

ORDER NO. 659

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

Before Commissioners:

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

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

Docket No. CP2011-52

ORDER APPROVING
ADDITIONAL GLOBAL DIRECT CONTRACTS 1
NEGOTIATED SERVICE AGREEMENT

(Issued February 1, 2011)

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 December 23, 2010, the Postal Service filed a notice announcing its intent to enter into an additional Global Direct Contracts 1 agreement.¹ It filed a copy of the signed contract on January 20, 2011.² The signed agreement indicates that the Postal Service will notify the mailer within 30 days after receiving regulatory approval of the effective date. The agreement is scheduled to remain in effect until 11:59 on the date prior to the date in January 2012 when Canada Post Corporation implements price changes for Admail. In the event no price changes occur for Admail in January 2012, the agreement will end on January 31, 2012. Revised Notice, Attachment 1 at 7. In addition, either party may terminate the contract on 30 days' notice to the other. *Id.*

To support 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);
- 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.

The Postal Service asserts that the instant agreement is functionally equivalent to the previous Global Direct Contracts 1 agreement in Docket Nos. MC2010-17 and CP2010-18. Notice at 3. Aside from cosmetic or customer-specific updates, the Postal Service contends that the only differences are that the instant agreement contains changes relative to Admail, explanation of procedures for non-conforming mail, specific

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, December 23, 2010 (Notice). The agreement had not been signed at the time of the filing of the original notice. At that time, the Postal Service expected the agreement to be signed soon. Notice at 1 n.2.

² Notice of the United States Postal Service of Filing a Signed Global Direct Contracts 1 Negotiated Service Agreement, January 20, 2011 (Revised Notice).

price changes, revisions to minimum commitment, and annexes. *Id.* at 3-4. Despite these differences, the Postal Service contends that the instant contract is functionally equivalent to the Global Direct Contracts 1 agreement filed previously because the core terms and conditions remain the same. *Id.* at 4. It requests that the Commission include this agreement within the Global Direct Contracts 1 product. *Id.*

In Order No. 624, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.³ In the absence of an executed contract, the Commission extended the due date for comments in the instant docket and directed the Postal Service to identify differences between the draft agreement filed December 23, 2010 and the executed agreement.⁴

III. COMMENTS

Comments were filed by the Public Representative.⁵ No other interested person submitted comments. The Public Representative states that the instant negotiated service agreement serves the interest of the public and is consistent with 39 U.S.C. 3633 and 39 CFR 3015. *Id.* at 1. Based on his review of the contract and materials filed under seal, the Public Representative concludes that the instant contract is not being cross-subsidized by market dominant products. Further, he finds that, notwithstanding some variances from previously approved contracts, the instant contract appears to be functionally equivalent to the contract in Docket No. CP2010-18 and the existing contract with this customer. *Id.* at 1-2.

The Public Representative also discusses the timing of the filing of the executed contract in this proceeding, noting that draft agreements preclude meaningful review. He suggests that, in lieu of filing a draft agreement, the Postal Service utilize available

³ Notice and Order Concerning Filing of Additional Global Direct Contracts 1 Negotiated Service Agreement, December 28, 2010 (Order No. 624).

⁴ Order No. 632, Order Extending Time for Comments, December 30, 2010.

⁵ Public Representative Comments in Response to Order No. 632, January 24, 2011 (PR Comments).

options to avoid interruptions in service, e.g., filing motions to extend existing contract terms. *Id.* at 2-3.

IV. COMMISSION ANALYSIS

The Postal Service's filing presents two issues for the Commission to consider: (1) whether the contract satisfies 39 U.S.C. 3633, and (2) whether the contract is functionally equivalent to the previously reviewed Global Direct Contracts 1 contracts.⁶ In reaching its conclusions, the Commission has reviewed the Notice, the contract, 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 ensuring that 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 contracts in that they share similar cost and market characteristics. *Id.* at 3. In its Notice, the Postal Service compares the instant contract, which is the successor to the contract in Docket

⁶ Previously, the Commission found the Global Direct Contracts product to be properly classified as a competitive product. See Order No. 153, Docket Nos. MC2009-9, CP2009-10 and CP2009-11, Order Concerning Global Direct Contracts Negotiated Service Agreement, December 19, 2008, at 7.

No. CP2010-19, with the previous Global Direct Contracts 1 contract in Dockets Nos. MC2010-17 and CP2010-18. It asserts that the differences between them concerns (1) Global Direct service used with Admail to Canada; (2) detailed procedures relating to penalties for non-conforming mail; (3) actual and potential changes in pricing; and (4) revision in annualized minimum commitments and annexes. *Id.* at 3-4.⁷

The Postal Service states that the essential terms and services remain consistent: “[T]he Postal Service is providing the customer with Global Direct, a competitive service for delivery of Letter Post items bearing foreign postage and indicia.” Notice at 4.

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 Postal Service indicates in its Notice that this filing is on behalf of the same customer as in Docket No. CP2010-19. The instant contract supersedes the contract in Docket No. CP2010-19. Given that, the Postal Service shall, no later than 30 days after the effective date of the current contract, provide the costs, volumes, and revenues disaggregated by weight associated with the current contract. Such data are to be filed in Docket No. CP2010-19.

The instant contract states that the Postal Service shall notify the mailer of its effective date within 30 days after receiving all necessary regulatory approvals and it will remain in effect for 1 year or if prices changes occur, it will terminate prior to the price change date or, at the latest, if no price changes occur January 31, 2012. The Postal Service shall notify the Commission of the effective dates of the instant contract. If it terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.

⁷ In accordance with Order No. 632, the Postal Service also highlighted minor differences between the draft contract and the executed contract. Revised Notice at 2-3.

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.

As the Public Representative observes, the Commission faces difficulties in fulfilling its statutory responsibilities based on a review of only a draft contract. However, the Commission recognizes the complexity of negotiating contracts with other parties. Therefore, the Commission requests that the Postal Service continue to take all necessary actions possible to file notices of price adjustments with an executed contract. If the Postal Service needs additional time to complete the contract process, it should seek appropriate relief from the Commission to avoid any possible interruption in service to the mailer.

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2011-52 is appropriately included within the Global Direct Contracts 1 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The contract filed in Docket No. CP2011-52 is included within the product Global Direct Contracts 1 (MC2010-17 and CP2010-18).
2. The Postal Service shall notify the Commission of the instant contract's effective dates and 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 expiration date of the instant contract, provide the costs, volumes, and revenues disaggregated by weight associated with the current contract, including any penalties paid.
4. Within 30 days of the expiration of the current contract in Docket No. CP2010-19, the Postal Service shall file the costs, volumes, and revenues disaggregated by weight associated with that contract, including any penalties paid. Such data are to be filed in Docket No. CP2010-19.

By the Commission.

Shoshana M. Grove
Secretary