. Governors' Decision No. 08-7 is over one year old. Locating the redacted version in online archives is an unnecessary hurdle for the layperson. This need not be an onerous task for the Postal Service when filing multiple sequential NSA notices. For a group of varietal contracts, each relying on the same Governors' Decision for ratemaking authority, inclusion of the Governors' Decision in the first, and clear reference to the recent "lead" Notice in each subsequent filing, might meet the spirit of the Commission's instruction that each docket should be self-contained. While competitive NSA filings (properly) include much data under seal, permitting the maximum transparency possible is desirable. The Postal Service's legitimate commercial interests in keeping contract data confidential can thereby be balanced with the general public's right to review rates, classifications and operating practices of the Postal Service.

³ Order Concerning Priority Mail Contract 14 Negotiated Service Agreement, July 14, 2009, at 6.

For review purposes, comparing the successive GEPS-1 notices might suggest a bright line rule: If a contract's terms place it squarely within the pricing and classification "shell" of a Governors' Decision already approved by the Commission, then it follows that:

- a.) The NSA under scrutiny is the *f~* (functional equivalent) of the approved antecedent.
- b.) The *f~* NSA, like its antecedent, complies with the 3-pronged requirements of pertinent element of 39 USC 3633(a).
- c.) When the *f~* NSA under scrutiny comports with title 39 cost-coverage requirements, the only remaining question is whether the Notice complies with title 39 and CFR notice and publication requirements.

As a practical matter, the implied step d.) *Whether a Notice complies with title 39 and CFR notice and publication requirements*; is a prima facie determination (based upon the contents of the Notice itself).

When all 4 conditions in the above construct can be positively asserted, then NSAs *f~* with an antecedent NSA for competitive products – featuring a pricing schedule *not* of general applicability -- comport with all legal requirements, and merit approval by the Commission. This might enable a more expeditious review for competitive NSAs.

Conclusion

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter, documentation in its original (not

redacted) version. The Public Representative acknowledges the pricing in the present GEPS-1 contract comports with provisions of title 39. This contract appears to be able to generate sufficient revenue to cover its attributable costs, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.⁴ Indeed, the instant agreement is a renewal (with minor modifications – “incidental differences”⁵) of an existing one-year agreement with a mailer. That previous GEPS-1 NSA was approved by the Commission. In addition to having the mailer prepare mailings for less costly handling by the Postal Service, the contract employs pricing incentives based upon volumes and other provisions favorable to both the Postal Service and the public.

The Public Representative respectfully submits the preceding Comments for the Commission's consideration.

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⁴ 39 C.F.R. § 3015.7(c).

⁵ Notice, at 6.