

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

Before Commissioners:

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

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

Docket No. CP2013-59

ORDER APPROVING NEW INTERNATIONAL BUSINESS REPLY SERVICE
COMPETITIVE CONTRACT 3 AGREEMENT

(Issued April 15, 2013)

I. INTRODUCTION

Pursuant to 39 C.F.R. § 3015.5, the Postal Service seeks to add a new International Business Reply Service (IBRS) agreement (Agreement) to the IBRS Competitive Contract 3 product.¹ For the reasons discussed below, the Commission approves the addition of the Agreement to the IBRS Competitive Contract 3 product.

¹ Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 4, 2013 (Notice).

II. BACKGROUND

IBRS competitive agreements provide businesses that sell lightweight articles to foreign consumers with an opportunity to offer consumers a way to return those articles to the United States for recycling, refurbishing, repairing, or other value-added processing. Notice at 4. The Commission approved the addition of the IBRS Competitive Contract 3 product to the Mail Classification Schedule in February 2011 and designated the agreement filed in Docket Nos. MC2011-21 and CP2011-59 as the baseline agreement for purposes of establishing functional equivalence.²

On April 4, 2013, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed the Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement and complies with the requirements of 39 U.S.C. § 3633. Notice at 6, Attachment 3. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors' Decision No. 08-24.³ Notice at 4. Among the supporting documents, the Postal Service included a copy of Governors' Decision No. 08-24, the new Agreement, and a certification of compliance with 39 U.S.C. § 3633(a). *Id.* Attachments 1-3. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the Agreement, customer-identifying information, and related financial information filed under seal. *Id.* Attachment 4.

On April 5, 2013, the Commission issued an order establishing a docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² See Docket Nos. MC2011-21 and CP2011-59, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011 (Order No. 684).

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for International Business Reply Service (IBRS) Contracts, December 24, 2008 (Governors' Decision No. 08-24).

⁴ Order No. 1692, Notice and Order Concerning Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 5, 2013.

III. COMMENTS

The Public Representative filed comments supporting the addition of the Agreement to the IBRS Competitive Contract 3 grouping.⁵ No other comments were received.

The Public Representative states that his review of the Agreement and the supporting financial model filed under seal leads him to conclude that the Agreement is functionally equivalent to the baseline agreement and should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. PR Comments at 2. The Public Representative agrees with the Postal Service that the two differences between the Agreement and the baseline agreement (revised Article 15 and a new Article 30) are minor and do not affect the fundamental service being offered or the fundamental structure of the Agreement. *Id.* at 3. He concludes that the Agreement is functionally equivalent to the baseline agreement. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the supporting data filed under seal, and the Public Representative's comments.

Functional equivalence. The Commission must determine whether the Agreement is functionally equivalent to the IBRS 3 baseline agreement. The Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement because they share the same cost and market characteristics. Notice at 4. In addition, the Postal Service affirms that the basic obligations and benefits under the agreements are the same. *Id.* It asserts that any differences, including changes to Articles 15 and 30, are minor and do not alter the contract's functional equivalency. *Id.* at 5.

The Commission finds that the Agreement shares similar cost and market characteristics with the baseline agreement. In addition, the Commission concludes

⁵ Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 12, 2013 (PR Comments).

that the Agreement conforms to the pricing formula and classification established in Governors' Decision No. 08-24. The Commission has considered the nature and impact of the two differences between the Agreement and the baseline agreement (revised Article 15 and new Article 30). The Commission determines that these differences are minor and do not affect the fundamental service being offered or the fundamental structure of the contract.

