

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

Docket No. CP2009-62

ORDER CONCERNING INBOUND DIRECT ENTRY CONTRACTS 1  
NEGOTIATED SERVICE AGREEMENT

(Issued September 4, 2009)

I. INTRODUCTION

The Postal Service requests to add a new Inbound Direct Entry (IDE) contract to the Inbound Direct Entry Contracts with Foreign Postal Administrations product established in Docket No. MC2008-6.<sup>1</sup> In its filing, the Postal Service also requests to have the instant contract designated as the new baseline agreement for purposes of determining the functional equivalence of future IDE contracts. *Id.* at 2. For the reasons discussed below, the Commission approves the addition of the instant contract

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

to the Competitive Product List as a new product, Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (referred to hereinafter as IDE 1).

## II. 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 Inbound Direct Entry (IDE) contract with New Zealand Post Limited (NZP), the public postal operator of New Zealand. It states that the NZP agreement is functionally equivalent to previously established IDE contracts filed in Docket Nos. CP2008-14, CP2008-15 and CP2009-41. *Id.* at 1. The IDE product 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 mailstream 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.

The Postal Service also publicly filed a redacted version of the contract, an application for non-public treatment of supporting materials, a certified statement required by 39 CFR 3015(c)(2), a redacted version of the Governors' Decision that authorizes IDE contracts, and a redacted version of the supporting financial information. The contract and supporting financial information were filed under seal.

The Notice states that the instant contract is functionally equivalent to the IDE contracts previously submitted, fits within the Mail Classification Schedule (MCS) language included in Attachment A to Governors' Decision No. 08-6, and should be included within the IDE contracts product. *Id.* at 2. In Order No. 105, the Commission approved the individual IDE contracts in Docket No. MC2008-6 as functionally equivalent and added the contracts to the Competitive Product List as one product under the IDE classification.<sup>2</sup>

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<sup>2</sup> 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).

The Postal Service includes by reference its arguments regarding the functional equivalence to the IDE contracts as indicated in Docket Nos. CP2008-14 and CP2008-15, with three noted exceptions. Notice at 3 (footnote omitted). The instant IDE contract, it claims, resembles the contracts in Docket Nos. CP2008-14 and CP2008-15, except as to the provisions on the term, confidentiality, and payment account details. *Id.* at 3-4.

The Postal Service maintains that some materials should remain under seal including 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. *Id.* at 2-3.

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, but will be renewed automatically until terminated by the parties.

In Order No. 289, the Commission gave notice of this docket, appointed a Public Representative, and provided the public with an opportunity to comment.<sup>3</sup>

### III. COMMENTS

Comments were filed by the Public Representative.<sup>4</sup> No other interested persons submitted comments. The Public Representative states that “[e]ach pertinent element of 39 U.S.C. 3632, 3622, and 3642 appears to be met by this contract.” *Id.* at 1. He also notes that each element of 39 U.S.C. 3633(a) appears to be met by this additional IDE contract. *Id.* at 5. The pricing, in light of supporting documentation filed under seal,

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<sup>3</sup> PRC Order No. 289, Notice and Order Concerning Filing of Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, August 25, 2009 (Order No. 289).

<sup>4</sup> Public Representative Comments in Response to United States Postal Service Request to Add Inbound Direct Entry Contract to the Competitive Products List, September 3, 2009 (Public Representative Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Inbound Direct Entry Contract to the Competitive Product List, September 3, 2009. The motion is granted.

appears adequate and compliant.<sup>5</sup> *Id.* The Public Representative concludes that the contract appears to be functionally equivalent to the other contracts within the IDE contract product (MC2008-6) classification, and the contract contains pricing incentives and other provisions beneficial to both the Postal Service and the general public.<sup>6</sup> Without opposing the proposal to treat the NZP agreement as a new baseline, he does question why a functionally equivalent agreement should create a new baseline. *Id.* at 4. He underscores that the MCS must retain precision to preclude erosion of accountability and transparency. *Id.* As a safeguard, he proposes that the Postal Service outline in its future notices of any functionally equivalent agreement material distinctions and similarities. *Id.*

#### IV. COMMISSION ANALYSIS

The three main issues in this proceeding are whether the agreement satisfies 39 U.S.C. 3633, and the interrelated issue of whether the instant contract is functionally equivalent with previously filed IDE contracts; and whether it should be classified as a baseline for future IDE contracts.<sup>7</sup> In reaching its conclusions, the Commission has reviewed the Notice, the agreement and the financial analyses provided under seal, and the Public Representative's comments.

*Statutory requirements.* The Postal Service contends that the instant agreement and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2. It asserts that Governors' Decision No. 08-6 supporting this agreement establishes a pricing formula and classification that ensures each contract meets the criteria of

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<sup>5</sup> The Public Representative determines that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2. He affirms that his review of the materials filed under seal indicates that the instant contract complies with the pricing formula for IDE contracts.

<sup>6</sup> *Id.* at 1 and 3. He also concurs that the agreement appears to satisfy costing requirements, but seeks clarity in the process. *Id.* at 4-5, *citing* 39 CFR 3020.13(b)(3).

<sup>7</sup> Previously, the Commission found the Inbound Direct Contracts product to be properly classified as a competitive product. See Order No. 105 at 7; see also, 36 U.S.C. 3642(d).

39 U.S.C. 3633 and the regulations promulgated thereunder. It further states that the previously proposed IDE MCS language requires each contract to cover its attributable costs. *Id.* at 3.

