

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Dan G. Blair; and
Tony L. Hammond

Competitive Product Prices
Inbound Direct Entry Contract with Foreign Postal
Administrations (MC2008-6)
Negotiated Service Agreement

Docket No. CP2009-62

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

(August 25, 2009)

I. BACKGROUND

On August 21, 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

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, August 21, 2009 (Notice).

Governors' Decision 08-6 filed in Docket No. MC2008-6.² *Id.* at 1-2. In Order No. 105, the Commission approved the individual IDE contracts in MC2008-6 as functionally equivalent and added the contracts to the Competitive Product List as one product under the IDE classification.³

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract is with New Zealand Post Limited (NZP), the public postal administration for New Zealand.⁴ The contract term is one year from the effective date and may be automatically renewed for further periods unless the parties agree otherwise. Notice at 3. The Postal Service will notify the customer of the effective date of the contract within 30 days after receiving all regulatory approvals. *Id.*, Attachment 2, at 10, Article 19.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain the contract and supporting documents under seal;
- Attachment 2—a redacted copy of the contract;
- Attachment 3—a certified statement required by 39 CFR 3015.5(c)(2); and
- Attachment 4—a redacted copy of Governors' Decision No. 08-6 which establishes prices and classifications for IDE contracts.

Functional equivalency. The Postal Service asserts that the instant IDE contract is functionally equivalent to IDE contracts previously submitted because it shares similar cost and market characteristics and therefore, the contracts should be classified as a

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.

³ See Docket Nos. MC2008-6, CP2008-14 and CP2008-15, Order concerning Prices Under Inbound Direct Entry Contract With Certain Foreign Postal Administrations, September 4, 2008, at 8 (Order No. 105).

⁴ More specifically, NZP is responsible for New Zealand's compliance with international obligations, such as those relative to Express Mail Service (EMS). *Compare with* Notice, Attachment 2 at 3, Article 6(3) (EMS and Air Parcels may not be commingled in sacks containing items under this Agreement).

single product. *Id.* at 3-4.⁵ Further, it contends that the contract fits within the Mail Classification Schedule language for IDE contracts included with Governors' Decision 08-6. *Id.* at 2.

In addition, the Postal Service contends that the contract is in accordance with Order No. 105, which established the individual IDE contracts in Docket Nos. CP2008-14 and CP2008-15 as functionally equivalent and added the contracts to the competitive product list as one product under the IDE classification.⁶ It further asserts that the "instant IDE Contract is virtually identical to that in Docket No. CP2009-41," except for differences relating to the term, confidentiality, and payment account methods. *Id.* at 3-4. The Postal Service maintains that the differences do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* at 4.

Baseline treatment. The Postal Service requests that the instant contract be considered the baseline contract for future functional equivalency comparisons because future IDE contracts "are likely to resemble this contract in form and substance..." *Id.* at 2. The Postal Service has made a similar request in a recent filing.⁷ The matter is pending before the Commission on a request for clarification filed by the Postal Service.⁸ The Commission intends to address the issue in that proceeding in a subsequent order.

⁵ 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.

⁶ See Docket Nos. MC2008-6, CP2008-14 and CP2008-15, Order Concerning Prices Under Inbound Direct Entry Contracts with Certain Foreign Postal Administrations, September 4, 2008, at 8 (Order No. 105).

⁷ Docket No. C2009-50, Notice of the United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, July 15, 2009; see *also* Docket No. C2009-58, Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 7, 2009.

⁸ Docket No. CP2009-50, United States Postal Service Response to Order No. 262 Concerning Termination Date of Additional Global Expedited Package Services 1 Negotiated Service Agreement and Request for Clarification, July 30, 2009.

II. NOTICE OF FILING

The Commission establishes Docket No. CP2009-62 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, 3633, or 3642. Comments are due no later than September 2, 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.

III. ORDERING PARAGRAPHS

It is Ordered:

1. The Commission establishes Docket No. CP2009-62 for consideration of the issues raised in this docket.
2. Comments by interested persons in these proceedings are due no later than September 2, 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