

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

Before Commissioners:

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

Competitive Product Prices
Global Direct Contracts (MC2009-9)
Negotiated Service Agreement

Docket No. CP2009-18

ORDER CONCERNING ADDITIONAL
GLOBAL DIRECT CONTRACTS
NEGOTIATED SERVICE AGREEMENT

(Issued January 9, 2009)

The Postal Service proposes to add an additional negotiated service agreement to the Global Direct Contracts product established in Docket Nos. MC2009-9, CP2009-10, and CP2009-11.¹ For the reasons discussed below, the Commission approves this request.

I. BACKGROUND

On December 23, 2008, the Postal Service filed notice pursuant to 39 CFR 3015.5 and Order No. 153 announcing that it had entered into an additional Global

¹ See PRC Order No. 153, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008 (Order No. 153) (establishing the Global Direct Contracts product and incorporating the initial two agreements).

Direct Contracts agreement.² Global Direct Contracts provide for mail accepted within the United States and transportation to a receiving country of mail pieces bearing the image of appropriate foreign post indicia. The Postal Service pays the appropriate settlement charges for this mail. The Global Direct Contracts product is included within the Competitive Product List.

The Postal Service asserts that the additional agreement is supported by the Governors' Decision filed in Docket No. MC2008-7.³ It identifies the agreement as fitting within the Mail Classification Schedule language for Global Direct Contracts, and provides the Postal Service's rationale for concluding that the instant agreement is functionally equivalent to the initial contracts filed in Docket Nos. CP2009-10 and CP2009-11. *Id.* at 2-6. The Notice also indicates that this agreement is set to expire no later than January 31, 2010. *Id.* at 2.

In Order No. 159,⁴ the Commission provided notice of the Postal Service's filing, established Docket No. CP2008-18, appointed a public representative, and provided the public with an opportunity to comment.

² Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts Negotiated Service Agreement, December 23, 2008 (Notice). A redacted copy of the certified statement required by 39 CFR 3015.5(c)(2) was attached to the Notice. The contract and supporting materials were filed under seal.

³ 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, Attachment A, August 8, 2008, for 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.

⁴ PRC Order No. 159, Notice and Order Concerning Filing of Additional Global Direct Contracts Negotiated Service Agreement, December 29, 2009 (Order No. 159).

II. COMMENTS

The Public Representative filed comments and surreply comments.⁵ The Postal Service filed reply comments.⁶

The Public Representative states that the provisions of the agreement “overtly comport with the requirement that it will generate sufficient revenue to cover attributable costs for the services provided, enable competitive products as a whole to cover their costs, and as a whole to contribute a minimum of 5.5 percent to the Postal Service’s total institutional costs.” Public Representative Comments at 4. He concludes that, based on a review of the materials the Postal Service filed under seal, the agreement is appropriately categorized as a competitive product. *Id.* Furthermore, he finds no reason to conclude that the instant agreement is not functionally equivalent to the previously filed Global Direct Contracts agreements. *Id.*

The Public Representative repeats his concerns raised in a previous docket regarding the “privileged access to recipient-nation delivery charges (such as bilateral negotiated rates or terminal dues) and disparate customs clearance treatment” associated with this type of negotiated service agreement. *Id.* at 13. While acknowledging that these concerns are beyond the scope of the instant docket, he again requests the initiation of a public inquiry docket to examine these issues. *Id.* at 6-13.

The Postal Service filed a reply to the Public Representative’s privileged access and disparate treatment comments. It contends that other avenues are available to address these issues and urges the Commission to reject the call for a public inquiry. See Postal Service Reply.

⁵ Public Representative Comments in Response to Order No. 159, January 5, 2009 (Public Representative Comments). The Public Representative also filed Public Representative Surreply Comments on Order No. 159 with an accompanying Motion for Late Acceptance of Surreply Comments on Order No. 159, both filed on January 7, 2009. The motion is granted.

⁶ Reply of United States Postal Service to Public Representative Comments in Response to Order No. 159, January 7, 2008 (Reply).

