

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 1 (CP2008-5)
Negotiated Service Agreement

Docket No. CP2009-19

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
FILING OF ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT
(January 5, 2009)

In response to Order No. 160,¹ the Public Representative hereby comments on the December 23 Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement (“Notice”), an additional negotiated service agreement (NSA) with an individual mailer. For this 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

¹ Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, December 29, 2008.

² See 39 CFR 3015.5.

competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs).

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. In the Governors' May 6, 2008 Decision 08-7 (at 2), the Governors assert that these conditions are met by the GEPS1 pricing formulae. The instant Notice (and its accompanying documentation) is persuasive. Each element of 39 USC 3633(a) appears to be met by this additional Global Expedited Package Services (GEPS) 1 Negotiated Service Agreement (NSA).

Accountability and Confidentiality

The Public Representative must respectfully note that Federal Register notice of Orders 158 and 160 did not appear in the *Federal Register* until Monday, January 5, 2009.³ If any member of the public were relying solely on the *Federal Register* (instead of the Commission's website, where Orders are posted upon issuance) this may have created an undue burden in filing a timely response. At best, a potential respondent would be afforded several hours in which to submit comments. Once again,⁴ the Public Representative would therefore encourage the Commission's efforts to remind the public that its docket is updated every business day on the Commission's website.

³ 74 FR 2 (January 5, 2009) at 327.

⁴ *E.g.*, see Public Representative Comments in Docket No. CP2008-25, at 3, October 2, 2008.

In *Comments in Response to Notice of Price Adjustment for Market-Dominant Postal Products and Limited Classification Changes* (Docket No. R2008-1) (March 3, 2008, at 1-2), Public Representative Kenneth E. Richardson noted that:

Among the factors listed in §3622 of the PAEA to be considered by the Commission is “the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters.” (§3622(c)(3).) Thus, the PAEA distinguishes the interests of the general public from the interests of business mail users and enterprises in the private sector engaged in the delivery of mail matter other than letters. Having been designated to represent the interests of the general public, the Public Representative focused on the interests of the general public as distinct from the interests of the other groups included in §3622(c)(3) of the PAEA.

Despite the expedited review NSAs are subject to since the Postal Accountability and Enhancement Act was signed, the general public deserves adequate notice and opportunity to participate in all matters before the Commission.

The Postal Service Notice contains 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.⁵ 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.

⁵ Postal Service Request, at 2-3.

Functional Equivalency

The Postal Service presents the instant contract as functionally equivalent to the Global Express Package Services 1 (GEPS 1) product established in Docket No. CP2008-5. Commission Order 160 acknowledges the Postal Service's cite to 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 provided 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. CP2008-5.⁶

The Notice proposes that this contract fully comports with materials filed in accordance with 39 CFR § 3015.5, under the Rules of Practice and Procedure regarding requests to modify the product lists within the Mail Classification Schedule. Specifically, this additional GEPS 1 NSA meets the description of services provided in Attachment A, and falls between the price floor and ceiling formulae proposed in Attachment B to the Governors' Decision No. 08-7 (CP2008-5). This contract, falling within these parameters and pricing guidelines, shares a Euclidian homology with the original GEPS 1 pricing shell. Thus, it would appear to be a functionally equivalent GEPS 1 agreement.

⁶ See Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86); See also Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts (Governors' Decision No. 08-7), May 6, 2008, and (also in Docket No. CP2008-5) United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, July 23, 2008.

One can note that, if a proposed GEPS contract falls within the pricing shell established by the Governors' Decision No. 08-7, then it should cover its attributable costs.⁷ If such a contract covered its attributable costs, that would comport with 39 USC 3633(a)(2) ("ensure that each competitive product covers its costs attributable"), and enable parts (1) and (3) of 39 USC 3633(a) – prohibiting subsidization of competitive products by market dominant products; and ensuring that all competitive products collectively cover their share of institutional costs. In this case, all requisite conditions appear to have been met.

The Agreement

This GEPS 1 contract provides volume incentives for Express Mail International and Priority Mail International. Preparation requirements include using USPS-supplied labeling software (or a software that has the same functionality as the USPS-supplied labeling software). The software allows for preparation of address labels and Customs declarations and submission of electronic shipment information to the Postal Service, as well as prepayment of Customs duties and taxes and pre-advice for foreign Customs authorities by the Postal Service. Most importantly, for a mailer to qualify, the contract must cover its attributable costs. In these functions, it would appear that this GEPS 1 agreement complies with the template proposed in Docket No. CP2008-5. Like its predecessors, this GEPS agreement has a one-year term. The instant GEPS agreement, however, has refinements to the liquidated damages provision and simpler

⁷ See Docket Nos. CP2008-25 and CP2009-1.

notice requirements. The parties arrived at these modifications in an effort to increase efficiency. Neither would modification would appear to affect the structure of the GEPS 1 shell, or the fundamental nature of a GEPS 1 NSA.

Conclusion

The Public Representative acknowledges that the pricing in the present GEPS 1 contract comports with provisions of title 39. 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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