In addition, the Commission has considered the difference to Articles 6.1 and 6.3 raised in Docket No. CP2013-57, where references to the Domestic Mail Manual (DMM) section 507.9 have been replaced with references to DMM section 505.1.⁶ The Commission requires the Postal Service to inform the Commission of all significant differences between any proposed functionally equivalent IBRS contract and the baseline agreement. Order No. 684 at 6. The Commission notes that this change to Articles 6.1 and 6.3 was not documented by the Postal Service in several other previous IBRS 3 dockets where the agreement contained an identical change.⁷ Changes to the DMM references may impact functional equivalency. Accordingly, all such changes should be identified in the Postal Service's notices proposing functionally equivalent agreements. Here, the Commission finds that the DMM reference changes to Articles 6.1 and 6.3 do not alter the functional equivalence of the Agreement. In addition, the DMM reference changes are logical in the context of the Agreement, focusing the mailer on relevant content concerning Business Reply Mail, rather than Address Sequencing Services.

⁶ Docket No. CP2013-57, Order No. 1697, Order Approving New International Business Reply Service Competitive Contract 3 Agreement, at 4-5, April 11, 2013.

⁷ See, e.g., Docket No. CP2012-16, Order No. 1260, Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, February 27, 2012; Docket No. CP2012-17, Order No. 1280, Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, March 9, 2012; Docket No. CP2012-18, Order No. 1298, Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, March 27, 2012; Docket No. CP2013-50, Order No. 1668, Order Approving New International Business Reply Service Competitive Contract 3 Agreement, February 25, 2013.

Having compared the Agreement to the baseline agreement, the Commission concludes that the Agreement is functionally equivalent to the baseline agreement and may be included within the IBRS Competitive Contract 3 product.

Cost considerations. Because the Agreement is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.5.

As part of its Notice, the Postal Service submitted a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Notice, Attachment 3. In addition, the Postal Service filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on the information provided, the Commission finds that the Agreement should not lead to the subsidization of competitive products by market dominant products, satisfying 39 U.S.C. § 3633(a)(1); should cover its attributable costs, satisfying 39 U.S.C. § 3633(a)(2); and should have a positive effect on competitive products' contribution to institutional costs, satisfying 39 U.S.C. § 3633(a)(3). As part of its Annual Compliance Determination proceedings, the Commission will review the Agreement's financial performance for consistency with 39 U.S.C. § 3633(a).

Other considerations. The Agreement provides that the Postal Service will notify the customer regarding the effective date within 30 days of receiving regulatory approvals. *Id.* Attachment 1 at 4. The contract terminates one calendar year after the effective date, unless terminated sooner. *Id.* The Postal Service shall promptly notify the Commission of the effective date of the Agreement. In addition, it shall promptly notify the Commission if the Agreement terminates earlier than scheduled.

The Agreement, like previous IBRS competitive agreements, includes a contingency clause in Article 8, which allows the Postal Service to change rates based on cost increases without entering into a new agreement. *Id.* at 3. Article 27 addresses contingency prices under early termination and other circumstances. *Id.* at 7-8. The

Commission reviewed these types of clauses in Docket No. CP2009-20 and concluded that if rates change under the terms of these contingencies, the Postal Service must file the changed rates under 39 C.F.R. § 3015.5 and provide at least 15 days' notice, but stated that it did not anticipate the need for further action unless the changed rates raise new issues.⁸ The Commission further determined that its conclusions with respect to the agreement in Docket No. CP2009-20 would apply to other agreements with similar provisions permitting contingency prices. Order No. 178 at 11. As the Agreement includes similar contingencies, the Postal Service shall file rate changes occurring as the result of a contractual contingency with the Commission and provide at least 15 days' advance notice of the change in rates.

Conclusion. The Commission concludes that the Agreement is appropriately added to the existing IBRS Competitive Contract 3 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-59 is included within the International Business Reply Service Competitive Contract 3 product.
2. The Postal Service shall promptly notify the Commission of the Agreement's effective date.
3. The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than scheduled.

⁸ See Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, at 9-11, February 5, 2009 (Order No. 178).

4. The Postal Service shall file any modifications of prices in the Agreement with the Commission as described in this Order.

By the Commission.

Shoshana M. Grove
Secretary