

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

Before Commissioners:

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

Competitive Product Prices
Global Direct Contracts 1
Negotiated Service Agreement

Docket No. MC2010-17

Competitive Product Prices
Global Direct Contracts 1 (MC2010-17)
Negotiated Service Agreement

Docket No. CP2010-18

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

(Issued December 30, 2009)

I. BACKGROUND

On December 23, 2009, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, announcing that it has entered into an additional Global Direct contract, and seeks to add it as Global Direct Contracts 1 to the Competitive Product List.¹ The Postal Service states that the instant contract is functionally equivalent to previously

¹ Notice of the United States Postal Service of Filing of Functionally Equivalent Global Direct Contracts Negotiated Service Agreement, and Request to Add Global Direct Contracts 1 to the Competitive Products List, December 23, 2009 (Notice).

submitted Global Direct Contracts and is supported by Governors' Decision No. 08-10, which establishes prices and classifications not of general applicability for Global Direct Contracts.² The Request has been assigned Docket No. MC2010-17.

The Postal Service contemporaneously filed a contract related to the proposed competitive product classification pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010-18. In Order No. 153, the Commission approved the individual Global Direct Contracts in Docket Nos. MC2009-9, CP2009-10, and CP2009-11.³ In Order No 166, the Commission confirmed that individual Global Direct Contracts, such as Docket No. CP2009-18, are functionally equivalent and should be included in the Global Direct Contracts product on the Competitive Product List.⁴ The Postal Service also urges that analysis under 39 U.S.C. 3642(b) is "unnecessary here, because such an exercise would merely replicate the Commission's determination in Docket No. MC2009-9." Notice at 2-3.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract contemplates a rate for mail acceptance within the United States and transportation to a receiving country so as to enable a private mailer to directly use certain mailing services of Canada Post for deposit in that country's domestic mailstream for delivery to an ultimate destination outside of the United States. The Notice urges that the instant agreement is functionally equivalent to the previously submitted agreements, and that it is the immediate successor to the agreement that the

² Governors' Decision No. 08-10, July 16, 2008, filed in Docket No. MC2008-7, establishes prices and classifications not of general applicability for Global Direct and Global Bulk Economy Contracts, as well as for Global Plus Contracts 2, which combines Global Direct and Global Bulk Economy services. As part of Governors' Decision No. 08-10, the Postal Service submitted a description of Global Direct Contracts which it describes as "contracts giving a rate for mail acceptance within the United States and transportation to a receiving country with the addition by the customer of appropriate foreign postage charged by the receiving country." Notice, Attachment 4; *see also id.* at 2, n.3, *citing* PRC Order No 153 at 9 (regarding indirect postage payment).

³ Docket Nos. MC2009-9, CP2009-10 and CP2009-11, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008 (Order No. 153).

⁴ See Notice at 2, n.3, *citing* Docket No. CP2009-18, Order Concerning Additional Global Direct Contracts Negotiated Service Agreement, January 9, 2009, at 5, 6 (Order No. 166).

Commission found to be functionally equivalent and eligible for inclusion in the Global Direct Contracts product in Docket No. CP2009-11. *Id.*

The contract term is one year from the effective date and may be automatically renewed unless the parties agree otherwise. *Id.* at 3-4. Since the instant contracts take the place of its immediate predecessor and one of the original baseline Global Direct Contracts, the contract in Docket No. CP2009-11, the Postal Service requests that the instant contract be treated as the baseline for future functional equivalency comparisons. *Id.* at 2. It further requests that Global Direct Contracts 1 be added to the Competitive Product List, particularly as future Global Direct contracts are more likely to resemble this contract. *Id.*

In support of its Notice, the Postal Service filed the following five attachments:

- Attachment 1— a redacted copy of the contract;
- Attachment 2— a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3— an application for non-public treatment of materials to maintain the contract and supporting documents under seal;
- Attachment 4— a redacted copy of Governors' Decision No. 08-10, which establishes prices and classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts; and
- Attachment 5— a statement of supporting justification from Docket No. CP2009-11, which is included by reference for the instant contract to satisfy 39 CFR 3020.32.

