

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
Inbound Direct Entry Contracts
with Foreign Postal Administrations (MC2008-6)
Negotiated Service Agreement

Docket No. CP2009-41

NOTICE AND ORDER CONCERNING FILING
OF FUNCTIONALLY EQUIVALENT INBOUND DIRECT ENTRY CONTRACTS
NEGOTIATED SERVICE AGREEMENT

(July 2, 2009)

I. BACKGROUND

On June 29, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5, announcing that it has entered into an additional Inbound Direct Entry Contract (IDE), which it states fits within the previously established Inbound Direct Entry Contracts.¹ The Postal Service states that the instant contract is functionally equivalent to previously submitted IDE contracts and is supported by the Governors' Decision 08-6 filed in Docket No. MC2008-6.² Notice at 2.

The Notice also references Order No. 105 which established the individual IDE contracts in Dockets Nos. CP2008-14 and CP2008-15 as functionally equivalent and

¹ Notice of United States Postal Service of Filing of Functionally Equivalent Inbound Direct Entry Contracts, Negotiated Service Agreement, June 29, 2009 (Notice).

² See Docket No. MC2008-6, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Direct Entry Contracts with Foreign Postal Administrations (Governors' Decision No.08-6), May 6, 2008.

added the contracts to the competitive product list as one product under the IDE classification.³ The IDE service allows the Postal Service to provide foreign postal administrations with the ability to ship sacks of parcels that are pre-labeled for direct entry into the Postal Service's mail stream, in exchange for applicable domestic postage plus a sack handling fee. The core of the service is the sack handling and entry as domestic mail and it is not dependent on the underlying domestic mail services. The Postal Service states that the instant contract is functionally equivalent to the IDE contracts previously submitted, fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 08-6 and should be included within the IDE Contracts product. Notice at 2.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract is with P&T Express Mail Service Joint Stock Company (VNPE). VNPE is established under the auspices of the Vietnam Post and Telecommunications Group, the public postal administration for Vietnam, responsible for Vietnam's compliance with international obligations relative to Express Mail Service. The Postal Service 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. *Id.*, Attachments 1 and 2 respectively.⁴

The Postal Service will notify the customer of the effective date of the contract within 30 days after receiving all regulatory approvals. The contract term is one year from the effective date. The contract is subject to automatic renewal after the one year term unless the parties determine otherwise. *Id.*, Attachment 1.

The Notice advances reasons why the instant IDE contract fits within the Mail Classification Schedule language for IDE contracts. The Postal Service states that the instant contract is functionally equivalent to the IDE contracts filed previously because it

³ See PRC Order No. 105, Order Concerning Prices Under Inbound Direct Entry Contracts with Certain Foreign Postal Administrations, September 4, 2008, at 8 (Order 105).

⁴ Attachment 1 was revised by Notice of United States Postal Service of Filing Erratum to Attachment 1 to Notice of United States Postal Service of Filing Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, June 30, 2009.

shares similar cost and market characteristics and therefore, the contracts should be classified as a single product. *Id.* at 3-4. It states that in Governors' Decision No. 08-6, 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 states that the costs of each contract must conform to a common description and the contract language of the MCS prescribes that each IDE contract must cover its attributable costs. *Id.*

The Postal Service reports that the instant contract covers the same domestic services as those in Docket Nos. CP2008-14 and CP2008-15 except for the addition of the Priority Mail small Flat-Rate Box. It asserts that in "almost all substantive respects," the instant IDE contract resembles the contracts in CP2008-14 and CP2008-15. *Id.* at 4. The Postal Service contends that even though fees or the underlying domestic services offered may be different, these distinctions do not affect the contracts' functional equivalence because the total costs associated with IDE Contracts are volume variable and the basic service offered of handling inbound sacks in the domestic mail stream is the same. *Id.* Other changes include language to update changes in policies and product structures and terms to clarify the applicability of Postal Service export requirements. *Id.*

The Postal Service also affirms the instant contract has material differences reflected in the language of this agreement compared to other IDE contracts. *Id.* These differences include: (1) the one year term of the instant contract is subject to automatic renewal which differs from the contracts in CP2008-14 and CP2008-15 which are automatically renewed unless terminated; (2) Priority Mail small Flat- Rate Box has been added as a domestic mail type which Vietnam Post can access via IDE service while other included domestic mail services included are the same as in previous contracts but have updated rate structures;⁵ (3) terms are included which express the

⁵ The Postal Service states that the other domestic mail services are the same as in Docket Nos. CP2008-14 and CP2008-15 but the instant contract reflects the updated Priority Mail rate structure based on the price adjustments for competitive products in Docket CP2009-8.

parties' wish to explore future opportunities for volume based discounts which the Postal Service states does not represent a new commitment; (4) terms that clarify charges for non-conforming size or weight items, and Delivery Confirmation charges for First-Class Mail parcel items; (5) language which explains the need for a permit application fee; (6) terms which address changes to IDE customer payment requirements upon detention or seizure of mail by Customs and Border Protection; and (7) terms to explain the use of the Centralized Trust Account payment method as applicable to Vietnam's financial regulatory requirements which were not offered in the contract for CP2008-14. *Id.* at 5-6.

The Postal Service maintains that these differences only add detail or amplify processes included in previous IDE contracts and do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* at 7. It asserts that the contracts are substantially equivalent in all pertinent respects. *Id.*

The Postal Service maintains that certain portions of the contract and certified statement required by 39 CFR 3015.5 (c)(2), 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 2-3.

II. NOTICE OF FILING

The Commission establishes Docket No. CP2009-41 for consideration of the matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the instant contract is consistent with the policies of 39 U.S.C. 3632, 3622, or 3642. Comments are due no later than July 10, 2009.

The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in this docket.

It is Ordered:

1. The Commission establishes Docket No. CP2009-41 for consideration of the issues raised in this docket.
2. Comments by interested persons in these proceedings are due no later than July 10, 2009.
3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
4. The Secretary shall arrange for publication of this order in the *Federal Register*.

By the Commission.

Judith M. Grady
Acting Secretary