

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 2 (CP2009-50)
Negotiated Service Agreement

Docket No. CP2009-64

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
FILING OF FUNCTIONALLY EQUIVALENT GLOBAL EXPEDITED PACKAGE
SERVICES 2 NEGOTIATED SERVICE AGREEMENT

(September 28, 2009)

In response to Order No. 300¹, the Public Representative hereby comments on the September 15 Notice of United States Postal Service Filing of an Additional Functionally Equivalent Global Expedited Package Services (GEPS-2) 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-2 contract.

¹ Notice and Order Concerning Filing of Additional Global Expedited Package Services 2 Negotiated Service Agreement, September 17, 2009.

Compliance with Statutory Requirements

This NSA is a one-year contract, stipulating minimum mailing volume or postage requirements for the customer to earn discounts. The GEPS-2 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, May 6, 2008 (Attachment 2). Accordingly, this NSA is (indirectly) beneficial to the general public.

The instant GEPS-2 NSA Notice and supporting data (as filed, under seal) indicate that the proposed contract is appropriately categorized as a Competitive Product, and is functionally equivalent (*f ~*) to the other contracts within the GEPS-2 (CP2009-50) rubric. Analysis reveals this product to be a GEPS 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.

This *f ~* GEPS-2 NSA complies with the 3-pronged requirements of 39 USC 3633(a). Because the Notice complies with title 39 and CFR notice and publication requirements, this Public Representative can find no reason this GEPS-2 agreement would fail to receive approval by the Commission.

Discussion

The instant GEPS-2 NSA is a successor contract with a current GEPS customer (CP2008-18). The new agreement includes terms for liquidated damages, clarifies tender locations, and establishes minimum volume or postage requirements for the customer. Because these terms serve to protect the Postal Service's interests, they also are in the general public's interest. With the Application for Non-public Treatment of Materials (Attachment 1), the Postal Service provides a rationale for maintaining confidentiality concerning pricing, processes which enable discounted pricing, the attendant formulae and other contractual terms which are matters of commercial sensitivity.² Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in this matter, providing a brief explanation for maintaining the confidentiality of each aspect of the matters remaining under seal.

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-2 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

² Notice, Attachment 1.

Postal Service's total institutional costs.³ 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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³ 39 C.F.R. § 3015.7(c).