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that each contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Notice, Attachment 5, at 2. Thus, Mr. Cebello contends there will be no issue of subsidization of competitive products by market dominant products as a result of these contracts. *Id.*

The Postal Service will notify the customer of the effective date of the contract within 30 days after receiving all regulatory approvals. *Id.* at 3-4. The related contract

at issue under Docket No. CP2009-11 expires on January 11, 2010. Notice at 2. The Postal Service also explains that a redacted version of the supporting financial documentation is included with this filing as a separate Excel file. *Id.* at 3.

Functional equivalency. The Postal Service asserts that the instant Global Direct contract is functionally equivalent to Global Direct Contracts previously submitted under Docket Nos. CP2009-10, CP2009-11, CP2009-18 and CP2009-29 because it shares “similar, if not the same,” cost and market characteristics and therefore the contracts should be classified as a single product. *Id.* at 5.⁵ Further, it contends that the contract fits within the Mail Classification Schedule language for Global Direct Contracts included with Governors’ Decision No. 08-10, since “these agreements are ‘functionally equivalent in all pertinent respects.’” *Id.* at 5, *citing* PRC Order No. 85 at 8.

In addition, the Postal Service contends that the contract is in accordance with Order No. 153, which established the individual Global Direct Contracts in Docket Nos. CP2009-10 and CP2009-11 as functionally equivalent and added the contracts to the Competitive Product List as one product under the Global Direct classification. It further asserts that the “instant Global Direct Contract is fundamentally similar to that in Docket No. CP2009-11,” except for differences relating to the new array of offerings by Canada Post, national treatment as to preparation, the term, confidentiality, and price changes.⁶

Specifically, some of the distinctions reflected in the Notice include (a) allowing mailers to use Canada Post’s domestic Incentive Letter Mail Service if the requisite preparatory tasks are performed by the mailer; (b) requiring notice to comply with confidentiality rules; (c) modifying the term to a full year; (d) clarifying locations for tendering qualifying items; and (e) reflecting the price changes of Canada Post. *Id.* at 5.

⁵ Global Direct services provide 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 and meets the preparation requirements for that particular type of mail established by the receiving country.

⁶ The Postal Service confirms that it “is providing the customer with price-based incentives to commit to large amounts of mail volume or postage revenue for Global Direct, a competitive service for delivery of Letter Post items bearing foreign postage and indicia.” *Id.* at 4; *see also id.*, Attachment 5, at 2.

The Postal Service maintains that the differences do not affect the fundamental service being offered or the essential structure of the contracts. *Id.*

Baseline treatment. The Postal Service requests that the instant contract be considered the baseline contract for future functional equivalency comparisons of future Global Direct contracts “[b]ecause the Postal Service expects the text of any future Global Direct Contracts to resemble the instant contract more closely than those in Docket No. CP2009-10 and CP2009-11.” *Id.* The Postal Service has made similar requests for a new baseline contract in recent filings.⁷ The Commission intends to address the issue in light of all distinct characteristics in a subsequent order.

II. NOTICE OF FILING

The Commission establishes Docket Nos. MC2010-17 and CP2010-18 for consideration of the Notice pertaining to the proposed Global Direct Contracts 1 Negotiated Service Agreement product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service’s filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than January 6, 2010. The public portions of these filings can be accessed via the Commissions website (www.prc.gov).

The Commission appoints Jeremy Simmons to serve as Public Representative in these dockets.

⁷ See, e.g., Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009, at 3; Docket No. CP2009-62, Order Concerning Inbound Direct Entry Contracts 1 Negotiated Service Agreement, September 4, 2009, at 7.

III. ORDERING PARAGRAPHS

It is Ordered:

1. 1. The Commission establishes Docket Nos. MC2010-17 and CP2010-18 for consideration of the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Jeremy Simmons is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than January 6, 2010.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary