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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
(CP2008-4)
Negotiated Service Agreement

Docket No. CP2009-53

ORDER CONCERNING ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 1 NEGOTIATED SERVICE AGREEMENT

(Issued August 6, 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. CP2008-5. For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. BACKGROUND

On July 22, 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 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.

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 Postal Service states that the instant contract replaces the contract for the customer in Docket No. CP2008-12, which will end on August 31, 2009. *Id*. at 2. 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. *Id*. at 1-2. The term of the instant 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. It

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[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, July 22, 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).

states that 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 contends that the instant contract demonstrates its functional equivalence with the previous GEPS 1 contracts because of several factors: 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 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 contracts' functional equivalency because the GEPS 1 contracts share similar cost attributes and methodology. *Id.* at 4-5.

The Postal Service also identifies several other contractual differences including provisions that clarify the availability of other Postal Service products and services, exclude certain flat rate products from the mail qualifying for discounts, simplify mailing notice requirements, modify mail tender locations, clarify the mailer's volume and revenue commitment in the event of early termination, and change certain provisions in the prior contract in minor respects. *Id*. at 5-6.

The Postal Service states that these differences related to a particular mailer are incidental and do not change the conclusion that these agreements are functionally equivalent in all substantive aspects. *Id.* at 7.

The Postal Service requests that the instant contract be included within the GEPS 1 product. *Id.*

The Postal Service maintains that certain portions of the contract and certified statement required by 39 CFR 3015.5(c)(2), names of GEPS 1 customers, related financial information, portions of the certified statement which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

In Order 254, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.[4]

III. COMMENTS

Comments were filed by the Public Representative.[5] No other interested parties submitted comments. The Public Representative states that the contract is consistent with 39 U.S.C. 3632 and 3642. *Id*. at 1. He also states that each element of 39 U.S.C. 3633(a) appears to be met by this additional GEPS 1 contract. *Id*. The Public Representative states that his analysis of this product indicates that the terms of the contract fall within the guidelines established by Governors Decision No. 08-7 in Docket No. CP2008-4. *Id.* at 2. He determines that mail preparation and electronic data exchange requirements for the customer and updated pricing appears to benefit both parties to the contract and is indirectly beneficial to the general public. *Id.*

Based on his review of the materials filed, the Public Representative concludes that the instant contract comports with 39 U.S.C. 3633. In addition, he cites features of the contract, including mail preparation requirements and pricing incentives, as favorable to both the Postal Service and the general public. *Id.* at 3.

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

[4] PRC Order No. 254, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 23, 2009 (Order No. 254).

[5] Public Representative Comments in Response to United States Postal Service Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, August 3, 2009 (Public Representative Comments).

> 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 previous GEPS 1 contracts and asserts it 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 and adds specific tender provisions *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 6. Finally, provisions are modified which clarify aspects subject to regulatory oversight and update references from prior contracts. 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.

On July 28, 2009, the Postal Service filed a notice of a classification change that modifies the minimum capability requirements for GEPS contracts from the current threshold as stated above to 2,500 pieces or $50,000.[6]

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

[6] Docket No. MC2009-38, Notice of United States Postal Service of Classification Change, July 28, 2009, *See,* PRC Order No. 270, Notice and Order of Classification Change for Global Expedited Package Services Contracts, August 4, 2009.

warrant.[7] 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.[8] 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.

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 in its notice that this filing is on behalf of the same customer as in Docket No. CP2008-12. The instant contract supersedes the contract in Docket CP2008-12. Given that, the Postal Service shall, no later than 30 days after the effective date of the new contract, provide cost, revenue, and volume data associated with the current contract. Such data are to be filed in Docket 2008-12.

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[7] *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.

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

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 at the earliest possible opportunity.

In conclusion, the Commission finds that the contract submitted in Docket No. CP2009-53 is appropriately included within the GEPS 1 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2009-53 is included within the product Global Expedited Package Services 1 (CP2008-4).

2. The Postal Service shall provide the cost, revenue, and volume data associated with the current contract no later than 30 days after the effective date of the instant contract.

3. 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.

Ann C. Fisher
Acting Secretary