During the review of the Postal Service's financial supporting documentation, the Commission found discrepancies between (a) the supporting financial material, and (b) the contract rate provisions. The financial supporting documentation uses rates in effect prior to the May 11, 2009 increase in prices for market dominant products.<sup>8</sup> The contract, however, contains the rates currently in effect. Additionally, the contract is based on Priority Mail commercial rates; however, the financial supporting documentation uses Priority Mail retail rates. These discrepancies did not adversely affect cost coverage for the contract. The Commission found these same discrepancies in Docket No. CP2009-41 and highlighted them in Order No. 248.<sup>9</sup>

Based on the data submitted and its analysis, the Commission finds that the agreement 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, an initial review of the proposed agreement indicates that it comports with the provisions applicable to rates for competitive products.

*Functional equivalence/baseline treatment.* The Postal Service asserts that the instant contract is functionally equivalent to the IDE contracts filed previously because it shares similar cost and market characteristics, and therefore the contract should be classified as a single product. Notice at 3. The Postal Service notes, however, that the instant contract includes provisions not contained in the earlier IDE contracts. *Id.* These differences include: (1) renewal can result automatically, without the parties'

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<sup>8</sup> See Docket No. R2009-2, Order Approving Revisions in Amended Notice of Market Dominant Price Adjustment, April 9, 2009. The Postal Service filed rates to become effective May 11, 2009.

<sup>9</sup> Docket No. CP2009-41, Order Concerning Filing of Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, July 15, 2009 (Order No. 248).

mutual agreement; (2) confidentiality duties that comport with the Commission's new confidentiality rules, and are governed in the text of the agreement rather than under an annex; and (3) the payment methods that are comparable to the terms in Docket No. CP2008-15, but not other prior IDE contracts.<sup>10</sup> *Id.* at 4.

The Postal Service also requests that the instant contract be considered a new baseline for future functional equivalent comparisons “[b]ecause future IDE Contracts are likely to resemble this contract in form and substance. Notice at 2. The Postal Service also explains that the text of the earlier IDE contracts contain different extension terms, confidentiality, and payment account detail provisions, and it intends to incorporate the new provisions into subsequent IDE contracts. Thus, it expects “future IDE Contracts to resemble the instant contract more closely than those in Docket Nos. CP2008-14 and CP2008-15.” *Id.* at 4.

In lieu of ruling on the functional equivalence of the instant contract to those previously filed, the Commission concludes, for reasons of accountability and transparency as suggested by the Public Representative, that the more appropriate outcome is to add the instant contract to the Competitive Product List as a new product, IDE 1. In approving the initial IDE contract, it was the Commission's expectation that it would be followed by additional IDE contracts that may exhibit sufficient variation from the initial contract to warrant being classified as a new product, *e.g.*, IDE 2, IDE 3, etc. Given the Postal Service's intent to use the instant contract as a template for future IDE contracts and that it contains provisions not included in the earlier IDE contracts, the Commission will label the instant contract as a new product, IDE 1. To the extent that future IDE contracts with foreign posts are (substantially) based on the instant contract, the Postal Service may seek to have them classified as functionally equivalent. To the extent that such future contracts differ substantially, the Postal Service should file a

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<sup>10</sup> The present contract differs from Docket No. CP2008-14, which did not use the Centralized Trust Account payment method, and Docket No. CP2009-41, which included an annex based on foreign financial regulatory requirements.

request, pursuant to 39 CFR 3020.1 *et seq.*, to add a new product to the Competitive Product List.<sup>11</sup>

Following the current practice, the Postal Service shall identify all significant differences between any new IDE contract and the IDE 1 product. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. In addition, and consistent with the current practice, a redacted copy of Governors' Decision No. 08-6 should be included in the new filing.

## V. ORDERING PARAGRAPHS

*It is Ordered:*

1. A new subcategory titled "Inbound Direct Entry Contracts with Foreign Postal Administrations" shall be created under the Inbound International category appearing in the Competitive Product list. This subcategory will include all individual Inbound Direct Entry Contracts with Foreign Postal Administrations products.
2. The existing product titled "Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6, CP2008-14 and CP2008-15)" shall appear under the subcategory Inbound Direct Entry Contracts with Foreign Postal Administrations until each of the individual contracts within this product has expired.

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<sup>11</sup> As the Commission recently noted in Order No. 290, "[f]uture requests to implement a new baseline agreement should be filed as an MC docket since it will result in adding a new product to the product list and may result in removing a product from the product list." Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

3. The IDE contract filed in Docket No. CP2009-62 is added to the Competitive Product List as a new product, “Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008-6, CP2009-62)” and shall appear under the subcategory Inbound Direct Entry Contracts with Foreign Postal Administrations.
4. The Postal Service shall notify the Commission of the scheduled effective date and termination date and update the Commission if the contract terminates at an earlier date.
5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Judith M. Grady  
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket No. CP2009-62. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

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Inbound International

Inbound Direct Entry Contracts with Foreign Postal Administrations  
~~(MC2008-6, CP2008-14, and MC 2008-15)~~

Inbound Direct Entry Contracts with Foreign Postal Administrations  
(MC2008-6, CP2008-14 and MC2008-15)

Inbound Direct Entry Contracts with Foreign Postal Administrations  
1 (MC2008-6 and CP2009-62)

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