

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  
Competitive Contract 2 (MC2010-18)  
Negotiated Service Agreements

Docket Nos. MC2010-18  
CP2010-21  
CP2010-22

ORDER CONCERNING FILING OF INTERNATIONAL BUSINESS REPLY SERVICE  
COMPETITIVE CONTRACT 2  
NEGOTIATED SERVICE AGREEMENT

(Issued February 26, 2010)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as International Business Reply Service Competitive Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

## II. BACKGROUND

On February 9, 2010, the Postal Service filed a notice announcing that it has entered into two additional International Business Reply Service (IBRS) contracts.<sup>1</sup> Additionally, 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 Competitive Contract 2 to the Competitive Product List.<sup>2</sup> The Postal Service asserts that the new International Business Reply Service Competitive Contract 2 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2010-18.

The Postal Service contemporaneously filed two contracts related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contracts have been assigned Docket Nos. CP2010-21 and CP2010-22, respectively.

The Postal Service uses IBRS contracts for customers that sell lightweight articles to foreign consumers and desires to offer their customers a way to return the articles to the United States for recycling, refurbishment, repair, or value-added processing. *Id.* at 3.

The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contracts are in accordance with Order No. 290.<sup>3</sup> The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. The

---

<sup>1</sup> Notice of the United States Postal Service of Filing Two Functionally Equivalent IBRS Competitive Contracts and Request to Establish Successor Instruments as Baseline International Business Reply Service Competitive Contract 2, February 9, 2010 (Request).

<sup>2</sup> *Id.* at 2. The Postal Service states that it is not currently proposing to remove IBRS Contract 1 from the Competitive Product List because the agreement in Docket No. CP2009-17 remains in place. *Id.*, n.5.

<sup>3</sup> See Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

Postal Service states the instant contracts are to replace the expiring contracts in Docket Nos. CP2009-20 and CP2009-22.<sup>4</sup> *Id.* at 3-4. The Postal Service notes that the current contracts expire on February 28, 2010.<sup>5</sup>

In support of its Request, the Postal Service filed the following attachments:

- Attachment 1—a statement of supporting justification as required by 39 CFR 3020.32;
- Attachments 2-A and 2-B—redacted copies of the contracts;
- Attachments 3-A and 3-B—redacted copies of the certified statements required by 39 CFR 3015.5(c)(2);
- Attachment 4—Governors’ Decision No. 08-24 which establishes prices and classifications for the IBRS Contracts product; and includes Mail Classification Schedule language for IBRS contracts, formulas for pricing along with an analysis, certification of the Governors vote, and certification of compliance with 39 U.S.C. 3633(a); and
- Attachment 5—an application for non-public treatment of materials to maintain the contracts and supporting documents under seal.

Substantively, the Request seeks to add International Business Reply Service Competitive Contract 2 to the Competitive Product List. *Id.* at 1.

The Postal Service asserts that the two contracts have generally similar cost and market characteristics as previous IBRS contracts. However, because it requests that the instant contracts be deemed the new baseline contracts for the International Business Reply Service Competitive Contract 2 product, the Postal Service considers the appropriate analysis to be the comparison of the new contracts’ cost attributes and market characteristics with one another. *Id.* at 4. The Postal Service indicates that the

---

<sup>4</sup> Docket Nos. MC2009-14 and 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 .

<sup>5</sup> The Postal Service indicates an intent to begin the new contracts on March 1, 2010. *Id.* at 4.

instant contracts differ from one another basically only in the customer identity. *Id.* The Postal Service represents that prices and classifications “not of general applicability” for IBRS contracts were established by Governors’ Decision No. 08-24 filed in Docket Nos. MC2009-14 and CP2009-20. *Id.* at 1, n.1. It also identifies the instant contracts as fitting within the Mail Classification Schedule language for IBRS contracts as included as an attachment to Governors’ Decision No. 08-24. *Id.* at 1.

The Request advances reasons why International Business Reply Service Competitive Contract 2 should be added to the Competitive Product List and fits within the Mail Classification Schedule language for IBRS contracts. *Id.* at 5. The Postal Service also explains that a redacted version of the supporting financial documentation is included with this filing as a separate Excel file. *Id.* at 3.

The Postal Service asserts that the instant contracts are in compliance with 39 U.S.C. 3633, are functionally equivalent to one another, fit within the IBRS Mail Classification Schedule language, will serve as the new baseline contracts for the proposed product, and should be grouped together under a single product. *Id.* at 5-6. It requests that the instant contracts be included within the International Business Reply Service Competitive Contract 2 product. *Id.*

In Order No. 407, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.<sup>6</sup>

### III. COMMENTS

Comments were filed by the Public Representative.<sup>7</sup> No filings were submitted by other interested parties. The Public Representative states that each element of

---

<sup>6</sup> Notice and Order Concerning Filing of International Business Reply Service Competitive Contract 2 Negotiated Service Agreement, February 12, 2010 (Order No. 407).

<sup>7</sup> Public Representative Comments in Response to United States Postal Service Notice Concerning Filing of Additional International Business Reply Service Contract 2 Negotiated Service Agreements, February 22, 2010 (Public Representative Comments).

