

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

ORDER CONCERNING FILING  
OF FUNCTIONALLY EQUIVALENT GLOBAL DIRECT CONTRACTS 1  
NEGOTIATED SERVICE AGREEMENT

(Issued January 11, 2010)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Global Direct Contracts 1 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

## II. BACKGROUND

On December 23, 2009, the Postal Service filed a request seeking to add a new product, Global Direct Contracts 1, to the Global Direct Contracts product.<sup>1</sup> The Global Direct product provides a rate for mail acceptance within the United States, transportation to a receiving country of mail that bears the destination country's indicia, and payment by the Postal Service of the appropriate settlement charges to the receiving country. In support of its Request, the Postal Service incorporates by reference the Statement of Supporting Justification of Frank Cebello, Executive Director, Global Business Management, initially filed with its request in Docket Nos. MC2009-9, CP2009-10, and CP2009-11.<sup>2</sup> The Request has been assigned Docket No. MC2010-17.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 CFR 3015.5. The contract has been assigned Docket No. CP2010-18 and is the successor to the contract approved in Docket No. CP2009-11. See Order No. 153. The Postal Service states that the instant contract is functionally equivalent to previously 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.<sup>3</sup> In addition, the Postal Service contends that the contract is in accordance with Order No. 153.

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<sup>1</sup> 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 (Request).

<sup>2</sup> Docket Nos. MC2009-9, CP2009-10 and CP2009-11, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008 (Order No. 153).

<sup>3</sup> 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." Request, Attachment 4; see *also* Request at 2, n.3, *citing* PRC Order No. 153 at 9 (regarding indirect postage payment).

The contract term is one year from the effective date and may be automatically renewed unless the parties agree otherwise. *Id.* at 3-4.

In support of its Request, 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.

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. Request 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.

The Postal Service asserts that the instant Global Direct contract is functionally equivalent with the previous Global Direct Contracts 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. 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.

The Postal Service asserts that the “instant Global Direct Contract is fundamentally similar to that in Docket No. CP2009-11, but notes that many of the terms and conditions have changed including the following: (a) allowing mailers to use

Canada Post's domestic Incentive Lettermail Service;<sup>4</sup> (b) notice of confidentiality rules; (c) modifying the term to a full year; (d) clarifying locations for tendering qualifying items; explaining the availability of pickup service; and (e) reflecting the price changes of Canada Post. *Id.* at 5. The Postal Service maintains that the differences do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* It also states that the proposed Mail Classification Schedule (MCS) language included with the Request presents a modification proposed by the Commission to reflect the actual payment practice.<sup>5</sup>

The Postal Service requests that the instant contract be considered the baseline contract for functional equivalency comparisons of future Global Direct contracts, indicating that future Global Direct Contracts will be based upon the instant contract's provisions rather than those in Docket No. CP2009-10 and CP2009-11. Request 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 Order No. 373, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>6</sup>

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<sup>4</sup> The Postal Service states that Incentive Lettermail is the same as Canada Post's Lettermail in terms of size, shape, and content. A mailer performs certain preparation tasks dictated by Canada Post to qualify for Incentive Lettermail pricing, just as Canadian domestic mailer might.

<sup>5</sup> See Order No. 153 at 9, in which the Commission reviewed the language of the actual agreements compared to the language proposed by the Postal Service to modify the MCS and determined the language proposed for inclusion in the MCS should reflect the actual payment practice under these agreements.

<sup>6</sup> Notice and Order Concerning Filing of Functionally Equivalent Global Direct Contracts Negotiated Service Agreement, December 30, 2009 (Order No. 373).

### III. COMMENTS

Comments were filed by the Public Representative.<sup>7</sup> No other interested person submitted comments. The Public Representative states that it appears that the contract complies with 39 U.S.C. 3633(a) and 39 CFR 3015.5. *Id.* He observes that the pricing structure and certification indicate that this contract meets its attributable costs and there is no cross-subsidization of this competitive product by market dominant products. *Id.* at 2-3. He notes that while some of the terms of the instant contract are different than previous Global Direct contracts this does not alter its functional equivalency. *Id.* at 3. He affirms that his review of the contract and supporting materials filed under seal indicates that the instant contract complies with the pricing formula established in Governors' Decision No. 08-10, is functionally equivalent to the other contracts within the Global Directs Contracts classification, and is appropriately established as a competitive product. *Id.* at 2-3.

