

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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

Docket No. CP2009-60

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

(August 26, 2009)

In response to Order No. 280<sup>1</sup>, the Public Representative hereby comments on the August 13 Notice of United States Postal Service Filing of an Additional Functionally Equivalent Global Expedited Package Services 1 (GEPS-1) Negotiated Service Agreement, and the August 21 filing of the signed contract under seal (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

---

<sup>1</sup> Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, August 17, 2009.

(MCL), notice and publication. Furthermore, each pertinent element of 39 USC 3633(a) appears to be met by this GEPS-1 contract.

### **Compliance with Statutory Requirements**

This functionally equivalent (*f* ~ GEPS-1) NSA complies with the 3-pronged requirements of 39 USC 3633(a); the GEPS-1 product formula and its pricing shell have been reviewed numerous times. The GEPS-1 product (and the instant contract's pricing) 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).

### **Compliance with Procedural Requirements**

The instant Notice included the Application of the United States Postal Service for Non-Public Treatment of Materials (Attachment 1). This colloquy addressed the need for confidentiality in this filing, including the eight factors required by Commission rules of practice in 39 C.F.R. 3007.21, and Order 225 (Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009).

The Public Representative appreciates the Postal Service's thorough filing in this matter. Attachment 4, (previously identified as "Attachment D" to the Governors' Decision 08-7, certifying that the prices associated with the GEPS-1 contract were established by 08-7 is updated by Manager, Regulatory Reporting and Cost Analysis W. Ashley Lyons to reflect Fiscal Year 2008 (the most recent available) data. In addition to the May 6, 2008 Governors' Decision 08-7, the Certification of Governors' vote in that Decision was included for this Docket (both in Attachment 2). In short, this filing

includes all the pertinent data possible to ensure transparency for the general public, while maintaining the necessary confidentiality for materials of commercial sensitivity.

The instant GEPS-1 NSA Notice and supporting data (as filed, under seal) indicate that the proposed CP2009-60 contract is appropriately categorized as a Competitive Product, and is *f*~ to the other contracts within the GEPS-1 (CP2008-4) rubric. Analysis reveals this product to be a GEPS-1 product, as 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.

### **Provisions of this GEPS-1 Agreement**

This NSA is a one-year contract, stipulating minimum mailing volume or postage requirements for the customer to earn discounts. The GEPS-1 formula appears to be beneficial to both parties in this NSA. The pricing appears to comport with the pricing shell in Governors' Decision 08-7. Accordingly, this NSA is (indirectly) beneficial to the general public.

The instant filing includes two aspects that the Public Representative must note. First, the contract provides for liquidated damages (and/or prorated liquidated damages) in the event of breach by the customer. While this contract also includes the rather liberal escape clause in which either party may terminate the contract "with 30 days notice to the other Party in writing", it is reassuring that the agreement could, in such a case, provide liquidated damages on a prorated basis.

Second, the Notice (August 13 filing, at 3) compares the instant contract to the GEPS-1 NSA in Docket CP2009-50. The Postal Service notes that, in CP2009-50, the NSA “designated a single International Service Center (ISC) location for tendering the mail.” In the instant agreement – the renewal of a prior NSA about to expire -- this agreement, the Postal Service permits tender at any location that the Postal Service designates. This provision may not be significant in terms of an individual agreement. However, the Postal Service asks that the CP2009-50 agreement now serve as the baseline for future GEPS-1 NSAs. The question raised is whether this modification in a GEPS-1 agreement rises to the level of a significant change in these contracts, and/or if an agreement designating a single ISC for the customer to deposit mailings would suggest a new product.

The Public Representative will presume that both parties bargained in good faith, with a level of sophistication that would enable some innovation in terms. Here the pricing and classification aspects of the GEPS-1 agreements demonstrate the *f* ~ of the instant contract. Furthermore, while the acceptance point for the mailings may be modified, it does not appear to be a material alteration. The product remains the same. An analogy for the public, single piece mailer might be considered: a customer tenders a mailing at a particular post office. The service commitment can be different than that at a nearby post office which is located in a different service area. Near metropolitan areas, this could result in a difference of one day’s delivery time. The product remains the same; the customer chooses the location for deposit of the mail. The parties to the instant (and all other) GEPS-1 agreement(s) negotiate terms that provide efficiencies for both. In so doing, they arrive at agreements that are likely beneficial to the general

public. The Postal Service adds to its volume mailpieces prepared for efficient handling, increasing revenue. The customer enjoys a better level of service at a reduced cost. The customer may then pass along savings to its customers and/or engage in additional commerce. Renewal of this GEPS-1 agreement with this customer might be one more indication that the international economy is stirring

This *f*~ GEPS-1 NSA complies with the 3-pronged requirements of 39 USC 3633(a). And, because the Notice complies with title 39 and CFR notice and publication requirements, this GEPS-1 agreement merits approval by the Commission.

### **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.<sup>2</sup> 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.

---

<sup>2</sup> 39 C.F.R. § 3015.7(c).

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

---

Paul L. Harrington  
Public Representative

901 New York Ave., NW Suite 200  
Washington, D.C. 20268-0001  
(202) 789-6867; Fax (202) 789-6883  
e-mail: paul.harrington@prc.gov