

ORDER NO. 285

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Dan G. Blair; and
Tony L. Hammond

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

Docket No. CP2009-58

ORDER CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT

(Issued August 24, 2009)

I. INTRODUCTION

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. CP2008-4. For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. BACKGROUND

On August 7, 2009, the Postal Service filed a notice announcing that it has entered into an additional 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 1 contracts, and is supported by the Governors' Decision filed in Docket No. CP2008-4.² 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 1-2.

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. The term of the instant contract is one year from the date the Postal Service notified the customer that all necessary regulatory approvals have been received.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain the contract and supporting documents under seal;
- Attachment 2—a redacted copy of Governors' Decision No. 08-7 which establishes prices and classifications for GEPS contracts;
- Attachment 3—redacted copy of the contract and supporting material;

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 7, 2009 (Notice).

² See Docket No. CP2008-4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

³ See Docket No. CP2008-5, PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

- Attachment 4—a certified statement required by 39 CFR 3015.5(c)(2).

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 satisfies the pricing formula and classification system established in Governors' Decision No. 08-7. In addition, it states that several factors demonstrate the contract's functional equivalence with the previous GEPS 1 contracts, including the following: the customers are small or medium-sized businesses that mail directly to foreign destinations using EMI and/or PMI; the contract term of one year applies to all GEPS 1 contracts; the contracts have similar cost and market characteristics; and each requires payment through permit imprint. *Id.* at 3-4. It asserts that even though prices may be different based on volume or postage commitments made by the customers or updated costing information, these differences do not affect the contract's functional equivalency because the GEPS 1 contracts share similar cost attributes and methodology. *Id.* at 4-5.

The Postal Service also identifies other provisions which it states reflect incidental differences between mailers. These include provisions that clarify the correlation between regulatory oversight and contract expiration, and the availability of other Postal Service products and services;⁴ exclude certain flat rate products from the mail qualifying for discounts; simplify mailing notice requirements and scheduling; modify mail tender locations; clarify the mailer's volume and revenue commitment in the event of early termination; specify liquidated damages terms; and update certain provisions in the prior contract in minor aspects.⁵ *Id.* at 5-6.

⁴ 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. In the instant case, the Postal Service seeks approval of a GEPS 1 contract with a new customer.

⁵ The Postal Service states that the instant contract is the same as the contract approved by the Commission in Docket No. CP2009-50, PRC Order No. 262, Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 29, 2009 (Order No. 262). It asserts the only differences are the liquidated damages provisions and tender provisions. *Id.* at 2, n.4.

The Postal Service concludes that this contract is functionally equivalent to previous GEPS 1 contracts and requests that it be included within the GEPS 1 product. *Id.*

In Order No. 274, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.⁶

III. COMMENTS

Comments were filed by the Public Representative.⁷ No other interested person 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. *Id.* at 1. 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 established in Governors' Decision No. 08-7, is functionally equivalent to the other contracts within the GEPS 1 (CP2008-4) classification, and is appropriately established as a competitive product. *Id.* at 3. He concludes that the terms of the agreement appear beneficial to the Postal Service and the general public. *Id.*

IV. 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

⁶ PRC Order No. 274, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, August 12, 2009 (Order No. 274).

⁷ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, August 19, 2009 (Public Representative Comments).

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 2-7. 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.*

The Postal Service identifies various differences between the instant contract and the pre-existing product group, GEPS 1. *Id.* at 4-6. The Postal Service characterizes these differences as minor, stating that they reflect particular distinctions between the mailers, e.g., the availability of other Postal Service products, mail tender location changes, liquidated damage terms, and provisions which clarify the mailer's volume and revenue commitments upon early termination.

Initially, the Governors' Decision authorizing 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 2,500 pieces of international mail to the Postal Service or paying at least \$50,000 in international postage to the Postal Service.⁸

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. Therefore, 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.⁹ 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. There has been no opposition or concerns expressed about grouping these contracts within one product.

Cost considerations. The Commission reviews 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.

⁸ See Docket No. MC2009-38, PRC Order No. 283, Order Accepting Classification Change for Global Expedited Package Services Contracts, August 19, 2009.

⁹ See, e.g., Docket Nos. CP2008-11-13, PRC Order No. 103, Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements, at 5,n.8, August 22, 2008.

¹⁰ However, this finding does not preclude the Commission from revisiting this issue at a future date if circumstances warrant.

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.

Other considerations. The Postal Service indicates that the instant 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.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2009-58 is appropriately included within the GEPS 1 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2009-58 is included within the product Global Expedited Package Services 1 (CP2008-4).

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.

Judith M. Grady
Acting Secretary