

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Competitive Product Prices
International Business Reply Service Competitive
Contract 3 (MC2011-21)
Negotiated Service Agreement

Docket No. CP2012-16

ORDER ADDING CONTRACT TO INTERNATIONAL BUSINESS REPLY SERVICE
COMPETITIVE CONTRACT 3 PRODUCT

(Issued February 27, 2012)

I. INTRODUCTION

On February 13, 2012, the Postal Service filed a notice, pursuant to 39 U.S.C. § 3015.5, that it has entered into an additional International Business Reply Service (IBRS) contract.¹ The Postal Service requests that the instant contract be included within the IBRS Competitive Contract 3 product. *Id.* at 6. For the reasons discussed below, the Commission approves the request.

¹ Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 13, 2012 (Notice).

II. BACKGROUND

The Postal Service indicates that the instant contract is the successor to one the Commission found to be eligible for inclusion in the IBRS Competitive Contract 3 product in Docket Nos. MC2011-21 and CP2011-59, and is on behalf of the same customer as in Docket No. CP2011-59. *Id.* at 3.

The Postal Service states that the instant contract is functionally equivalent to the IBRS 3 baseline contract originally approved in Docket Nos. MC2011-21 and CP2011-59 and supported by Governors' Decision No. 08-24 (IBRS 3 baseline contract). *Id.*, Attachment 3. It claims that the instant contract shares similar cost and market characteristics, as well as similar "functional terms," with the IBRS 3 baseline contract. *Id.* at 4. The Postal Service indicates that the instant contract will become effective on March 1, 2012. *Id.* at 3. The instant contract will remain in effect until March 1, 2013, unless termination of the agreement occurs earlier. *Id.* It may, however, be terminated by either party upon 30 days' written notice. *Id.*, Attachment 1 at 10.

The Notice identifies certain contract terms that distinguish the instant contract from the IBRS 3 baseline contract such as an additional sentence in Article 15 stating that the Postal Service may be required to file information in connection with the contract in other Commission dockets, and an additional Article 30 concerning intellectual property, co-branding, and licensing. *Id.* at 5. The Postal Service asserts that the differences affect neither the fundamental service that the Postal Service is offering nor the fundamental structure of the contract. *Id.*

III. COMMENTS

Comments were filed by the Public Representative.² No other interested person submitted comments. The Public Representative reviewed the instant contract and

² Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 22, 2012.

supporting financial model filed under seal to determine its functional equivalence with the IBRS 3 baseline contract. *Id.* at 2. He concludes that the instant contract is functionally equivalent to the IBRS 3 baseline contract. *Id.* Additionally, he states that the negotiated prices in the instant contract will likely generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. *Id.*

IV. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that: (1) the instant contract is functionally equivalent to IBRS 3 baseline contract; and (2) the instant agreement satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 CFR §§ 3015.5 and 3015.7).

Functional equivalence. The Postal Service maintains that the instant contract shares similar costs and market characteristics with the IBRS 3 baseline contract. It claims that the instant contract meets the pricing formula and classification established in Governor's Decision No. 08-24 and is consistent with 39 U.S.C. § 3633 and the Commission's rules. It has identified several ways that the instant contract differs from the IBRS 3 baseline contract, including an additional sentence in Article 15 stating that the Postal Service may be required to file information in connection with the contract in other Commission dockets, and an additional Article 30 concerning intellectual property, co-branding, and licensing. Notice at 5.

These minor differences notwithstanding, upon consideration, it appears that the instant contract is functionally equivalent to the IBRS 3 baseline contract. The Commission concludes that the instant contract may be included in the IBRS Competitive Contract 3 product.

Cost considerations. The Commission reviews competitive products to ensure that they meet the applicable requirements of 39 CFR §§ 3015.5 and 3015.7, as well as 39 U.S.C. § 3633. The Commission has reviewed the financial analyses provided under seal that accompany the instant contract as well as the comments filed in this proceeding.

Based on the information provided, the Commission finds that the contract submitted 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, a preliminary review of the proposed contract indicates that it comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633.

Other considerations. The Postal Service has represented to the Commission that the instant contract will become effective on March 1, 2012. The Postal Service shall notify the Commission if the instant contract terminates earlier than scheduled.

The instant contract, similar to the previous IBRS competitive contracts, contains price contingency clauses which allow the Postal Service flexibility to change rates without entering a new agreement. The Commission initially reviewed similar provisions in Docket No. CP2009-20.³ In Order No. 178, the Commission addressed the implications of the contingency clause in the contract in Docket No. CP2009-20, and determined that those conclusions apply to other contracts with similar provisions that specifically permit contingency prices.⁴

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2012-16 is appropriately included within the IBRS Competitive Contract 3 product.

³ 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.

⁴ 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 Order No. 178 at 9.

V. ORDERING PARAGRAPHS

It is ordered:

1. The contract filed in Docket No. CP2012-16 is included within the International Business Reply Service Competitive Contract 3 product.
2. The Postal Service shall notify the Commission if the contract terminates prior to the scheduled termination date.
3. The Postal Service shall file any modifications of price based on cost increases or contingency price provisions in the instant contract with the Commission as discussed in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary