

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  
International Business Reply Service  
International Business Reply Service Contract 1

Docket No. MC2009-14

Competitive Product Prices  
International Business Reply Service Contract 1  
(MC2009-14)  
Negotiated Service Agreement

Docket No. CP2009-20

ORDER CONCERNING  
INTERNATIONAL BUSINESS REPLY SERVICE CONTRACT 1  
NEGOTIATED SERVICE AGREEMENT

(Issued February 5, 2009)

The Postal Service seeks to add a new product identified as International Business Reply Service Contract 1 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

## I. BACKGROUND

On December 24, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add International Business Reply Service Contract 1 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the International Business Reply Service Contract 1 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009-14.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-20.

In support of its Request, the Postal Service initially filed the following materials: (1) a statement of supporting justification for this Request as required by 39 CFR 3020.32;<sup>2</sup> (2) a redacted 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);<sup>3</sup> (3) proposed Mail Classification Schedule language;<sup>4</sup> (4) a redacted copy of the price floor and price ceiling formulas approved by the Governors;<sup>5</sup> (5) a redacted copy of the analysis of the

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<sup>1</sup> Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice Filing (Under Seal) Contract and Enabling Governors’ Decision, December 24, 2008 (Request). For the reasons discussed in footnote 1 of Commission Order No. 164, the Commission preliminarily renamed the proposed product “International Business Reply Service Contract 1.” See PRC Order No. 164, Notice and Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, January 5, 2009, at 1, n.1 (Order No. 164). In this Order, the Commission finalizes the product name as “International Business Reply Service Competitive Contract 1.” See *infra* section IV for a more complete discussion on naming the proposed new product.

<sup>2</sup> Attachment 1.

<sup>3</sup> Attachment 2.

<sup>4</sup> Attachment 2, Attachment A.

<sup>5</sup> Attachment 2, Attachment B.

proposed price floor and price ceilings discussed in Attachment B;<sup>6</sup> (6) a redacted certification as to the formulas for prices offered under applicable International Business Reply Service contracts;<sup>7</sup> and (7) a redacted certification of compliance with 39 U.S.C. 3633(a) for the IBRS contract at issue in Docket No. CP2009-20.<sup>8</sup> Unredacted copies of the Governors' Decision, the IBRS contract, the certification, and other supporting documentation regarding compliance with 39 CFR 3015.5 were filed separately with the Commission under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. Request at 2-3.

In the Statement of Supporting Justification, Jo Ann Miller, Director, Global Business Development, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment 1. Thus, Ms. Miller contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract and the formulas established by the Governors' Decision comply with 39 U.S.C. 3633(a). See *id.*, Attachment 2 at Attachment D and Attachment 3.

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<sup>6</sup> Attachment 2, Attachment C.

<sup>7</sup> Attachment 2, Attachment D.

<sup>8</sup> Attachment 3.

## II. PROCEDURAL HISTORY

In Order No. 164, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>9</sup> The Order also sought further information from the Postal Service with respect to the following areas: (1) information relating to the proposed product name in an attempt to avoid confusion with the domestic product Merchandise Return Service (MRS) and the market dominant IBRS product; (2) an explanation as to why a redacted version of the contract proposed in Docket No. CP2009-20 could not be filed; and (3) additional IBRS contracts with contingency arrangements that are currently in effect. *Id.* at 3-6.

On January 12, 2009, the Postal Service filed its response to Order No. 164.<sup>10</sup> As part of its response, the Postal Service filed a redacted version of the Docket No. CP2009-20 contract.<sup>11</sup> It also filed the contingency arrangements with this and other IBRS contract customers both in redacted and unredacted form.<sup>12</sup> Additionally, the Postal Service answered the Commission's questions regarding the classification and naming of the new IBRS Contract 1 product.<sup>13</sup> The Postal Service explained that it believes that several factors weigh in favor of naming this new proposed competitive product International Business Reply Service Contract 1. First, with respect to the differences between domestic MRS and the proposed new product, the Postal Service notes that MRS does not contain a weight restriction while IBRS is limited to those items that qualify as Letter Post under the Universal Postal Union's (UPU) definition of the

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<sup>9</sup> See *generally* Order No. 164.

<sup>10</sup> Response of the United States Postal Service to Order No. 164, and Notice of Filing Redacted Contract and Other Requested Materials, January 12, 2009 (Response to Order No. 164).

<sup>11</sup> *Id.* at Attachment 1.

<sup>12</sup> *Id.* at Attachments 2-A, 2-B, and 2-C.

