

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES GLOBAL DIRECT NEGOTIATED SERVICE AGREEMENTS	Docket No. MC2009-9
COMPETITIVE PRODUCT PRICES GLOBAL DIRECT CONTRACT (MC2009-9) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2009-10
COMPETITIVE PRODUCT PRICES GLOBAL DIRECT CONTRACT (MC2009-9) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2009-11

**REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD GLOBAL DIRECT
NEGOTIATED SERVICE AGREEMENTS TO THE COMPETITIVE PRODUCTS LIST,
AND NOTICE OF FILING (UNDER SEAL) TWO FUNCTIONALLY EQUIVALENT
AGREEMENTS**

(November 17, 2008)

In accordance with 39 USC § 3642 and 39 CFR § 3020.30 et seq., the United States Postal Service (Postal Service) hereby requests that Global Direct Negotiated Service Agreements (NSAs) be added to the competitive products list within the Mail Classification Schedule (MCS). The United States Postal Service also gives notice, pursuant to 39 CFR § 3015.5, that the Postal Service has entered into two such contracts with customers. The Governors previously established prices and classifications not of general applicability for Global Direct Contracts.¹ The Postal

¹ See Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts (Governors' Decision No. 08-10), July 16, 2008. A redacted copy of this decision was filed as an Attachment to Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) of Two Functionally Equivalent Agreements ("Request to Add Global Plus 2"), Docket Nos. MC2008-7, CP2008-16 and CP2008-17, August 8, 2008, and an

Service demonstrates below that the agreements are functionally equivalent.

Accordingly, the Postal Service requests that the Commission list these contracts as one product on the competitive products list.²

Attachment 1 to this Request is the Statement of Supporting Justification of Frank Cebello, Executive Director, Global Business Management, pursuant to Rule 3020.32. Attachments 2 and 3 are the redacted certifications for the two Global Direct contracts.³

Identification of Existing Global Direct Contracts

At present, the only Global Direct contracts are those submitted with this filing and their terms both fit within the proposed MCS language, included as Attachment A-2 to Governors' Decision No. 08-10. Both agreements are set to expire one year after the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained, culminating with a favorable conclusion on review by the Commission.

Confidentiality

While the Commission intends to address broader confidentiality issues in the future,⁴ the Postal Service maintains that the contracts, related financial information,

unredacted copy of the decision, as well as a record of proceedings, were filed under seal that same date. As the Postal Service indicated in its Request to add the Global Plus 2 contracts to the competitive products list, it would not ask the Postal Regulatory Commission (Commission) to establish an individual classification for Global Direct Services until such time as the Postal Service had entered contracts with customers for the service. Request to Add Global Plus 2, at 1-2, n. 1. The Postal Service requests that Governors' Decision No. 08-10 and the record of proceedings be incorporated by reference in the instant dockets.

² See Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9 and CP2008-10, June 27, 2008, at 8.

³ Unredacted copies of the two Global Direct contracts and other supporting documentation establishing compliance with 39 CFR § 3015.5 are being filed separately with the Commission under seal.

⁴ See Order No. 86, Order Concerning Global Expedited Package Services Contract, Docket No. CP2008-5, June 27, 2008, at 7. See also PRC Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, August 13, 2008.

names of Global Direct customers, certain portions of the certified statements required by 39 CFR § 3015.5(c)(2) and certain portions of the Governors' Decision should remain confidential. The contracts contain pricing and other information related to mailer and Postal Service processes and procedures for handling the mail tendered under the contract. Related financial information and portions of the certified statements contain cost and pricing information showing how prices are developed. Prices and other contract terms relating to the parties' processes and procedures are highly confidential in the business world and the Postal Service protects them in accordance with industry standards. The ability of the Postal Service to negotiate individual contracts would be severely compromised if prices and other information pertaining to these types of agreements were publicly disclosed. Also, public disclosure would compromise the ability of respective shippers to negotiate favorable shipping services contracts in the future. Names of customers should remain confidential due to the substantial likelihood that the Postal Service's competitors would use such information to target their efforts and undercut the Postal Service's prices.

