

ORDER NO. 387

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 (MC2009-17)  
Negotiated Service Agreement

Docket No. CP2010-19

ORDER CONCERNING  
FILING OF ADDITIONAL GLOBAL DIRECT CONTRACTS 1  
NEGOTIATED SERVICE AGREEMENT

(January 11, 2009)

I. INTRODUCTION

The Postal Service seeks to add an additional negotiated service agreement to the Global Direct Contracts 1 product established in Docket Nos. MC2010-17, CP2010-18. For the reasons discussed below, the Commission approves this request.

## II. BACKGROUND

On December 23, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Direct Contracts 1 agreement.<sup>1</sup> Global Direct Contracts 1 provide a rate for mail acceptance within the United States and transportation to a receiving country, with the addition by the customer of appropriate foreign indicia, and payment by the Postal Service of the appropriate settlement charges to the receiving country. The Postal Service believes the instant agreement is functionally equivalent to the previously submitted Global Direct Contracts 1 agreement, and is supported by Governors' Decision No.08-10 filed in Docket No. MC2008-7.<sup>2</sup> The Postal Service contends that the instant agreement should be included within the Global Direct Contracts 1 product. *Id.* at 2.

The Postal Service filed the instant agreement pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the agreement is in accordance with PRC Order No. 153.<sup>3</sup> *Id.* It submitted the contract and supporting material under seal, and attached the following:

- 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; and
- 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.

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<sup>1</sup> Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, December 23, 2009 (Notice).

<sup>2</sup> Notice at 1-2, *citing* Attachment 4 reflecting a redacted version of Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts (Governors' Decision No. 08-10), July 16, 2008. The Postal Service also filed under seal an unredacted version of the Governors' Decision in that docket.

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

The Postal Service will notify the customer of the effective date of the contract, which is the successor of the Global Direct contract approved in Docket No. CP2009-18, within 30 days after receiving all regulatory approvals.<sup>4</sup> Notice at 2-3. To that end, 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 2.

The Notice identifies the instant agreement as fitting within the Mail Classification Schedule (MCS) language for Global Direct Contracts, and indicates that this agreement is set to replace the one expiring soon.<sup>5</sup> The Postal Service states this contract includes MCS language with the modification proposed by the Commission to reflect the actual payment practice.<sup>6</sup> The Notice also provides the Postal Service's rationale for concluding that the instant contract is functionally equivalent to the Global Direct Contracts 1 agreement proposed in Docket No. CP2010-18. *Id.* The Postal Service submits that these contracts share similar cost and market characteristics with only a minor difference while the "core terms and conditions remain the same." *Id.* The instant contract "allows the customer to tender items that meet the requirements for Canada Post's domestic Ad Mail service, in addition to the types of Canada Post items covered by the contract in Docket Nos. MC2010-17 and CP2010-18." *Id.* This kind of distinction, it adds, has not precluded functionally equivalent treatment in the past. *Id.* at 3, n.6, *citing* PRC Order No. 166. Thus, it concludes that "this contract should be added to the existing Global Direct Contracts 1 product." *Id.* at 4.

In Order No. 374, the Commission gave notice of the docket, appointed a public representative, and provided the public with an opportunity to comment.

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<sup>4</sup> The contract at issue in Docket No. CP2008-19 was ruled functionally equivalent to other Global Direct Contracts, including the one at issue in Docket No. CP2008-11, which were added to the Competitive Product List. See Docket No. CP2009-18, Order Concerning Additional Global Direct Contracts Negotiated Service Agreement, January 9, 2009 (Order No. 166).

<sup>5</sup> *Id.* The Postal Service also states that this agreement is scheduled to remain effective for one year subject to automatic renewal unless terminated by the parties. *Id.* at 3.

<sup>6</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 Mail Classification Schedule and determined the language proposed for inclusion in the Mail Classification Schedule should reflect the actual payment practice under these agreements.

### 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. 08-7, is functionally equivalent to the other contracts within the Global Direct Contracts classification, and is appropriately established as a competitive product. *Id.* at 2-3.

### IV. COMMISSION ANALYSIS

As filed, this docket presents two issues for the Commission to consider: (1) whether the agreement satisfies 39 U.S.C. 3633, and (2) whether the agreement is functionally equivalent to the previously reviewed Global Direct Contracts 1 agreement.<sup>8</sup> In reaching its conclusions, the Commission has reviewed the Notice, the contract and the financial analyses provided under seal, and the Public Representative 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 the Governors' Decision (No. 08-10) supporting this agreement establishes

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<sup>7</sup> Public Representative Comments in Response to Order No. 374, January 6, 2010 (Public Representative Comments).

<sup>8</sup> Previously the Commission found the Global Direct Contracts product to be properly classified as a competitive product. See Order No. 153 at 7.

a pricing formula and classification that ensures each contract meets the criteria of 39 U.S.C. 3633 and the regulations promulgated thereunder. *Id.*, Attachment 4.

The Public Representative concurs that the agreement appears to satisfy section 3633 of title 39 and 39 CFR 3015.5. 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.

*Functional equivalence.* The Postal Service asserts that the instant agreement is functionally equivalent to the previously reviewed Global Direct Contracts 1 agreement in that they share similar cost and market characteristics, and contends as a result they therefore should be classified as a single product. Notice at 3. It also states that the contract is the successor to the contract in Docket No. CP2009-18. The Postal Service in its Notice compares the two Global Direct Contracts 1 agreements. It asserts that the only distinction between them is that the instant contract permits the customer to tender items meeting the requirements for Canada Post's domestic Ad Mail service in addition to the items covered in the previous Global Direct Contracts 1. The Postal Service states that the essential core terms and services remain consistent: "the Postal Service is providing the customer with price-based incentives to commit 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 3.

The Public Representative also states that he finds no reason to believe that the contracts are not functionally equivalent. Public Representative Comments at 2.

Having evaluated the similarities and differences of the instant Global Direct Contracts 1 along with the supporting financial analyses, the Commission finds that the contracts may be treated as functionally equivalent, and that the instant contract is

properly included within the Global Direct Contracts 1 product on the Competitive Product List.

The Postal Service shall promptly notify the Commission if the contract terminates earlier than anticipated.

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2010-19 is appropriately included within the Global Direct Contracts 1 product.

V. ORDERING PARAGRAPHS

*It is Ordered:*

1. The contract filed in Docket No. CP2010-19 is included within the product Global Direct Contracts 1 (MC2010-17).
2. The Postal Service shall notify the Commission if the contract terminates earlier than the scheduled termination date, as discussed in this Order.

By the Commission.

Shoshana M. Grove  
Secretary