<sup>13</sup> With respect to the Commission concern that MRS may be better classified as a competitive product, the Postal Service stated that it is currently conducting a review of all special services, including MRS, to determine if any products should be transferred to the Competitive Product List.

term. Second, it notes that customers and foreign postal administrations use and understand the term IBRS in connection with lightweight merchandise items, as well as letters and cards. Third, the Postal Service believes that any necessary distinctions have been made clear in its proposed MCS language for IBRS contracts.<sup>14</sup> If, however, the Commission determines that a change of designation is needed to provide further clarity, the Postal Service recommends that such change be limited to the listing on the product list.<sup>15</sup> As an example of a revised product name that could provide more clarity, the Postal Service used the term “International Business Reply Service (AO) Contract 1” to reflect the fact that the UPU uses the abbreviation AO for *autres objects* or Letter Post items other than letters or cards. *Id.* at 3-4.

On January 16, 2009, a Chairman's Information Request No. 1 and Notice of Filing of Questions Under Seal was issued.<sup>16</sup> The Postal Service filed its response (under seal) to these questions on January 23, 2009.<sup>17</sup>

### III. COMMENTS

Comments were filed by the Public Representative.<sup>18</sup> No filings were submitted by other interested parties. The Public Representative believes the addition of the proposed product to the Competitive Product List and the approval of the proposed contract is in the interest of the general public and is consistent with the statutory requirements of 39 U.S.C. 3632, 3633 and 3642. Public Representative Comments at

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<sup>14</sup> Specifically, the proposed MCS language limits the proposed new product, IBRS Contract 1, to Letter Post items not subject to the Private Express Statutes. On the other hand, the market dominant IBRS product only covers items subject to the Private Express Statutes.

<sup>15</sup> It asks the Commission not to require an adjustment of inventory or processes on behalf of the Postal Service, its customers, or its foreign postal administration partners.

<sup>16</sup> Chairman's Information Request No. 1 and Notice of Filing of Questions Under Seal, January 16, 2009 (CIR No. 1).

<sup>17</sup> Notice of Filing United States Postal Service Responses to Chairman's Information Request No. 1 (Under Seal), January 23, 2009 (Response to CIR No. 1).

<sup>18</sup> Public Representative Comments in Response to Commission Order No. 164, January 14, 2009 (Public Representative Comments).

2-3. He further states that the agreement appears beneficial to the general public. *Id.* at 4-6. He also believes that, considering the circumstances of the contract, the Postal Service has provided sufficient transparency to the public. *Id.* at 3-4.

#### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Response to Order No. 164, the Response to CIR No. 1, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

*Statutory requirements.* The Commission's statutory responsibilities in this instance entail assigning IBRS Contract 1 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Product list assignment.* The Postal Service asserts that IBRS Contract 1 should be classified as competitive because the contracts at issue concern items outside the definition of letters, and "the PAEA clearly requires that bulk international mail be classified as competitive." Request at 5.<sup>19</sup> These arguments do not support the proposed classification. First, in determining whether to assign IBRS Contract 1 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider, under section 3642, whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

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<sup>19</sup> It also cites other factors supporting the "bulk" status. *Id.*

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products. While the inclusion or exclusion of a product from the postal monopoly may be an important factor for the Commission to weigh in determining whether a product should be classified as market dominant or competitive, it is not determinative.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns.

39 U.S.C. 3642(b)(3).

Second, the PAEA does not “require” newly proposed “bulk international mail” to be classified as competitive. In title 39, chapter 36, subchapter II, the Commission created the original competitive product list, including identifying several bulk international mail products.<sup>20</sup> Section 3631 explicitly states that the competitive product list shall consist of “[certain products] subject to subsection (d)<sup>[21]</sup> *and any changes the Postal Regulatory Commission may make under section 3642.*” 39 U.S.C. 3631(a) (emphasis added). Once that initial determination was made in Order No. 43, products may be added to, transferred between, or deleted from the product lists in accordance with section 3642.

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to competitors. Request, Attachment 1, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar services. *Id.* It further states that it has no specific data on the contract

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<sup>20</sup> Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

<sup>21</sup> Subsection (d) of 39 U.S.C. 3631 originated in S. 662, 109<sup>th</sup> Cong. section 203 (2005). It was not present in H.R. 22, the House version of the bill, and was not present in H.R. 6407, the final version of the bill that became the PAEA.

partner's views regarding the regulatory classification of these types of contracts. *Id.* at para. (g). Finally, the Postal Service states that the market for these services is highly competitive and only large shipping companies, consolidators, and freight forwarders serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for these types of customers. *Id.* at para. (h). Additionally, the Postal Service submits that by offering IBRS contracts, it is giving small businesses an additional option for shipping articles internationally. Thus, this results in a net impact on small businesses that is positive. *Id.*

No commenter opposes the proposed classification of International Business Reply Service Contract 1 as competitive.