The Public Representative concludes that the instant contract's terms are in compliance with statutory requirements for a competitive product and are beneficial to the general public. *Id.* at 4.

### IV. COMMISSION ANALYSIS

The Postal Service's filing presents several issues for the Commission to consider: (1) the addition of a new product to the MCS in accordance with 39 U.S.C. 3642; (2) whether the agreement satisfies 39 U.S.C. 3633; and, (3) the treatment of the Global Contracts 1 as the baseline agreement as requested by the Postal Service. In reaching its conclusions, the Commission has reviewed the Request, the

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<sup>7</sup> Public Representative Comments in Response to Order No. 373, January 6, 2010 (Public Representative Comments).

agreement and the financial analyses provided under seal, and the Public Representative's comments.

*Product Classification.* The Postal Service notes that the Commission has had the opportunity to review the Global Directs Contracts product in Order No. 153 and found that those contracts were properly classified as competitive. In lieu of a separate statement relative to the instant contract, it incorporates by reference its supporting justification for the contracts in Dockets Nos. CP2009-9, CP2009-6 and CP2009-11 as Attachment 5 to the request. The Commission finds this an acceptable method for the Postal Service to support its request.

*Cost Considerations.* The Postal Service contends that the instant contract and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Request at 3. It asserts that the Governors' Decision (No. 08-10) supporting this agreement establishes a pricing formula and classification that ensures each contract meets the criteria of 39 U.S.C. 3633 and the regulations promulgated thereunder. Request, Attachment 4, Attachment D.

The Public Representative concurs that the agreement appears to satisfy section 3633 of title 39. Public Representative Comments at 1.

Based on the data submitted and the Commission's 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.

*Baseline Agreement.* The Postal Service seeks to add a new product, Global Direct Contracts 1, to the competitive product list. It contends that the instant contract is functionally equivalent to previously reviewed Global Direct Contracts. At the same time

it asks that the instant contract be considered a new baseline for future Global Direct Contracts. Request at 2. The Postal Service indicates that future Global Direct Contracts are likely to resemble this one. Because Global Direct Contracts 1 is being added as a new product, the Commission finds it unnecessary to address the issue of functional equivalency with previous contracts.

The Postal Service notes that the Global Direct Contracts 1 contract differs from previously submitted Global Direct contracts, *e.g.*, pertaining to the treatment of confidential information, the availability of domestic Incentive Lettermail Service, and more detail in descriptions for penalties and postage due assessed by Canada Post. It also cites new provisions that add clarity or update terms, but contends that they do not alter the essential service being offered. *Id.* at 5. Finally, it asserts that the cost and market characteristics of the instant contract are fundamentally similar to those of the prior Global Direct contracts. *Id.*

Having evaluated the instant Global Direct contract along with the supporting financial analyses, the Commission finds that the Global Direct Contracts 1 is properly included as a new product to the Competitive Product List.

Following the current practice, the Postal Service shall identify all significant differences between any new Global Direct contract and the Global Direct Contract 1 product. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The docket referenced in the caption should be Docket No. MC2010-17. In conformity with the current practice, a redacted copy of Governors' Decision 08-10 should be included in the new filing along with an electronic link to it.

The Postal Service shall inform the Commission of the effective dates of the contract and promptly notify the Commission if the contract terminates earlier than scheduled.

In conclusion, the Commission adds Global Direct Contract 1 to the competitive product list and finds that the negotiated service agreement submitted in Docket No. CP2010-18 is appropriately included within the Global Direct Contracts 1 product.

#### V. ORDERING PARAGRAPHS

*It is Ordered:*

1. Global Direct Contract 1 (MC2010-17 and CP2010-18) is added to the Competitive Product List as a new product, under Negotiated Service Agreements, International.
2. The Postal Service shall inform the Commission of the effective dates of the contract and notify it if the contract terminates earlier than scheduled, as discussed in this Order.
3. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove  
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 Nos. MC2010-17 and CP2010-18. 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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Outbound International

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Global Direct Contracts 1 (MC2010-17and CP2010-18)

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