

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 Plus 2 Contracts (MC2008-7)
Negotiated Service Agreements

Docket Nos. CP2009-49

ORDER CONCERNING FILING OF A FUNCTIONALLY EQUIVALENT
GLOBAL PLUS 2 CONTRACT
NEGOTIATED SERVICE AGREEMENT

(Issued July, 31, 2009)

I. INTRODUCTION

The Postal Service proposes to add a specific Global Plus 2 contract to the Global Plus Contract product established in Docket No. MC2008-7. For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. BACKGROUND

On July 13, 2009, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 2 contracts, which it states fit within the previously established Global Plus 2 Contracts product.¹ The Postal Service states that each contract is functionally equivalent to previously submitted Global Plus 2 contracts, are filed in accordance with Order No. 112² and are supported by Governors' Decision No. 08-10 filed in Docket No. MC2008-7.³ Notice at 1.

The Notice also states that in Docket No. MC2008-7, the Governors established prices and classifications for competitive products not of general applicability for Global Plus Contracts. The Postal Service relates that the instant contract is the immediate successor contract to the contract in Docket No. CP2008-17, which will expire soon, and which the Commission found to be functionally equivalent in Order No. 112.

The Postal Service contends that the instant contract should be included within the Global Plus 2 product on the Competitive Product List. *Id.*

In support, the Postal Service has filed a redacted version of the contract and related materials as Attachment 1-A. A redacted version of the certified statement required by 39 CFR 3015.5 is included as Attachment 2-A. The Postal Service states that the contract should be included within the Global Plus 2 product and requests that the instant contract be considered the "baseline contract[s] for future functional equivalency analyses concerning this product." *Id.* at 2.

¹ Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 2 Negotiated Service Agreements, July 13, 2009 (Notice). While the Notice was filed jointly in Docket Nos. CP2009-48 and CP2009-49, the Commission will address the issues in these dockets in separate orders. The Postal Service requests that the two contracts be included in the Global Plus 2 product, and "that they be considered the new 'baseline' contracts for future functional equivalency analyses...." *Id.* at 2.

² See Docket Nos. MC2008-7, CP2008-16 and CP2008-17, Order Concerning Global Plus 2 Negotiated Service Agreements, October 3, 2008 (Order No. 112).

³ See Docket Nos. MC2008-7, CP2008-16 and CP2008-17, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classification for Global Direct, Global Bulk Economy, and Global Plus Contracts, July 16, 2008 (Governors' Decision 08-10).

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract becomes effective August 1, 2009, unless regulatory reviews affect that date, and have a one-year term.

The Postal Service maintains that certain portions of each contract and certified statement required by 39 CFR 3015.5(c)(2), containing names and identifying information of the Global Plus 2 customer, related financial information, portions of the certified statement which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

The Postal Service asserts the contract is functionally equivalent with the contract filed in Docket No. CP2009-49 because they share similar cost and market characteristics. It contends that they should be classified as a single product. *Id.* It states that while the existing contracts filed in Docket Nos. CP2008-16 and CP2008-17 exhibited minor distinctions, the new contracts are identical to one another. *Id.* at 4.

The instant contract is with the same Postal Qualified Wholesalers (PQW) as in Docket No. CP2008-17. Even though some terms and conditions of the contract have changed, the Postal Service states that the essence of the service to the PQW customers is offering price-based incentives to commit large amounts of mail volume or postage revenue for Global Bulk Economy (GBE) and Global Direct (GD).⁴

The Postal Service indicates that the instant contract has material differences which include removal of retroactivity provisions; explanations of price modification as a result of currency rate fluctuations or postal administration fees; removal of language on enforcement of mailing requirements; and restructuring of price incentives, commitments, penalties and clarification of continuing contractual obligations in the event of termination.

⁴ The Postal Service states the commitments also account for International Priority Airmail (IPA), International Surface Air Lift (ISAL), Express Mail International (EMI), and Priority Mail International (PMI) items mailed under a separate but related Global Plus 1 contract with each customer. The Global Plus 1 contracts are the subject of a separate competitive products proceeding.

The Postal Service maintains these differences only add detail or amplify processes included in prior Global Plus 2 contracts. It contends because the instant contract has the same cost attributes and methodology as well as similar cost and market characteristics, the differences do not affect the fundamental service being offered or the essential structure of the contract. *Id.* at 8. Therefore, it asserts these contracts are “functionally equivalent in all pertinent respects.” *Id.* at 8.

In Order No. 250, the Commission gave notice of the filing, appointed a Public Representative, and provided the public with an opportunity to comment.⁵

On July 23, 2009, Chairman’s Information Request No. 1 (CHIR No. 1) was issued with responses due by July 28, 2009. On July 28, 2009, the Postal Service provided its responses to CHIR No. 1.