The Governors' Decision authorizes management to execute contracts containing prices that fall within a range determined by formulas that the Governors have established, producing results that comply with 39 USC § 3633(a)(1)-(3). Public disclosure of these formulas and related information would seriously undermine postal management's leverage in negotiations with customers. This pricing information is clearly of a commercial nature, and the Postal Service is aware of no competitor or private company of comparable size and scope that releases such information to the

public. The specific information about price calculations in the Governors' Decision thus continues to merit confidential treatment.

Proposed Mail Classification Schedule Language

The proposed MCS language for Global Direct Contracts, included as Attachment A-2 to Governors' Decision No. 08-10, contains many of the same provisions that were included in the Postal Service's original proposed MCS language for Global Direct Contracts.⁵ The changes are the same as those made in the MCS language for other customized agreements; the change in the piece and postage capability requirements to qualify for a customized agreement and the change in the requirement that a mailer must tender all of its qualifying mail to the Postal Service.

Filing under Part 3020, Subpart B of the Rules of Practice and Procedure

The Statement of Supporting Justification of Frank Cebello, Executive Director, Global Business Management, is included as Attachment 1 in accordance with Part 3020, Subpart B of the Rules of Practice and Procedure. This Statement provides support for the addition of the two Global Direct contracts to the competitive products list.

Under 39 U.S.C. § 3642(b), the only criteria for such review are whether the product qualifies as market-dominant, whether it is excluded from the postal monopoly, and whether the proposed classification reflects certain market considerations. Each of these criteria has been addressed in this case. With Order No. 43, the Commission has already assigned all NSAs concerning outbound international mail to the competitive

⁵ See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007.

category,⁶ and Global Direct contracts are NSAs concerning outbound international mail. Therefore, there is no need to ponder further whether Global Direct contracts are market-dominant or, by dint thereof, covered within the postal monopoly. The additional considerations listed in 39 U.S.C. § 3642(b)(3) are addressed by Mr. Cebello's statement. Because all of section 3642's criteria for classification have been met, the Postal Service respectfully urges the Commission to act promptly by adding this product to the competitive products list as requested.

Functional Equivalency of Global Direct Contracts

The two Global Direct contracts under consideration are functionally equivalent in that they share similar cost and market characteristics and therefore should be classified as a single product.⁷ With their Decision, the Governors have established a pricing formula and classification that ensures that each contract meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each contract meet a common description. In addition, the language proposed for Section 2610.3 of the MCS requires that each Global Direct contract must cover its attributable costs. The contracts at issue here meet the Governors' criteria and thus exhibit similar cost and market characteristics.

In a concrete sense as well, these Global Direct contracts share the same cost and market characteristics. In essence, with Global Direct service, the Postal Service is providing customers with a price for mail acceptance within the United States and transportation to a receiving country of mail that bears the receiving country's indicia

⁶ PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. MC2007-1, October 29, 2007, App. A, at 9, 11.

⁷ In Order No. 85, the Commission concluded, that despite different revenue thresholds, the two Global Plus 1 contracts at issue, were "functionally equivalent in all pertinent respects." Order No. 85, at 8. The two contracts filed in this proceeding are precisely analogous.

and meets the preparation requirements for the particular type of mail established by the receiving country. Both of the customers for the Global Direct contracts at issue are businesses who send mail directly to foreign destinations and who desire that their mail bear the indicia of the foreign country for the particular foreign services used.⁸ Further, these two Global Direct contracts cover the same services to the same foreign destination, although that may not always be the case with future Global Direct contracts, where different services may be provided to other foreign destinations. Here, one customer has a volume commitment and one has a postage commitment, but prices do not vary with volume or postage commitments. In future Global Direct contracts, prices will differ depending upon the services offered and the foreign destination. Any differences, however, in prices, foreign services offered, foreign destinations or volume or postage commitments between these or other Global Direct contracts does not alter the functional equivalency, because the total costs associated with Global Direct contracts are volume-variable and the basic service offered – acceptance within the United States and transportation to the receiving country of “foreign” mail – is the same.

Liquidated damages provisions differ as a result of negotiations with individual mailers and generally reflect a balancing of subjective factors such as the volume or postage commitment made by the customer, the customer’s prior mailing history and the potential for future business from the customer. The two contracts also provide for postage adjustments to account for certain currency exchange rate fluctuations and for any changes in the relevant foreign postal administration’s postage or other fees. The

⁸ Mr. Cebello’s statement included as Attachment 1 expands further on the common market characteristics of Global Direct contracts in general, and the two particular Global Direct contracts filed in this proceeding as well.

term of both contracts is the same – basically a one-year period. Both contracts have the same postage payment provisions, generally requiring the use of dedicated permits, but payments through special payments systems are authorized for non-identical weight items.

The two contracts have different provisions regarding where the mail is to be tendered. In instances where the Postal Service determines that it might incur higher transportation costs, it includes a specific tender location in the contract. In instances where transportation costs are less of an issue for the Postal Service, the contract includes more general language and the Postal Service works with the customer to determine an appropriate location or locations. Preparation requirements here are the same because the two customers are using the same service to the same foreign destination, but in future Global Direct contracts, preparation requirements likely will differ depending upon the services used and the foreign destinations. Although the preparation requirements in these two contracts are the same, the contract Annexes containing those requirements are different because the Postal Service has attempted to simplify the Annex, generally by including website references where certain information can be found rather than repeating the information in the Annex.

The assignment clauses differ in the two contracts, reflecting decisions reached in different negotiations. Also, some contract clauses, while appearing in both contracts, are numbered differently merely reflecting preparation of the contracts at different times. Because both agreements incorporate the same cost attributes and methodology, the relevant characteristics are similar, if not the same, for these two Global Direct contracts. The Postal Service does not consider that the specified

differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts.

As demonstrated, the cost and market characteristics of these agreements are thus substantially similar. Nothing detracts from the conclusion that these agreements are “functionally equivalent in all pertinent respects.”⁹

Conclusion

For the reasons discussed, the Postal Service believes that both Global Direct contracts should be added to the competitive products list as one product. The Postal Service asks that the Commission approve this Request.

As required by 39 USC §3642(d)(1), a notice concerning this Request is being sent for publication in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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⁹ Order No. 85, at 8.

Statement of Supporting Justification

I, Frank Cebello, Executive Director, Global Business Management, am sponsoring the Request that the Commission add, as one product, the two Global Direct contracts filed in Docket Nos. MC2009-9, CP2009-10, and CP2009-11, to the competitive products list for prices not of general applicability. The proposed Mail Classification Schedule (MCS) language for Global Direct Contracts describes the requirements for this type of contract. My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable. The Postal Service is proposing that the two Global Direct contracts be added, as one product, to the competitive products list. Other functionally equivalent contracts would be added to the list as price categories under the Global Direct Contracts listing.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Adding the Global Direct contracts to the competitive product list will improve the Postal Service's competitive posture, while enabling the Commission to verify that each contract covers its attributable costs and makes a positive contribution to coverage of institutional costs. These contracts, along with each contract that is functionally equivalent to these contracts, will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs paid for by competitive products. Accordingly, no issue of subsidization of competitive products by market dominant products arises.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The Global Direct contracts are for businesses that desire to ship articles bearing the indicia of the receiving country for a variety of marketing or operational reasons. These businesses, for example, may desire to send items that have the characteristics of the receiving country's domestic mail without setting up separate operations in the receiving country. With Global Direct services, the Postal Service basically provides customers with a price for mail acceptance within the United States and transportation to a receiving country of items bearing the postal imprint of the receiving country and a return address in the receiving country, and that meet any preparation requirements of both the Postal Service and the receiving country. Under the Postal Service's previous

statutory authority, customers have accessed Global Direct services through customized agreements.

When negotiating Global Direct contracts, the Postal Service's bargaining position is constrained by the existence of other providers of similar services. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. Global Direct items should be deemed competitive by virtue of their exclusion from the letter monopoly, as well as the significant levels of competition they face in their respective markets. The Postal Service may not decrease quality or output without risking the loss of business to large competitors that offer similar international delivery services. The relevant market also does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contracts are premised on prices that provide sufficient incentive for customers to ship with the Postal Service rather than a competitor. If the Postal Service were to raise these prices, it risks losing these customers to a private competitor in the international shipping industry.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

While certain Global Direct items fall within the meaning of "letters" under the Private Express Statutes, these items fall outside the prohibition on private carriage of letters over post routes by virtue of suspensions to the Private Express Statutes for outbound letters to a foreign country for deposit in that country's domestic mailstream for delivery to an ultimate destination outside of the United States. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Private consolidators, freight forwarders and integrators also offer international shipping arrangements whereby they provide analogous delivery services under similar conditions. Also, mailers with large enough volumes may find it advantageous to enter mail directly with foreign posts, without the Postal Service's assistance.