39 U.S.C. 3633(a) appears to be met by the proposed International Business Reply Service Competitive Contract 2 product. *Id.* at 2. He observes that the contracts' pricing terms comport with Governors' Decision No. 08-24. *Id.* The Public Representative relates that the addition of the proposed product to the Competitive Product List is consistent with the statutory requirements of 39 U.S.C. 3632, 3633, and 3642. *Id.* at 2-3.

He also states that the Postal Service has provided sufficient justification for confidentiality of the matters filed under seal. *Id.* at 3. The Public Representative notes that the IBRS product improves the efficiency of the mail, provides convenience to the mailers, and serves the public interest. *Id.* at 3-5. He concludes that the contracts comport with all applicable elements of title 39 because it appears they will generate sufficient revenue to cover attributable costs, should not cause market dominant products to subsidize competitive products, and will contribute to the recovery of the Postal Service's total institutional costs. *Id.* at 6.

#### 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 Mail Classification Schedule in accordance with 39 U.S.C. 3642; (2) whether the contracts satisfy 39 U.S.C. 3633; and (3) the treatment of these contracts as the baseline agreements for any future International Business Reply Service Competitive Contract 2 contracts. 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 has had the opportunity to review the IBRS competitive contracts product in Order No. 178 and found that those contracts were properly classified as competitive. In support of its proposal, the Postal Service includes the Statement of Supporting Justification (Statement) required by 39 CFR 3020.32 originally filed in Docket No. MC2009-14

concerning International Business Reply Service Contracts 1. Among other things, the Statement provides support for classifying IBRS as a competitive product. Use of the prior Statement is acceptable to support the conclusion that International Business Reply Service Contract 2 is appropriately classified as competitive, in particular, because the instant contracts are the successors to those in Docket Nos. CP2009-20 and CP2009-22. *Id.* at 5.

*Cost considerations.* The Postal Service contends that the instant contracts and supporting documents filed in these dockets establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). *Id.* at 3. It asserts that Governors' Decision No. 08-24 supports these contracts and 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, Attachment D.

Based on the data submitted, the Commission finds that these 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, International Business Reply Service Competitive Contract 2, to the Competitive Product List. It contends that the instant contracts are functionally equivalent to previously filed IBRS contracts. At the same time, it asks that the instant contracts be considered the new baseline for future International Business Reply Service Competitive Contract 2 contracts. *Id.* at 2. The Postal Service notes that the instant contracts are the direct successors to the contracts that the Commission found to be eligible for inclusion in the International Business Reply Service Competitive Contracts 1 product. *Id.* Because International Business Reply Service Competitive Contract 2 is

being added as a new product, the Commission finds it unnecessary to address the issue of functional equivalency with previous contracts. Instead, the Commission will review the instant contracts to determine if they are functionally equivalent with one another.

The Commission reviewed each contract and finds that, with the exception of customer-specific information, they are essentially identical and, therefore, are functionally equivalent. Accordingly, the Commission finds that International Business Reply Service Competitive Contract 2 is properly added to the Competitive Product List as a new product.

The instant contracts, similar to the previous IBRS competitive contracts, contain price contingency clauses which allow the Postal Service flexibility to change rates without entering a new agreement. The Commission initially reviewed a similar provision when it was filed in response to the Commission's request in Docket No. CP2009-20.<sup>8</sup> In Order No. 178, the Commission addressed the implications of the contingency clause in the contract in Docket No. CP2010-20, and determined that those conclusions apply to other contracts (including the instant contracts) with similar provisions.<sup>9</sup>

Following the current practice, the Postal Service shall identify all significant differences between any new IBRS contract and the International Business Reply Service Competitive Contract 2 product. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the

---

<sup>8</sup> 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.

<sup>9</sup> 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. However, unless the changed rates raise new issues, the Commission found that it would not anticipate a need to act further. See 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).

contract. The docket referenced in the caption should be Docket No. MC2010-18. In conformity with the current practice, a redacted copy of Governors' Decision No. 08-24 should be included in the new filing along with an electronic link to it.

*Other considerations:* The Postal Service shall inform the Commission of the effective dates of the contract and promptly notify the Commission if the contract terminates earlier than scheduled.

In conclusion, the Commission adds International Business Reply Service Competitive Contract 2 to the Competitive Product List and finds the negotiated service agreements submitted in Docket Nos. CP2010-21 and CP2010-22 are appropriately included within the International Business Reply Service Competitive Contract 2 product.

## V. ORDERING PARAGRAPHS

*It is Ordered:*

1. International Business Reply Service Competitive Contract 2 (MC2010-18, CP2010-21 and CP2010-22) 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 effective dates of the contract and update the Commission if the termination date changes as discussed in this Order.
3. The Postal Service shall file any modifications of price based on cost increases or contingency price provisions in these contracts with the Commission as discussed in the body of this Order.

4. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

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 to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-18, CP2010-21 and CP2010-22. 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

\* \* \* \* \*

Inbound International

\* \* \* \* \*

International Business Reply Service Competitive Contract 2 (MC2010-18,  
CP2010-21 and CP2010-22)

\* \* \* \* \*