III. COMMENTS

Comments were filed by the Public Representative.⁶ No other interested parties submitted comments. The Public Representative states the contract appears to satisfy the statutory criteria, but because he believes there are ambiguities in the cost methodology, his response is not an unqualified recommendation in support of the contract’s approval. *Id.* at 2. He notes that relevant provisions of 39 U.S.C. 3632, 3633 and 3642 appear to be met by these additional Global Plus 2 contracts. *Id.* The Public Representative states that he believes the contracts are functionally equivalent to the existing Global Plus Contracts product. He also determines that the Postal Service has provided greater transparency and accessibility in its filings. *Id.* at 3.

The Public Representative notes that the general public benefits from the availability of these contracts in several ways: well prepared international mail adds increased efficiency in the mailstream, enhanced volume results in timeliness in

⁵ Notice of Filing of Two Functionally Equivalent Global Plus 2 Negotiated Service Agreements, July 16, 2009 (Order No. 250).

⁶ Public Representative Comments in Response to Order No. 250, July 23, 2009 (Public Representative Comments).

outbound shipments to all countries including those with small volume, and the addition of shipping options may result in expansion of mail volumes, particularly with the incentives for PQWs to promote the use of outbound international shipping resulting in expansion of these services for the Postal Service. *Id.* at 4.

Finally, he discusses the need for self-contained docket filings. In particular, he notes that the instant contract relies on data from the most recent International Cost and Revenue Analysis (ICRA), which was filed in another docket. He suggest that the Postal Service identify the location of the ICRA utilized and cited in that docket. *Id.* at 6.

IV. COMMISSION ANALYSIS

The Postal Service proposes to add an additional contract under the Global Plus Contracts product that was created in Docket No. MC2008-7. 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 functionally equivalent to previously reviewed Global Plus 2 contracts. In reaching its conclusions, the Commission has reviewed the Notice, the contract and the financial analyses provided under seal, supplemental information, and the Public Representative's 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.

J. Ron Poland, Manager, Statistical Programs, Finance Department asserts Governors' Decision No. 08-10 for Global Plus Contracts establishes price floor and ceiling formulas issued on July 16, 2008. He certifies that the pricing in the instant contract meets the Governors' pricing formula and meets the criteria of 39 U.S.C. 3633(a)(1), (2) and (3). He further states that the prices demonstrate that the contract and the included ancillary services should cover their attributable costs, preclude the subsidization of competitive products by market dominant products, and should not

impair the ability of competitive products on the whole to cover an appropriate share of institutional costs. Notice, Attachment 2-A.

For his part, the Public Representative indicates that the contract appears to satisfy 39 U.S.C. 3633. Public Representative Comments at 1-3.

Based on the data submitted, including the supplemental information, 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 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 contract filed in the companion proceeding, Docket No. CP2009-49, as well as with Global Plus 2 contracts filed previously because they share similar cost and market characteristics. Notice at 4. The Postal Service states that the customers under the existing and proposed contracts are the same. In addition, it notes that existing contracts exhibited some differences, the contracts proposed in Docket Nos. CP2009-48 and CP2009-49 are identical. *Id.*

Having reviewed the contracts filed in the instant proceeding and in Docket No. CP2009-49, and the Postal Service's justification, the Commission finds that the two contracts may be treated as functionally equivalent.

New baseline. The Postal Service requests that the contracts filed in Docket Nos. CP2009-48 and 2009-49 be included in the Global Plus 2 product and "considered the new 'baseline' contracts for purposes of future functional equivalency analyses concerning this product." *Id.* at 2. Currently, the Global Plus 2 product consists of two existing contracts that will be superseded by the contracts in Docket Nos. CP2009-48 and CP2009-49. Under those circumstances, the new contracts need not be designated as a new product. Accordingly, the new contracts in Docket Nos.

CP2009-48 and CP2009-49 will be included in the Global Plus 2 product and become the "baseline" for future functional equivalency analyses regarding that product.

Other considerations. If the agreement terminates earlier than anticipated, the Postal Service shall promptly inform the Commission of the new termination date.

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2009-49 is appropriately included within the Global Plus 2 product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2009-49 is included within the Global Plus 2 product (MC2008-7 and CP2009-49).
2. The existing Global Plus 2 product (MC2008-7, CP2008-16 and CP2008-17) is removed from the product list.
3. As discussed in the body of this Order, future contract filings which rely on materials filed under seal in other dockets should be self contained.
4. The Postal Service shall notify the Commission if the termination date changes as discussed in this Order.

By the Commission.

Judith M. Grady
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material includes changes in the Product List codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to the Postal Service’s Docket No. CP2009-49 request. 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

Negotiated Service Agreements

Domestic

Global Plus Contracts

~~Global Plus 2 (MC2008-7, CP2008-16 and CP2008-17)~~

Global Plus 2 (MC2008-7 and CP2009-49)