- (g) *Provide any available information on the views of those who use the product on the appropriateness of the proposed modification.*

As discussed above, the customers for these Global Direct contracts are businesses that desire to ship articles bearing the indicia and meeting the preparation requirements of the receiving country. These customers have previously entered into Global Direct Contracts with the Postal Service pursuant to the latter's former authority, and they find the arrangement sufficiently attractive to merit continuation. This indicates that the relevant segment of postal customers, in general, find this type of product to be preferable to similar products offered by the Postal Service's competitors. Customers are aware that competitive services are provided by other entities. However, no specific data are available to the Postal Service on Global Direct customer views regarding the regulatory classification of these contracts.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for international delivery services comparable to Global Direct is highly competitive. Therefore, addition of Global Direct Contracts will likely

have little, if any, impact upon small business concerns. Large shipping companies, consolidators, and freight forwarders serve this market, particularly with respect to the type of customers represented by these Global Direct contracts; the Postal Service is unaware of any small business concerns that could offer comparable service for these volumes.

In addition, Global Direct contracts may be used by small businesses to ship their items. By offering Global Direct contracts, the Postal Service is giving small businesses an additional option for shipping articles internationally, beyond the services offered by competitors. Thus, the net impact on small businesses is positive, because of the absence of negative impact on small business competitors and the positive impact on the small businesses that will have these services available.

(i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

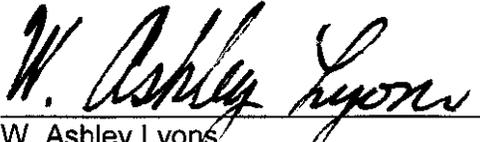
The customer eligibility criteria contained in the proposed MCS language for Global Direct contracts are consistent with those proposed for the previously filed customized agreement product classifications. That is, the customers must be capable on an annualized basis of tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international postage to the Postal Service and that a customer need not tender all of its qualifying mail to the Postal Service. Also, as with other customized agreements, the contract must cover its attributable costs.

Certification of Prices for the Global Direct Contract with [REDACTED]

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department am familiar with the prices for the Global Direct Contract with [REDACTED]

[REDACTED] The prices contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, issued July 16, 2008 (Governors' Decision No. 08-10), which established prices by means of price floor and ceiling formulas.

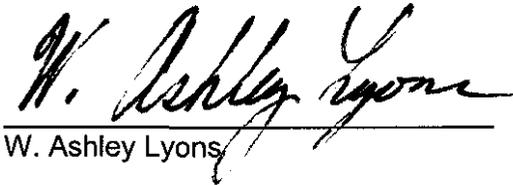
I hereby certify that the numerical [REDACTED] values underlying the prices in the [REDACTED] Contract are the appropriate [REDACTED] to use in the formulas and represent the best available information. The prices, resulting in a [REDACTED] coverage of [REDACTED] percent for the applicable prices, are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the Agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from Global Direct Contracts should be much smaller. The Agreement with [REDACTED] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.


W. Ashley Lyons

Certification of Prices for the Global Direct Contract with [REDACTED]

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department am familiar with the prices for the Global Direct Contract with [REDACTED]. The prices contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, issued July 16, 2008 (Governors' Decision No. 08-10), which established prices by means of price floor and ceiling formulas.

I hereby certify that the numerical [REDACTED] values underlying the prices in the [REDACTED] Contract are the appropriate [REDACTED] to use in the formulas and represent the best available information. The prices, resulting in a [REDACTED] coverage of [REDACTED] percent for the applicable prices, are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the Agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from Global Direct Contracts should be much smaller. The Agreement with [REDACTED] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.


W. Ashley Lyons