

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 Plus 2A Contracts (MC2008-7)
Negotiated Service Agreements

Docket Nos. MC2010-27
CP2010-69
CP2010-70

ORDER APPROVING FUNCTIONALLY EQUIVALENT
GLOBAL PLUS 2A CONTRACTS
NEGOTIATED SERVICE AGREEMENTS

(Issued July 30, 2010)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Global Plus 2A to the competitive product list. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

The Postal Service seeks to add a new product, Global Plus 2A, to the competitive product list and to that end, filed notice, pursuant to 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 2A contracts.¹ The Postal Service states that the instant contracts are functionally equivalent to one another and to previously submitted Global Plus 2 contracts, and are filed in accordance with Order No. 112.² It states further that the instant contracts are supported by Governors' Decision No. 08-10, which establishes prices and classifications not of general applicability for Global Direct, Global Bulk Economy and Global Plus Contracts.³

The Postal Service states that the instant contracts are the immediate successor contracts to those in Docket Nos. CP2009-48 and CP2009-49 that are scheduled to expire July 31, 2010. Notice at 3-4. The instant contracts are expected to begin August 1, 2010, and expire on the day prior to the day of any changes in the published rates that affect the Qualifying Mail subject to the contracts. *Id.* at 4.

The Postal Service filed copies of the contracts, Governors' Decision with attachments, and supporting financial documentation under seal. *Id.* at 3.

¹ Notice of the United States Postal Service of Filing of Two Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreements, July 13, 2010 (Notice); see Errata to Notice of the United States Postal Service of Filing of Two Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreements, July 14, 2010; see also Errata to Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreements, July 14, 2010; Notice of the United States Postal Service of Filing a Signed Global Plus 2A Negotiated Service Agreement, July 15, 2010.

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, 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 1, August 8, 2009.

Additionally, in support of its Notice, the Postal Service filed the following five attachments:

- Attachment 1—a Statement of Supporting Justification required by 39 CFR 3020.32;
- Attachments 2A and 2B—redacted copies of each contract;
- Attachment 3A and 3B—a certified statements required by 39 CFR 3015.5(c)(2);
- 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, formulas for the prices, analysis of the formulas and certification of the formulas and certification of the Governors' vote; and
- Attachment 5—an application for non-public treatment of materials to maintain the contract and supporting documents under seal.

The Postal Service asserts that the instant contracts are functionally equivalent both to one another and to the precursor Global Plus 2 contracts in that they share similar cost and market characteristics. *Id.* at 4. It contends that as a result the instant contracts should be grouped together as a single product. *Id.*

The Postal Service addresses similarities in the instant contracts and their predecessors, *e.g.*, that the customers are the same and that fundamental terms and conditions of the contracts remain essentially unchanged. In addition, the Postal Service identifies what it characterizes as material changes in the contracts, *e.g.*, term, price incentives, and additional service options. It asserts that the differences do not affect either the service provided or the structure of the contracts. *Id.* at 5-7.

The Postal Service also states that each of the instant contracts takes the place of its immediate predecessor which served as the baseline contract for the Global

Plus 2 product.⁴ It requests that the instant contracts be considered “the new ‘baseline’ contracts for consideration of future such agreements’ functional equivalency....” Notice at 9.

Filing under part 3020. In support of its filing, the Postal Service submitted, as Attachment 1, a Statement of Supporting Justification. The Postal Service asserts that analysis under 39 U.S.C. 3642(b) is unnecessary here because of the Commission findings in Order No. 43 that negotiated service agreements for Outbound International are classified as competitive. Further, it asserts that the instant MC docket (MC2010-27) is merely a technicality “and does not involve a substantively new product requiring fresh review.” *Id.* at 8.

The Postal Service contends that its filings demonstrate that the instant contracts comply with the requirements of 39 U.S.C. 3633, fit within the Mail Classification Schedule (MCS) language for Global Plus 2 contracts and are functionally equivalent to each other. *Id.* at 9. It urges the Commission to add Global Plus 2A to the competitive product list. *Id.*

In Order No. 493, the Commission gave notice of the three dockets, appointed a Public Representative, and provided the public with an opportunity to comment.⁵

III. COMMENTS

Comments were filed by the Public Representative.⁶ No other interested person submitted comments. The Public Representative states that it appears that the contract

⁴ See Docket No. CP2009-48, Order Concerning Filing a Functionally Equivalent Global Plus 2 Contract Negotiated Service Agreement, July 31, 2009, at 7; Docket No. 2009-49, Order Concerning Filing a Functionally Equivalent Global Plus 2 Contract Negotiated Service Agreement, July 31, 2009, at 7.

⁵ Notice and Order Concerning Filing of Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreement, July 20, 2010 (Order No. 493).

⁶ Public Representative Comments in Response to United States Postal Service Filing of Functionally Equivalent Global Plus 2A Contracts, Negotiated Service Agreements, July 27, 2010 (Public Representative Comments).

complies with 39 U.S.C. 3633(a) and 39 CFR 3015.7. *Id.* at 2. He affirms that his review of the contract and supporting materials filed under seal indicates that the pricing structure comports with Governors' Decision No. 08-10 for Global Plus 2 contracts. He notes that while some of the terms of the instant contracts are different than previous Global Plus 2 contracts, this does not alter its functional equivalency. *Id.* at 2.

The Public Representative concludes that the instant contracts' terms are in compliance with section 3633 of title 39 for competitive products and are appropriately established as a competitive product. *Id.* at 4. He urges the Commission to promote equity in settlement costs for Outbound International negotiated service agreements. *Id.* at 5.⁷

IV. COMMISSION ANALYSIS

The Postal Service's filing presents several issues for the Commission to consider: (1) the addition of a new product to the MCS in accordance with 39 U.S.C. 3642; (2) whether the contracts satisfy 39 U.S.C. 3633; and (3) the treatment of the Global Plus 2A contracts as the baseline contracts as requested by the Postal Service. In reaching its conclusions, the Commission has reviewed the Notice, the contracts and the financial analyses provided under seal, and the Public Representative's comments.

Product classification. The Postal Service notes that the Commission found in Order No. 43 that products for outbound International Mail are competitive. It also relates the Commission's finding in Order No. 85, that additional Global Plus contracts could be filed with the same material terms and conditions as the Global Plus 1 contracts in that docket with identification of all substantial differences between the new contract and the precursor product group. The Commission found that functionally

⁷ The Public Representative also notes that the instant contracts still reference the term "Bulk Mail Center" which the Postal Service stated is being changed to "Network Distribution Center." See Docket No. MC2010-19, Notice and Order Concerning Classification Changes, March 2, 2010.

equivalent contracts should be grouped accordingly. Additionally, the Commission has reviewed the predecessor contracts to these agreements and found that those contracts were properly classified as competitive. In lieu of a separate statement relative to the instant contracts, it incorporates by reference its supporting justification for the Global Plus 2 product in Dockets Nos. MC2008-7, CP2008-16 and CP2008-17 as Attachment 1 to the Notice. The Commission finds this an acceptable method for the Postal Service to support its Notice.

Cost considerations. 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 3. It asserts that the Governors' Decision No. 08-10 supporting these contracts 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 4.

The Public Representative concurs that the contracts appear to satisfy section 3633 of title 39. Public Representative Comments at 2.⁸

Based on the data submitted and the Commission's analysis, the Commission finds that the contracts should cover their 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 contracts indicates that they comport with the provisions applicable to rates for competitive products.

Baseline contracts. The Postal Service seeks to add a new product, Global Plus 2A, to the competitive product list. It contends that the instant contracts are functionally equivalent both to one another and to previously reviewed Global Plus contracts. At the

⁸ The Public Representative raises a concern about settlement costs. *Id.* at 4-5. The Commission is working with the Postal Service to promote the setting of appropriate settlement costs at the Universal Postal Union.

same time it asks that the instant contracts be considered a new baseline for future Global Plus 2A product reviews. Notice at 2. The Postal Service indicates that future Global Plus 2A Contracts are likely to resemble these agreements. Because Global Plus 2A is being added as a new product, the Commission finds it unnecessary to address the issue of functional equivalency with previous contracts.

The Postal Service notes that Global Plus 2A differs from previously submitted Global Plus 2 contracts, *e.g.*, pertaining to the treatment of confidential information, term, price incentives, commitments and penalties, addition of Canada Post's domestic Incentive Lettermail service, and changes to terms for Global Direct–Canada. *Id.* at 6. It also cites new provisions that add clarity or update terms, but contends that they do not alter the essential service being offered. *Id.* at 7. Finally, it asserts that the cost and market characteristics of the instant contracts are fundamentally similar to those of the prior Global Plus 2 contracts. *Id.*

Having evaluated the instant Global Plus 2A contracts along with the supporting financial analyses, the Commission finds that Global Plus 2A is properly added as a new product to the competitive product list. In response to the Postal Service's request, the instant contracts will be considered the baseline agreements for future functional equivalency analyses for the Global Plus 2A product. Following the current practice, the Postal Service shall identify all significant differences between any new Global Plus 2A contract and the Global Plus 2A contracts. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The docket referenced in the caption should be Docket No. MC2010-27. In conformity with the current practice, a redacted copy of Governors' Decision 08-10 should be included in the new filing along with an electronic link to it.

The Postal Service shall inform the Commission of the effective dates of each contract and promptly notify the Commission if either contract terminates earlier than scheduled.

Filing under part 3020. In this proceeding, the Postal Service seeks to add a new product to the competitive product list. Its filing, however, was not submitted pursuant to part 3020.30 *et seq.* of the Commission's rules, although it did include supporting documentation from the underlying product docket and a redacted version of the Governors' decision for the product classification. The omission is apparently due to the Postal Service's characterization of its filing as "not involv[ing] a substantively new product...." *Id.* at 8. While that assessment may be reasonable, to avoid any confusion, future filings which involve, as here, a new product that is the successor to an existing product, should be filed as a request and be filed pursuant to part 3020.30 *et seq.*

Other considerations. The Postal Service states that the precursor contracts to the instant contracts expire July 31, 2010. It is directed to file costs, volumes and revenues disaggregated by weight and country group associated with the current contracts including any penalties paid within 30 days of their expiration.

The Postal Service also states that the instant contracts expire on the day prior to the day of any changes in the published rates that affect the Qualifying Mail in the agreements. Within 30 days of termination of the instant contracts, the Postal Service shall file, costs, volumes and revenues disaggregated by weight and country group associated with the term of the contracts, including any penalties paid.

In conclusion, the Commission adds Global Plus 2A to the competitive product list and finds that the negotiated service agreements submitted in Docket Nos. CP2010-69 and CP2010-70 are appropriately included within the Global Plus 2A product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. Global Plus 2A (MC2010-27, CP2010-69 and CP2010-70) is added to the competitive product list as a new product, under Negotiated Service Agreements, Outbound International.
2. The Postal Service shall inform the Commission of the effective dates of each contract and notify it if either contract terminates earlier than scheduled, as discussed in this Order.
3. Within 30 days of the expiration of the current contracts expiring July 31, 2010 in Docket Nos. CP2009-46 and CP2009-47, the Postal Service shall file costs, volumes and revenues disaggregated by weight and country group associated with the respective contracts, including any penalties paid.
4. Within 30 days of the expiration of the instant contracts in Docket Nos. MC2010-27, CP2010-69 and CP2010-70, the Postal Service shall file costs, volumes and revenues disaggregated by weight and country group associated with the respective contracts, including any penalties paid.

5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2010-27, CP2010-69 and CP2010-70. 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

* * * * *

Outbound International

* * * * *

* * * * * Global Plus 2A (MC2010-27, CP2010-69 and CP2010-70)

* * * * *