The proper classification of the new IBRS Contract 1 product is not readily apparent. The Postal Service's supporting justification does not appear to address the specifics of this particular product. Nonetheless, in this case, having considered the statutory requirements and circumstances of this case, the Commission finds that International Business Reply Service Contract 1 is appropriately classified as a competitive product and should be added to the Competitive Product List. In future filings, the Postal Service should provide more detailed, specific information regarding the specific elements of section 3642(b), including the ability of others to participate in that particular market. Postal Service requests that do not include this information may hinder the Commission's review of the filing and delay final disposition.

*Cost considerations.* The Postal Service's financial analysis is intended to show that International Business Reply Service Contract 1 covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. Request at Attachment 3. The contract is predicated on unit costs based on the shipper's particular mail characteristics.

Based on the data submitted, the Commission finds that International Business Reply Service Contract 1 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 proposed International Business Reply Service Contract 1 indicates that it comports with the provisions applicable to rates for competitive products.

*Product name.* In Order No. 164, the Commission expressed a preliminary concern with calling the proposed product “International Business Reply Service Contracts” since it could be confused with the market dominant product of the same name. The Postal Service argues its proposed MCS language for IBRS contracts adequately distinguishes between products. However, this does not solve the potential naming problem whereby the Postal Service may, at a future date, wish to enter into IBRS market dominant contracts.<sup>22</sup> To provide for this possibility, the Commission will add the proposed product to the competitive product list as “International Business Reply Service Competitive Contract 1” to distinguish it from any future potential market dominant negotiated service agreement products which might be called “International Business Reply Service Market Dominant Contract 1.”

*Contingency price and cost increase price change provisions.* The proposed Docket No. CP2009-20 contract contains two contract terms that require discussion. The first concerns rate changes due to changes in cost. The contract provides that if the Postal Service's costs increase above a certain threshold, it may modify the price under the contract. Response to Order No. 164, Attachment 1, at page 3 of 8 (emphasis added). Second, the contract includes a contingency pricing provision which provides:

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<sup>22</sup> For example, if the Postal Service were to enter into its first market dominant IBRS contract tomorrow, under the Postal Service's proposed nomenclature, it would be confusing to call it “International Business Reply Service Contract 1” on the market dominant products list since there would already be a competitive product on the competitive products list of the same name (due to this proceeding).

## ARTICLE 16. CONTINGENCY PRICE

In the event that either the Mailer or the USPS terminates this Agreement under the terms of Article 13 before the normal expiration date, or in the event that the Mailer and the USPS do not enter into a customized agreement upon the expiration of this current Agreement, the Mailer shall pay postage for any Qualifying Mail the USPS receives after the agreed upon termination date or expiration date, as appropriate, at a price of [redacted] for a period of six (6) months. This price shall have no bearing on the price the USPS shall charge in the event that the Mailer and the USPS do enter into a customized agreement upon the expiration of this current Agreement. *In the event that the Mailer and the USPS have not entered into a new customized Agreement within six (6) months of the termination or expiration of this current Agreement, the USPS shall charge the Mailer a price to be determined at its sole discretion for those items received after the six (6) month date.*

*Id.* at page 5 of 8 (emphasis added). This provision allows the Postal Service to change rates unilaterally in the event that the parties have not executed a new agreement within the 6-month period following the end date of the contract.

Both provisions provide the Postal Service with the flexibility to change rates without the need to enter into a new agreement. That flexibility, however, does not trump the need for the Postal Service to comply with the Commission's rules. If either provision is exercised, the Postal Service must file the changed rates with the Commission under 39 CFR 3015.5. See also 39 U.S.C. 3632(b)(3). As provided in 39 CFR part 3015, rate changes not of general applicability are subject to a minimum 15-day notice requirement and, in this instance, could be filed in Docket No CP2009-20. Unless the changed rates raise new issues, the Commission would not anticipate a need to act further.

As demonstrated by its subsequent filings in this case, the Postal Service has outstanding IBRS contracts that contain similar cost increase and contingency

provisions. See *id.* at Attachments 2-A, 2-B, and 2-C. The Commission's conclusion regarding these provisions in this case are applicable to other contracts containing similar provisions.

*Other considerations.* 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 approves International Business Reply Service Competitive Contract 1 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

*It is Ordered:*

1. International Business Reply Service Competitive Contract 1 (MC2009-14 and CP2009-20) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Inbound International.
2. The Postal Service shall notify the Commission of the scheduled termination date of the Docket No. CP2009-20 contract, and update the Commission if the termination date changes for such contract as discussed in this Order.
3. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-14 and CP2009-20. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

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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Inbound International

Inbound Direct Entry Contracts with Foreign Postal Administrations

(MC2008-6, CP2008-14 and CP2008-15)

International Business Reply Service Competitive Contract 1 (MC2009-14  
and CP2009-20)

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