III. COMMISSION ANALYSIS

As filed, this docket presents two issues for the Commission to consider: (1) whether the agreement satisfies statutory provisions for cost coverage and contribution to institutional cost, and (2) whether the agreement is functionally equivalent to previously reviewed Global Direct Contracts agreements.⁷ In reaching its findings and conclusions, the Commission has reviewed the Postal Service's Notice, the agreement and the financial analyses provided under seal, the Public Representative's comments, and the Postal Service's Reply.

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 a pricing formula and classification that ensures each contract meets the criteria of 39 U.S.C. 3633 and the regulations promulgated thereunder. It further states that the previously proposed Mail Classification Schedule language requires each contract to cover its costs. *Id.* at 4.

The Public Representative concurs that the agreement appears to generate sufficient revenue to cover attributable costs, enables competitive products as a whole to cover their costs, and as a whole contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Public Representative Comments at 4.

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

⁷ A finding that the instant agreement is functionally equivalent forms a rebuttable presumption that the instant agreement is properly categorized as competitive and that other statutory requirements are satisfied.

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 agreements in that they all share the same cost and market characteristics, and contends that all agreements cover the same services to the same foreign destination. Notice at 4. It explains that Global Direct Contracts customers are businesses that send mail directly to foreign destinations desiring that their mail bear the indicia of the foreign country.

The Postal Service in its Notice reviews the similarities and the differences of the existing agreements. It notes that the instant agreement includes an additional service. It explains that two of the agreements contain postage commitments, while the third agreement has a volume commitment. It states that although prices vary based on the services, the contracts are similar because the total costs are volume variable. It notes that liquidated damages provisions differ between the agreements, but that the assignment clauses are essentially the same. The Postal Service indicates that all contracts contain provisions for currency exchange rate fluctuations and changes in foreign postage or other fees, and that the terms of all contracts are basically for a one-year period. Finally it notes that there are different provisions regarding where the mail is to be tendered because of the differences in services offered. *Id.* at 5.

The Public Representative states that he finds no reason to believe that the agreements are not functionally equivalent. Public Representative Comments at 4.

Having evaluated the similarities and differences of the three Global Direct Contracts agreements along with the supporting financial analyses, the Commission finds that the agreements may be treated as functionally equivalent, and that the instant agreement is properly included within the Global Direct Contracts product on the Competitive Product List. The nature of the additional service included with the instant agreement appears to have a minimal impact on the agreement's financial analysis and its characterization as functionally equivalent.

Additional issues. The Public Representative expresses concerns related to alleged privileged access to recipient-nation delivery charges and disparate customer clearance treatment that he also raised in Docket Nos. MC2009-9, CP2009-10, and CP2009-11. He suggests the Commission commence a proceeding to examine these issues. *Id.* at 12. The Postal Service in its Reply explains the current system under which these concerns arise, and offers alternatives in which a party might become involved in participating in the international regulatory process. It also opposes the Public Representative's suggestion that the Commission establish a proceeding on these matters.

As the Public Representative recognizes, the issues he raises are beyond the scope of this proceeding. *Id.* at 4; *see also* Order No. 153 at 7. However, the Commission appreciates the Public Representative's and the Postal Service's efforts in better informing the Commission of these issues and will take the Public Representative's suggestions under advisement until the need for such a proceeding becomes more apparent. The Commission will not initiate a public inquiry at this time.

The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2009-18 is appropriately included within the Global Direct Contracts product.

It is Ordered:

1. The negotiated service agreement filed in this docket appears consistent with applicable statutory requirements. It also appears functionally equivalent to previously reviewed Global Direct Contracts agreements, and appropriately is included within the Global Direct Contracts product.
2. The Postal Service shall notify the Commission of the scheduled termination date, and update the Commission if the termination date changes for either contract as discussed in this Order.
3. The Motion for Late Acceptance of Surreply Comments on Order No. 159, filed January 7, 2009, is granted.

By the Commission.

Steven W. Williams
Secretary