

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
INTERNATIONAL BUSINESS REPLY SERVICE
NEGOTIATED SERVICE AGREEMENTS

Docket No. MC2009-14

COMPETITIVE PRODUCT PRICES
INTERNATIONAL BUSINESS REPLY SERVICE CONTRACT (MC2009-14);
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2009-20

**REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD INTERNATIONAL
BUSINESS REPLY SERVICE CONTRACTS TO THE COMPETITIVE PRODUCTS
LIST, AND NOTICE OF FILING (UNDER SEAL) CONTRACT AND ENABLING
GOVERNORS' DECISION**
(December 24, 2008)

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service (Postal Service) hereby requests that International Business Reply Service (IBRS) Contracts be added to the competitive products list within the Mail Classification Schedule (MCS). The United States Postal Service also gives notice, pursuant to 39 C.F.R. § 3015.5, that the Postal Service has entered into such a contract with a customer. Finally, the Postal Service gives notice, pursuant to 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5, that the Governors have established prices and classifications not of general applicability for IBRS Contracts. Accordingly, the Postal Service requests that the Postal Regulatory Commission (Commission) list this contract,

together with any subsequent functionally equivalent IBRS Contracts, as one product on the competitive products list.¹

Attachment 1 to this Request is the Statement of Supporting Justification of Jo Ann Miller, Director, Global Business Development, pursuant to 39 C.F.R. § 3020.32. Attachment 2 is the redacted version of Governors' Decision No. 08-24. Attachment 3 is the redacted certification for the IBRS contract.²

Identification of Existing IBRS Contracts

At present, the only active IBRS contract is that submitted with this filing, and its terms fit within the proposed MCS language, included as Attachment A to Governors' Decision No. 08-24. This agreement is set to expire one year after the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained, culminating with a favorable conclusion on review by the Commission.

Because of the indeterminate nature of IBRS service, the Postal Service also has ongoing arrangements with two other customers whose contracts have expired. These contingency arrangements survive the contracts' expiration and govern any residual items that third parties might continue to enter into the mailstream for return to the IBRS customers. The Postal Service concluded those contracts under the authority of former 39 U.S.C. § 407,³ which was preserved by the transition rules of 39 U.S.C. §§ 3622(f) and 3631(c). The Postal Service notes that such an arrangement is in effect with the

¹ See Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9, and CP2008-10, June 27, 2008, at 8 (applying standards for the filing of functionally equivalent contracts).

² Unredacted copies of the Governors' Decision, the IBRS Contract, the certification, and other supporting documentation establishing compliance with 39 C.F.R. § 3015.5 are being filed separately with the Commission under seal.

³ Prior to its revision in the Postal Accountability and Enhancement Act (PAEA), P.L. 109-435, § 405, 120 Stat. 3198, 3229 (2006), 39 U.S.C. § 407 authorized the Postal Service, with the consent of the President, to establish rates of postage or other charges on international mail matter.

customer of the IBRS Contract filed here; this arrangement will continue until such time as a new IBRS Contract can take effect after all necessary approvals and reviews.

Confidentiality

While the Commission intends to address broader confidentiality issues in the future,⁴ the Postal Service maintains that the IBRS Contract, related financial information, the name of the IBRS customer, certain portions of the certified statement required by 39 C.F.R. § 3015.5(c)(2), and certain portions of the Governors' Decision should remain confidential. The contract contains pricing and other information related to mailer and Postal Service processes and procedures for handling the mail tendered under the contract. Related financial information and portions of the certified statement contain cost and pricing information showing how prices are developed. Prices and other contract terms relating to the parties' processes and procedures are highly confidential in the business world, and the Postal Service protects them in accordance with industry standards. The ability of the Postal Service to negotiate individual contracts would be severely compromised if prices and other information pertaining to these types of agreements were publicly disclosed. Public disclosure would also compromise the shipper's ability to negotiate favorable shipping services contracts in the future. Names of customers should remain confidential due to the substantial likelihood that the Postal Service's competitors would use such information to target their efforts and undercut the Postal Service's prices.

The Governors' Decision authorizes management to execute contracts containing prices that fall within a range determined by formulas that the Governors

⁴ See Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, August 13, 2008.

have established, producing results that comply with 39 U.S.C. § 3633(a)(1)-(3). Public disclosure of these formulas and related information would seriously undermine postal management's leverage in negotiations with customers. This pricing information is clearly of a commercial nature, and the Postal Service is aware of no competitor or private company of comparable size and scope that releases such information to the public. The specific information about price calculations in the Governors' Decision thus continues to merit confidential treatment.

Proposed Mail Classification Schedule Language

The proposed MCS language for IBRS Contracts, included as Attachment A to Governors' Decision No. 08-24, contains many of the same provisions that were included in the Postal Service's original proposed MCS language for IBRS Contracts.⁵ The changes are the same as those made in the MCS language for other customized agreements; the change in the piece and postage capability requirements to qualify for a customized agreement and the change in the requirement that a mailer must tender all of its qualifying mail to the Postal Service. In addition, an introductory phrase has been changed to clarify that IBRS Contracts subject to the proposed MCS language may cover any type of Letter Post item not subject to the Private Express Statutes.

Filing under Part 3020, Subpart B of the Rules of Practice and Procedure

The Statement of Supporting Justification of Jo Ann Miller, Director, Global Business Development, is included as Attachment 1 in accordance with Part 3020, Subpart B of the Rules of Practice and Procedure. This Statement provides support for the addition of the IBRS Contract to the competitive products list.

⁵ See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007.

Under 39 U.S.C. § 3642(b), the only criteria for such review are whether the product qualifies as market dominant, whether it is excluded from the postal monopoly, and whether the proposed classification reflects certain market considerations. Each of these criteria has been addressed in this case. First, the proposed classification language expressly limits the type of IBRS Contracts at issue here to items outside of the definition of “letters” or otherwise not subject to the Private Express Statutes. Second, the PAEA clearly requires that bulk international mail be classified as competitive. In undertaking to classify postal products as market dominant or competitive, the Commission proposed “to define bulk international mail[, including individual international NSAs,] by reference to bulk commercial services, which may be satisfied by volume commitments or other types of annual guarantees.”⁶ Other factors supporting “bulk” status include the user’s volume profile and whether the service is available to individual retail customers.⁷ Here, IBRS Contracts are tied to revenue or volume guarantees. Even though the senders of IBRS items may transmit individual pieces, the customer for the instant IBRS Contract is a high-volume user in terms of its receipt of IBRS items. Finally, IBRS is only available through contracts. Retail customers may not engage the Postal Service for prepaid return mailing of such items provided by the customer independently to third parties. Thus, even if pieces under the contract are mailed individually, that should not change the fact that the IBRS Contract customer has agreed to compensate the Postal Service for a bulk volume of IBRS items.

⁶ See Order No. 26, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 54. See also Order No. 112, Order Concerning Global Plus 2 Negotiated Service Agreements, October 3, 2008, at 7 (agreeing with the Postal Service that Global Direct is a competitive “bulk” service because it “imposes minimum annual volume or revenue requirements on [customers]”).

⁷ Order No. 112 at 7.

Therefore, there is no need to ponder further whether IBRS Contracts, as defined by the proposed MCS language, are market-dominant or, by dint thereof, covered within the postal monopoly. The additional considerations listed in 39 U.S.C. § 3642(b)(3) are addressed by Ms. Miller's statement. Because all of section 3642's criteria for classification have been met, the Postal Service respectfully urges the Commission to act promptly by adding this product to the competitive products list as requested.

Conclusion

For the reasons discussed, the Postal Service believes that this IBRS Contract should be added to the competitive products list. The Postal Service asks that the Commission approve this Request.

As required by 39 U.S.C. § 3642(d)(1), a notice concerning this Request is being sent for publication in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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Chief Counsel, Global Business

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December 24, 2008

Statement of Supporting Justification

I, Jo Ann Miller, Director, Global Business Development, am sponsoring the Request that the Commission add the International Business Reply Service (IBRS) Contract filed in Docket Nos. MC2009-14 and CP2009-20 to the competitive products list for prices not of general applicability. The proposed Mail Classification Schedule (MCS) language for IBRS Contracts describes the requirements for this type of contract. My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable. The Postal Service is proposing that the IBRS Contract be added to the competitive products list. Other functionally equivalent contracts would be added to the list as price categories under the IBRS Contracts listing.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Adding this IBRS Contract to the competitive product list will improve the Postal Service's competitive posture, while enabling the Commission to verify that each contract covers its attributable costs and makes a positive contribution to coverage of institutional costs. This contract, along with each contract that is functionally equivalent to this contract, will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs paid for by competitive products. Accordingly, no issue of subsidization of competitive products by market dominant products arises.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

IBRS Contracts are for U.S.-based entities who seek a channel for returned merchandise or other articles from their overseas customers. Such entities typically supply preprinted, prepaid IBRS packaging in which their customers can place used or defective consumer items and enter them in the mailstream at no direct cost. The business entity compensates the Postal Service for this service, and the Postal Service remits to the relevant foreign postal administration the amount due for collection and transportation of the items in the foreign country. Under the Postal Service's previous statutory authority, business-entity customers have accessed IBRS services through customized agreements.

When negotiating IBRS Contracts, the Postal Service's bargaining position is constrained by the existence of other providers of similar services. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. The Postal Service may not decrease quality or output without risking the loss of business to large competitors that offer similar international delivery services. The relevant market also does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contracts are premised on prices that provide sufficient incentive for customers to ship with the Postal Service rather than a competitor. If the Postal Service were to raise these prices, it risks losing these customers to a private competitor in the international shipping industry.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

As defined in the proposed Mail Classification Schedule language established by the Governors, IBRS Contract items must fall outside the ambit of the Private Express Statutes. For example, the IBRS Contract at issue here will be used for the return of lightweight used or defective consumer goods, which are not "letters" as defined by 39 C.F.R. § 310.1(a).

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Private consolidators, freight forwarders, and integrators also offer international shipping arrangements whereby they provide analogous delivery services under similar conditions.

- (g) *Provide any available information on the views of those who use the product on the appropriateness of the proposed modification.*

As discussed in part (d) above, the customer for this IBRS Contract is a business that desires to provide its consumers an option for returning used merchandise from abroad by mail. This business customer previously entered into an IBRS Contract with the Postal Service pursuant to the latter's former authority, and it finds the arrangement sufficiently attractive to merit continuation. This indicates that at least some relevant postal customers, in general, find this type of product to be preferable to similar products offered by the Postal Service's competitors. This customer, as well as other past and potential customers, are aware that competitive services are provided by other entities. However, no specific data are available to the Postal Service on IBRS customer views regarding the regulatory classification of these contracts.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for international delivery services comparable to IBRS is highly competitive. Therefore, addition of IBRS Contracts will likely have little, if any, impact upon small business concerns. Large shipping companies, consolidators, and freight forwarders serve this market, particularly with respect to the type of customers represented by these IBRS contracts; the Postal Service is unaware of any small business concerns that could offer comparable service for these volumes.

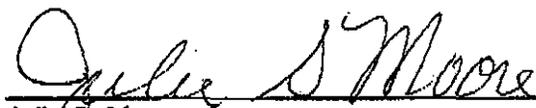
In addition, IBRS contracts may be used by small businesses who desire to return merchandise to the Postal Service's IBRS customer. By offering IBRS contracts, the Postal Service is giving small businesses an additional option for shipping articles internationally, beyond the services offered by competitors. Thus, the net impact on small businesses is positive, because of the absence of negative impact on small business competitors and the positive impact on the small businesses that will have these services available.

- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

The customer eligibility criteria contained in the proposed MCS language for IBRS contracts are consistent with those proposed for the previously filed customized agreement product classifications. IBRS customers must be capable on an annualized basis of tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international postage to the Postal Service, and a customer need not tender all of its qualifying mail to the Postal Service. As with other customized agreements, each IBRS contract must cover its attributable costs.

**CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 08-24**

I hereby certify that the Governors voted on adopting Governors' Decision No. 08-24, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision. The vote was 5 in favor and 1 abstention.


Julie S. Moore
Secretary of the Board of Governors

Date: 12/24/08

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR INTERNATIONAL BUSINESS
REPLY SERVICE (IBRS) CONTRACTS (GOVERNORS' DECISION NO. 08-24)**

December 24, 2008

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, United States Code, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices by setting price floor and price ceiling formulas for certain International Business Reply Service (IBRS) contracts for inbound Letter Post content other than items classified as "letters" subject to the Private Express Statutes. The types of contracts to which these prices will apply are described in Attachment A,¹ the price floor and price ceiling formulas are specified in Attachment B, and management's analysis of the appropriateness of these formulas is explained in Attachment C. We have reviewed that analysis and have concluded that the prices emerging from application of the formulas and the classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Contracts that fall within the terms specified in Attachment A, and whose prices fall within the price ranges established by the price floor and price ceiling formulas specified in Attachment B, are hereby authorized.

The PAEA provides that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. We have determined that prices established according to the formulas listed in Attachment B would be appropriate for the services covered by the types of IBRS Contracts

¹ The classification for IBRS Contracts is contained in the Mail Classification Schedule language originally proposed by the Postal Service, as modified in Attachment A. See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007. It should be noted that certain of the modifications seek to clarify the requirements for the IBRS service available by customized agreement.

classified in Attachment A. Management's analysis of the formulas, included as Attachment C, supports our decision to establish prices through such formulas for the specified types of contracts.

