

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 (MC2010-17)
Negotiated Service Agreement

Docket No. CP2010-47

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

(Issued May 19, 2010)

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 and CP2010-18. For the reasons discussed below, the Commission approves the addition of the instant contract to the Global Direct Contracts 1 product.

II. BACKGROUND

On May 4, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Direct Contracts 1 agreement.¹ Global Direct Contracts 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. The Postal Service believes the instant contract is functionally equivalent to the Global Direct Contracts 1 contract filed in Docket Nos. MC2010-17 and CP2010-18, and supported by the Governors' Decision filed in Docket No. MC2008-7.²

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 153.³ The term of the instant contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received and it may be automatically renewed unless terminated by the parties. Notice at 3. The Postal Service states that the instant contract replaces the contract for the customer in Docket No. CP2009-29 which will expire soon. *Id.* at 2-3.

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

- Attachment 1—a redacted copy of the contract;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, May 4, 2010 (Notice).

² Notice at 1-2. See Docket No. MC2008-7, Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Two Functionally Equivalent Agreements, August 8, 2008; Attachment 1 is 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, July 16, 2008 (Governors' Decision No. 08-10). The Postal Service also filed under seal an unredacted version of the Governors' Decision in that docket.

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

- Attachment 3—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 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.⁴

The Postal Service states that the instant contract fits within the Mail Classification Schedule language for Global Direct Contracts in Governors’ Decision No. 08-10, with the modification noted in Order No. 153.⁵

The Notice advances reasons why the instant contract fits within the Mail Classification Schedule language for Global Direct Contracts 1 and is functionally equivalent to the contract filed in Docket Nos. MC2010-17 and CP2010-18. The Postal Service characterizes certain differences from previously filed Global Direct Contracts 1 as cosmetic or customer-specific updates. It identifies changes in specific provisions that contain the essential differences from the previous Global Direct Contracts 1 contract as revisions in mailer notification requirements, mailer minimum commitment, and clarifying country-specific notification requirements all of which are highlighted in the Notice. Notice at 3. It contends that the instant contract is functionally equivalent to the Global Direct Contracts 1 contract filed previously notwithstanding these differences. *Id.* at 4.

The Postal Service contends that its filing demonstrates that the “cost and market characteristics of this agreement are substantially similar to those of prior Global Direct contracts” and is in conformity with the requirements of 39 U.S.C. 3633. *Id.* It requests that the contract be included within the Global Direct Contracts 1 product.

⁴ The Postal Service states in its Notice that Attachment 3 is the application for non-public treatment of the redacted materials and that Attachment 4 is the redacted version of Governors’ Decision No. 08-10. However, the attachments filed in this docket are as noted above.

⁵ See Order No. 153 at 9. See *also* Docket No. MC2009-23, Order of Classification Changes, May 11, 2009, that accepts a Postal Service proposal to modify the Mail Classification Schedule so that for Global Direct service the mailer is notified whether such mail is (or is not) sealed against inspection.

In Order No. 454, the Commission gave notice of the docket, appointed a public representative, and provided the public with an opportunity to comment.⁶

III. COMMENTS

Comments were filed by the Public Representative.⁷ No other interested person submitted comments. The Public Representative states that it appears that the contract complies with applicable requirements of 39 U.S.C. 3632, 3633 and 39 CFR 3015. *Id.* at 1. He notes that while some of the terms of the instant contract are different than previous Global Direct Contracts 1 contract, this does not alter its functional equivalency. *Id.* at 2. The Public Representative observes that the contract's pricing structure and conformity with Global Direct Contracts 1 cost attributes and methodology indicate that this contract should not lead to the subsidization of competitive products by market dominant products, should cover its attributable costs, and should have a positive net contribution to institutional costs. *Id.* at 2-3. 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 Direct Contracts classification, and is appropriately established as a competitive product. *Id.* at 2-3. He concludes that the contract is beneficial to the Postal Service and the general public. *Id.* at 3.

IV. COMMISSION ANALYSIS

As filed, this docket presents two issues for the Commission to consider:

(1) whether the contract satisfies 39 U.S.C. 3633, and (2) whether the contract is

⁶ Notice and Order Concerning Filing of Additional Global Direct Contracts 1 Negotiated Service Agreements, May 6, 2010 (Order No. 454).

⁷ Public Representative Comments in Response to United States Postal Service Filing of Additional Global Direct Contracts 1 Negotiated Service Agreement, May 17, 2010 (Public Representative Comments). Subsequently, the Public Representative filed Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Notice of Additional Global Direct Contracts 1 Negotiated Service Agreement, May 17, 2010. The motion is granted.

functionally equivalent to the previously reviewed Global Direct Contracts 1 contract.⁸ 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 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). Notice at 2. It asserts that the Governors' Decision (No. 08-10) supporting this contract establishes 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 3.

Based on an analysis of the data submitted, the Commission finds that the contract 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 contract indicates that it comports with the provisions applicable to rates for competitive products.

Functional equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the previously reviewed Global Direct Contracts 1 contract in that they share similar cost and market characteristics, and contends that as a result they should be classified as a single product. Notice at 3. It also states that the instant contract is the successor to the contract in Docket No. CP2009-29. In its Notice, the Postal Service compares the instant contract with the previous Global Direct Contracts 1 contract in Dockets Nos. MC2010-17 and CP2010-18. It asserts that the only distinction between them is that the instant contract has additional notification requirements relative to the type of mail the mailer will submit, differences in the annualized minimum commitment, and clarifies Canada Post's mail notification requirements. *Id.* The Postal Service states that the essential core terms and services

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

remain consistent: “the Postal Service is providing the customer with Global Direct, a competitive service for delivery of Letter Post items bearing foreign postage and indicia.” *Id.*

Having evaluated the similarities and differences of the instant Global Direct Contracts 1, the Commission finds that the instant contract may be treated as functionally equivalent, and that it is properly included within the Global Direct Contracts 1 product on the Competitive Product List.

Other considerations. The instant contract states that the Postal Service will notify the mailer of its effective date within 30 days after receiving all necessary regulatory approvals and will remain in effect for one year from the effective date. The Postal Service shall notify the Commission of the effective date of this contract. If it terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.

The Postal Service indicates in its Notice that this filing is on behalf of the same customer as in Docket No. CP2009-29. The instant contract supersedes the contract in Docket No. CP2009-29. Given that, the Postal Service shall, no later than 30 days after the effective date of the new contract, provide the costs, volumes, and revenues disaggregated by weight associated with the current contract. Such data are to be filed in Docket No. 2009-29.

In addition, within 30 days of the expiration of the instant contract, the Postal Service shall file the costs, volumes, and revenues disaggregated by weight associated with the instant contract, including any penalties paid.

In conclusion, the Commission finds that the negotiated service contract submitted in Docket No. CP2010-47 is appropriately included within the Global Direct Contracts 1 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2010-47 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.
3. The Postal Service shall, no later than 30 days after the effective date of the instant contract, provide the costs, volumes, and revenues disaggregated by weight associated with the current contract. Such data are to be filed in Docket No. CP2009-29.
4. Within 30 days of the expiration of the instant contract, the Postal Service shall file the costs, volumes, and revenues disaggregated by weight associated with the instant contract, including any penalties paid.

By the Commission.

Judith M. Grady
Acting Secretary