

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
International Business Reply Service Contracts 1
(MC2009-14)
Negotiated Service Agreement

Docket No. CP2010-17

ORDER CONCERNING CHANGE IN PRICES FOR
INTERNATIONAL BUSINESS REPLY SERVICE CONTRACT 1
NEGOTIATED SERVICE AGREEMENT

(Issued December 30, 2009)

I. INTRODUCTION

On December 18, 2009, the Postal Service filed notice of a change in prices pursuant to an amendment to International Business Reply Service (IBRS) Competitive Contract 1 Negotiated Service Agreement.¹ The Notice includes four attachments: (1) a redacted letter outlining the amendment to IBRS Competitive Contract 1 (Attachment 1); (2) a certified statement of compliance with 39 U.S.C. 3633(a)

¹ Notice of United States Postal Service of Change in Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 18, 2009 (Notice).

(Attachment 2); (3) an application for non-public treatment (Attachment 3); and (4) a Certification of Governors' Vote and a redacted version of Governors' Decision No. 08-24 authorizing prices that fall within a range set out in the decision. In addition, the Postal Service filed the unredacted amendment to the contract under seal. On December 29, 2009, the Postal Service filed updated work papers which show the impact on the IBRS cost basis of changes to a bilateral agreement with Canada Post Corporation that were not reflected in the initial filings.²

Substantively, the Notice gives advance notice of a change in prices for an outstanding IBRS competitive contract that expired March 31, 2008, and seeks addition of that contract to the Competitive Product List under the IBRS Competitive Contract 1 product. Notice at 2, 4.³ The Postal Service states that the price amendment will become effective January 2, 2010. *Id.* at 4.

The Postal Service maintains that this filing is a valid continuation of prices established by a contract before the Commission had authority to review international agreements. *Id.* at 3. However, the Postal Service also states that the IBRS contingency arrangement at issue is practically identical, and functionally equivalent to, those contracts in Docket Nos. CP2009-20 and CP2009-22. *Id.* at 4-5. Further, the Postal Service filed, and the Commission reviewed, the specific contract at issue in this docket in Docket Nos. MC2009-14 and CP2009-20.

² Notice of United States Postal Service of Filing Updated Financial Information, December 29, 2009 (Updated Financials Notice).

³ This is a contingency price under an expired contract. The instant contract expired, but the pricing term survives as a contingency in case a new agreement is not in place at the expiration of the previous agreement. See Notice at 2. The instant contract was in effect before the Commission reviewed such contracts under its current rules.

II. COMMISSION ANALYSIS

Contract review. In Order No. 164, the Commission asked the Postal Service to provide all contracts with contingency clauses similar to the one in the contract filed in Docket No. CP2009-20.⁴ The instant contract in this docket contains a price contingency clause identical to the clause in the contract reviewed in Docket No. CP2009-20. Therefore, the Commission initially reviewed the instant contract when it was filed in response to the Commission request in Docket No. CP2009-20.⁵ In Order No. 178, the Commission addressed the implications of the contingency clause in the contract in Docket No. CP2010-20, and stated that those conclusions apply to the other contracts (including the instant contract) with similar provisions.⁶

The Commission stated that while contingency pricing clauses allow the Postal Service flexibility to change rates without entering a new agreement, such flexibility “does not trump the need for the Postal Service to comply with the Commission’s rules.” *Id.* at 10. The Commission explained that the Postal Service must file the changed rates under 39 CFR 3015.5 and give a minimum of 15 days notice. *Id.* However, “[u]nless the changed rates raise new issues, the Commission would not anticipate a need to act further.” *Id.* The Commission noted that the Postal Service filed, at the Commission’s request, other contracts with similar contingency pricing clauses. *Id.* The Commission explained that its conclusion on the clause at issue in Docket No. CP2009-20 was applicable to the clauses in the other contracts it identified in that docket. *Id.*

⁴ See Docket Nos. MC2009-14 and CP2009-20, Notice and Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, January 5, 2009 at 2 (Order No. 164).

⁵ See Docket Nos. MC2009-14 and CP2009-20, Response of the United States Postal Service to Order No. 164, and Notice of Filing Redacted Contract and Other Requested Materials, January 12, 2009.

⁶ Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009 at 9 (Order No. 178).

The Commission has reviewed the new prices and financial analysis as submitted with the Request and on December 29, 2009, and the initial contract as filed in Docket No. CP2009-20. The Commission recognizes that the instant price change is likely to impact a very low volume of pieces, due to the time since the underlying contract's expiration and the mailer's profile. The Commission also notes that review of the instant contract (without the most recent price amendment) was completed in Docket Nos. MC2009-14 and CP2009-20, and no party raised issues relating to this contract.

Functional equivalence. The Commission finds that the instant contract appears to be similar to that filed in Docket No. CP2009-20. It differs in some minor respects relative to customer-specific information. These differences notwithstanding, the Commission concludes that the instant contract may be included in the IBRS Competitive Contract 1 product.

Cost considerations. Based on its review of the instant contract and the most recent supporting financial documentation filed in Docket No. CP2009-20, the Commission finds that the new prices for this arrangement comply with 39 U.S.C. 3633 and do not raise new substantive issues. The proposed amended prices should cover 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)).

Conclusion. In accordance with Order No. 178, the Commission recognizes the Postal Service's proposed new prices, and adds the instant contract to the Competitive Product List under the IBRS Competitive Contract 1 product. The Commission predicates this Order, however, on the Postal Service providing the source of the Postal Service's IBRS payments to the foreign postal operator(s), *i.e.*, the most recent bilateral agreement between the Postal Service and the foreign postal operator(s) that contains the rates cited in spreadsheet "02_Narrative" of the work papers submitted with the Updated Financials Notice on December 29, 2009. The Commission further notes that

its action is predicated on the minimal volume associated with this expired contract. This docket presents the unique circumstance where the Commission reviewed the very contract at issue in another docket, and is only asked to consider the change in prices for a minimal amount of volume.

III. ORDERING PARAGRAPHS

It is Ordered:

1. The contract filed in Docket No. CP2010-17 is included within the product International Business Reply Service Competitive Contract 1 (MC2009-14 and CP2009-20).
2. The Postal Service shall notify the Commission when this contract may be removed from the Competitive Product List.
3. The Postal Service shall provide a copy of the bilateral agreement with the foreign postal operator(s) that contains the rates for this contract as discussed in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary