

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

Docket No. CP2011-43

ORDER CONCERNING CONTINGENCY PRICES FOR
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 1

(Issued December 29, 2010)

On December 14, 2010, the Postal Service filed notice of contingency prices pursuant to an outstanding International Business Reply Service (IBRS) Competitive Contract 1.¹ The Notice is similar to previous contingency pricing changes made by the

¹ Notice of United States Postal Service of Change of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 14, 2010 (Notice). *See also* Erratum to Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 20, 2010. IBRS competitive contracts are for U.S.-based entities that seek a channel for returned merchandise or other articles from their overseas customers. Notice at 1.

Postal Service and authorized by the Commission.² The Postal Service requests that the Commission include the instant contingency pricing arrangement within the IBRS Competitive Contract 1 designation on the competitive product list. Notice at 4.

In addition to the Notice, the Postal Service filed the following four attachments:

- Attachment 1—a notice to the customer of the contingency prices to take effect January 1, 2011;
- Attachment 2—a certified statement of compliance with 39 U.S.C. 3633(a);
- Attachment 3—a redacted copy of Governors' Decision No. 08-24, which establishes prices and classifications for IBRS contracts and authorizes prices that fall within a range set out in the decision; and
- Attachment 4—an application for non-public treatment of materials to maintain the contract and supporting documents under seal.

Commission analysis. The Postal Service's filing concerns an IBRS contract executed prior to the implementation of the Commission's current rules for competitive products. The contract, which expired in March 2008, includes a contingency provision that permits the Postal Service to charge the mailer a new price in the event the parties do not execute a new agreement within 6 months of the expiration (or termination) date. See Order No. 178, *supra*, at 10.

The Postal Service filed the instant contract in Docket Nos. MC2009-14 and CP2009-20.³ It was also the subject of the Postal Service's similar filing in Docket No. CP2010-17.⁴

² 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); Docket No. CP2010-17, Order No. 377, Order Concerning Change in Prices for International Business Reply Service Contract 1 Negotiated Service Agreement, December 30, 2009.

³ See Response of the United States Postal Service to Order No. 164, and Notice of Filing Redacted Contract and Other Requested Materials, Docket Nos. MC2009-14 and CP2009-20, January 12, 2009. A redacted copy of the instant contract was included as Attachment 2-B.

⁴ See Docket No. CP2010-17, 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, at 3 n.4.

The instant contract was executed prior to implementation of the Commission's current rules on competitive products. Notwithstanding its lapsed status, the contract specifically permits contingency price changes. Furthermore, the Postal Service notes "that the instant contingency prices are likely to apply to an extremely small number of postal items, due to the mailer's profile and the passage of time since the contract's expiration." Notice at 4. Recognizing the atypical nature of these contracts and in an effort to "preemptively [resolve] any alleged inconsistency," the Postal Service filed notice pursuant to 39 CFR 3015.5. *Id.* The filing also included the letter providing the customer with advance notice of the contingency prices. *Id.*, Attachment 1.

Based on its review of the Postal Service's Notice and supporting materials, the Commission concludes that the contingency prices satisfy 39 U.S.C. 3633(a).⁵ Accordingly, in harmony with prior orders and as requested by the Postal Service, the contingency pricing arrangement will be included within the IBRS Competitive Contract 1 product.

It is Ordered:

The contingency pricing arrangement will be included within the IBRS Competitive Contract 1 product designation.

By the Commission.

Shoshana M. Grove
Secretary

⁵ As the underlying contract affects only one customer and that customer had advance notice of the contingency prices, the Commission finds it unnecessary to notice the filing apart from this Order.