We are satisfied that the prices established by the formulas in Attachment B meet the applicable statutory and regulatory requirements. The price floor formulas provide greater than 100 percent coverage of the costs attributable to each of these types of agreements. We accept and rely upon the certification in Attachment D that the correct cost inputs for the formulas have been identified. In addition, the price floor formulas [REDACTED] [REDACTED] should cover the agreements' attributable costs and provide a contribution toward the Postal Service's institutional costs. The formulas should thus prevent cross-subsidies from market dominant products. As noted in the certification in Attachment D, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 C.F.R. § 3015.5 and any other rules that the Commission deems applicable. The notice must include a financial analysis that demonstrates that the agreement covers its attributable costs, based on [REDACTED] Attachment B. The notice must also include a certification from a Postal Service official that the numerical values chosen for each agreement are appropriate, in that they represent the best available information and that the agreement should not result in a cross-subsidy from market dominant products and should not impair the ability of competitive products, as a whole, to cover an appropriate share of institutional costs.

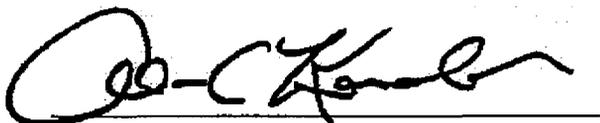
ORDER

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable IBRS contracts, and the changes in classification necessary to implement those prices, are hereby approved and ordered

into effect. An agreement is authorized under this Decision only if the prices fall within the formulas set by this Decision and the certification process specified herein is followed. After an authorized agreement is entered into, the Postal Service shall comply with all applicable statutory and regulatory requirements.

Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

A handwritten signature in black ink, appearing to read "Alan C. Kessler", written over a horizontal line.

Alan C. Kessler
Chairman

Attachment A

Description of Applicable International Business Reply Service (IBRS) Contracts

2315.3 International Business Reply Service (IBRS) Contracts

2315.3.1 Description

- a. International Business Reply Service (IBRS) Contracts provide a price for IBRS for Letter Post items not subject to the Private Express Statutes, with preparation requirements deviating from the standard, published requirements for cards and envelopes.
- b. Preparation requirements are specified by the originating country in which the items are mailed.
- c. The rates are dependent upon a volume or postage commitment on the part of the customer.
- d. A mailer must ~~tender all of its qualifying mail to the Postal Service and be capable, on an annualized basis, of either tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international \$2 million in First-Class Mail International postage to the Postal Service.~~
- e. The contract must cover its attributable costs.

2315.3.2 Size and Weight Limitations

The mailer may be required to meet specific size and weight limitations set by the origination country in which the items are mailed and by the Postal Service.

2315.3.3 Minimum Volume or Revenue Requirements

Mailers must commit to tender varying minimum volumes or postage on an annualized basis. There is no minimum volume requirement per mailing.

2315.3.4 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- None

2315.3.5 Products Included in Group (Agreements)

Attachment B

**Formulas for Prices Under Applicable International Business Reply Service
Contracts**

[REDACTED]

Attachment C

**Analysis of the Formulas for Prices Under Applicable International Business
Reply Service Contracts**

[REDACTED]

Attachment D

**Certification as to the Formulas for Prices Offered Under Applicable International
Business Reply Service Contracts**

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, United States Postal Service, am familiar with the price floor formula and price ceiling formula for International Business Reply Service (IBRS) Contracts, which are set forth in Attachment B.

I hereby certify that these formulas adequately represent all necessary [REDACTED] [REDACTED]. If the Postal Service were to enter into agreements that set prices above the price floor, the Postal Service would be in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The price floor formula is designed to ensure that each agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from IBRS Contracts should be much smaller. Even if all the agreements for IBRS Contracts are signed at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

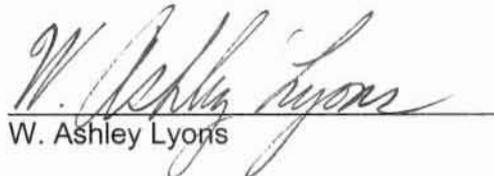


W. Ashley Lyons

Certification of Prices for the International Business Reply Service Contract with
[REDACTED]

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, United States Postal Service, am familiar with the prices for the International Business Reply Service (IBRS) Contract with [REDACTED]. The prices contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for International Business Reply Service (IBRS) Contracts, issued December 24, 2008 (Governors' Decision No. 08-24), which established prices by means of price floor and ceiling formulas.

I hereby certify that the numerical [REDACTED] values underlying the prices in the [REDACTED] Contract are the appropriate [REDACTED] to use in the formulas and represent the best available information. The prices, resulting in a [REDACTED] coverage of [REDACTED] percent for the applicable prices, are in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The prices demonstrate that the Agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from IBRS Contracts should be much smaller. The Agreement with [REDACTED] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.


W. Ashley Lyons