

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

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

Docket No. CP2012-17

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF FILING AN ADDITIONAL
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3
NEGOTIATED SERVICE AGREEMENT

(March 6, 2012)

The Public Representative hereby provides comments pursuant to Order No. 1261.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's notice of its entry into an additional International Business Reply Service (IBRS) competitive contract.²

Prices and classifications "not of general applicability" for IBRS contracts were previously established by Governors' Decision No. 08-24.³ In Order No. 684, the Commission added the International Businesses Reply Service Competitive Contract 3 product to the competitive product list, and included within that product an IBRS competitive contract that would serve as the baseline agreement for functional equivalence comparisons with future agreements.⁴ The Commission subsequently determined that IBRS competitive contracts filed in Docket Nos. CP2011-61 and

¹ PRC Order No. 1261, Notice and Order Concerning Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3, Negotiated Service Agreement, February 27, 2012.

² Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 24, 2012 (Notice).

³ See 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, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008.

⁴ See PRC Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011.

CP2011-71 were functionally equivalent to the baseline agreement and should be included in the International Businesses Reply Service Competitive Contract 3 (MC2011-21) product.⁵ More recently, the Commission approved the addition of the IBRS competitive contract filed in Docket No. CP2012-16 to the product.⁶

IBRS competitive contracts included within the International Businesses Reply Service Competitive Contract 3 product permit businesses that sell light-weight articles to consumers in foreign countries to offer those consumers a convenient method of returning the articles to the United States for recycling, refurbishment, repair, or other value-added processing. Notice at 4.

In this proceeding, the Postal Service requests that the Commission add the instant contract to the IBRS Competitive Contract 3 product based on its functional equivalence to the baseline contract in Docket Nos. MC2011-21 and CP2011-59. Notice at 5. The instant contract is with a customer who is entering into its first IBRS contract. *Id.* at 3. The instant contract will expire one year after its effective date, unless termination occurs earlier. *Id.*

COMMENTS

The Public Representative has reviewed the negotiated contract and supporting financial model filed under seal that accompanies the Postal Service's Notice. Based upon that review, the Public Representative concludes that the instant contract is functionally equivalent to the baseline agreement. In addition, it appears the negotiated prices in the instant contract should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633.

Functional Equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the IBRS 3 baseline contract "in that it shares similar cost and market characteristics . . . [and the] functional terms of the contract [] and the functional

⁵ See PRC Order No. 693, Order Approving an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket No. CP2011-61, March 11, 2011; *see also* PRC Order No. 844, Order Approving an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket No. CP2011-70, September 9, 2011.

⁶ PRC Order No. 1260, Order Adding Contract to International Business Reply Service competitive Contract 3 Product, Docket No. CP2012-16, February 27, 2012.

terms of the IBRS 3 baseline agreement are the same.” *Id.* at 4. However, the Postal Service identifies what it considers to be “minor differences” between the instant contract and 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. *Id.* at 5. The Postal Service maintains that these differences do not affect either the fundamental service that the Postal Service is offering nor the fundamental structure of the agreement. *Id.* The Public Representative agrees and concludes that the instant contract is functionally equivalent to the baseline agreement.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service’s Notice, it appears the negotiate prices in the instant contract should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission’s consideration.

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