

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 Plus 2B Contracts (MC2011-8)
Negotiated Services Agreements

Docket Nos. MC2011-8
CP2011-41
CP2011-42

ORDER ADDING GLOBAL PLUS 2B TO THE
COMPETITIVE PRODUCT LIST AND APPROVING
FUNCTIONALLY EQUIVALENT GLOBAL PLUS 2B CONTRACTS

(Issued December 23, 2010)

I. INTRODUCTION

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

II. BACKGROUND

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service seeks to add Global Plus 2B as a new product to the competitive product list.¹ The Request has been assigned Docket No. MC2011-8. In addition, the Postal Service filed notice, pursuant to 39 CFR 3015.5, announcing that it has entered into two Global Plus 2B contracts.

The Postal Service states that the instant contracts are functionally equivalent to one another.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 Plus Contracts.³ The two contracts have been assigned Docket Nos. CP2011-41 and CP2011-42, respectively.

The instant contracts. The Postal Service states that the instant contracts are the immediate successors to the Global Plus 2A contracts in Docket Nos. CP2010-69 and CP2010-70 that are scheduled to expire on 11:59 p.m. on January 16, 2011. Request at 3-4. The instant contracts are expected to begin January 17, 2011, and expire at 11:59 p.m. on the day prior to the day in January 2012 when Canada Post Corporation institutes price changes for its domestic Lettermail, Incentive Lettermail, Admail, and/or Publications Mail products. If these prices do not change during the month of January, the contracts terminate on January 31, 2012. Request at 4-5.

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

¹ Request of the United States Postal Service to Add Global Plus 2B to the Competitive Products List and Notice of Filing Two Functionally Equivalent Global Plus 2B Contracts Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, December 9, 2010 (Request).

² See Docket Nos. CP2008-8 through CP2008-10, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008.

³ See Docket No. CP2008-8, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Plus Contracts, June 2, 2008, at 1.

Additionally, 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—a redacted copy of each contract and applicable annexes;
- Attachments 3A and 3B—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, analyses and certifications of the formulas and certification of the Governors’ vote;
- Attachment 5—an application for non-public treatment of materials to maintain the contract and supporting documents under seal.

Functional equivalence. The Postal Service asserts that the instant contracts share similar cost and market characteristics and, therefore, are functionally equivalent to one another. *Id.* at 5. It contends as a result the instant contracts should be grouped together as a single product. *Id.* at 5-6.

The Postal Service addresses similarities between the instant contracts and their predecessors, *e.g.*, the fundamental terms and conditions of the contracts remain essentially unchanged. *Id.* at 6. It identifies minor changes in contract terms that distinguish the instant contracts from each other, *e.g.*, customer name, penalties, and identification of prior agreements. The Postal Service asserts that the differences do not affect functional equivalency. *Id.* at 5-6.

Baseline treatment. The Postal Service states that each of the instant contracts takes the place of its immediate predecessor which served as the baseline contract for the Global Plus 2A product.⁴ It requests that the instant contracts be considered “the

⁴ See Docket Nos. MC2010-27, CP2010-69 and CP2010-70, Order Approving Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreements, July 30, 2010.

new ‘baseline’ contracts for consideration of future functional analyses concerning the Global Plus 2B product.” *Id.* at 4, footnote omitted.

Filing under part 3020. In support of its filing, the Postal Service submitted a statement of Supporting Justification and a copy of Governors’ Decision No. 08-10 as Attachments 1 and 4, respectively. It 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 Mail are classified as competitive. Further it contends that the classification requirements of section 3642 have been met and that there is, “no further need to ponder whether Global Plus 2B contracts are market dominant or covered within the postal monopoly.” *Id.* at 7.

The Postal Service states 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 contracts under Governors’ Decision 08-10, and are functionally equivalent to each other. *Id.* at 7-8. It urges the Commission to add Global Plus 2B to the competitive product list and to establish the instant contracts as the baseline contracts for the Global Plus 2B product. *Id.*

In Order No. 608, 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 complies with 39 U.S.C. 3633(a) and 39 CFR 3015.7. PR Comments at 1. Based on

⁵ Order No. 608, Notice and Order Concerning Filing of Functionally, Equivalent Global Plus 2B Contracts Negotiated Service Agreements, December 13, 2010 (Order No. 608).

⁶ Public Representative Comments in Response to United States Postal Service Filing of Functionally Equivalent Global Plus 2B Contracts—Negotiated Service Agreements, December 21, 2010, (PR Comments).

his review of the record, the Public Representative states that the contracts comport with Governors' Decision No. 08-8 for Global Plus Contracts, cover their attributable costs, and are not being cross-subsidized by market dominant products. *Id.* at 3. He concurs that, despite some differences in terms, the contracts are functionally equivalent. *Id.*

The Public Representative concludes that the instant contracts' terms are in compliance with section 3633 of title 39 for competitive products. *Id.* at 4. He urges the Commission to promote equity in settlement costs for outbound international negotiated service agreements. *Id.*

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 2B contracts as the baseline agreements as requested by the Postal Service. In reaching its conclusions, the Commission has reviewed the Request, the contracts, 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. Request at 7. The Commission determined 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 Global Plus 2A product was classified as competitive. The Global Plus 2B product is likewise properly classified as competitive.⁷

Cost considerations. The Postal Service contends that the instant contracts and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Request at 5. 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. *Id.*, Attachment 4.

The Public Representative concurs that the agreements appear to satisfy section 3633 of title 39.⁸

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 agreement. The Postal Service seeks to add a new product, Global Plus 2B, to the competitive product list. It contends that the instant contracts are functionally equivalent both to one another. At the same time, it asks that the instant contracts be considered a new baseline for future Global Plus 2 product reviews.

⁷ In lieu of a separate statement relative to the instant contracts, the Postal Service provides the statement of supporting justification for the Global Plus 2 product in Dockets Nos. MC2008-7, CP2008-16 and CP2008-17 as Attachment 1 to the Request. The Commission finds this an acceptable method for the Postal Service to support its Request.

⁸ PR Comments at 1. The Public Representative raises a concern about settlement costs. *Id.* at 4. The Commission is working with the Postal Service to promote the setting of appropriate settlement costs at the Universal Postal Union.

Request at 2, 4. Because Global Plus 2B is being added as a new product, the Commission finds it unnecessary to address the issue of functional equivalency with previous contracts.⁹

The Postal Service explains that the instant contracts differ from one another in certain terms, *e.g.*, customer-specific information, postage prices, penalties, prior specific agreements, and preservation after termination provisions. *Id.* at 5- 6. Finally, it asserts that the cost and market characteristics of the instant contracts are fundamentally similar to those of the prior Global Plus contracts. *Id.* at 5.

Having reviewed the record in this proceeding, the Commission finds that Global Plus 2B is properly added as a new product to the competitive product list, and that the instant contracts may be treated as functionally equivalent. 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 2B product.

Following the current practice, the Postal Service shall identify all significant differences between any new Global Plus 2B contract and the instant Global Plus 2B 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. MC2011-8. 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.

Other considerations. The Postal Service states that the current contracts in Docket Nos. CP2010-69 and CP2010-70 are scheduled to expire January 16, 2011. It

⁹ The Postal Service has not sought to remove the Global Plus 2A product from the competitive product list because the underlying contracts remain "ongoing at this time." Request at 2, n.8.

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 remain in effect until 11:59 p.m. on the day prior to the date in January 2012 when Canada Post Corporation establishes price changes for domestic Lettermail, Incentive Lettermail, Admail, and/or Publications Mail products or if no changes occur the contracts end on the contracts terminate on January 31, 2012. *Id.* at 4. 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 2B to the competitive product list and finds that the negotiated service agreements submitted in Docket Nos. CP2011-41 and CP2011-42 are appropriately included within the Global Plus 2B product.

V. ORDERING PARAGRAPHS

It is Ordered:

1. Global Plus 2B (MC2011-8, CP2011-41 and CP2011-42) 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 January 16, 2011, in Docket Nos. 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.
4. Within 30 days of the expiration of the instant contracts in Docket Nos. CP2011-41 and CP2011-42, 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.

Ruth Ann Abrams
Acting 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. MC2011-8, CP2011-41 and CP2011-42. 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

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Negotiated Service Agreements

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Outbound International

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Global Plus 2B (MC2011-8, CP2011-41 and CP2010-42)

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