

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

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

Docket No. CP2012-59

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF FILING OF PRICES UNDER FUNCTIONALLY
EQUIVALENT INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE
CONTRACT 3 NEGOTIATED SERVICE AGREEMENT

(March 28, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2025.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice establishing a contingency price arrangement pursuant to a provision in an expired International Business Reply Service (IBRS) competitive contract.² The instant contingency price arrangement in part, occurs under a surviving term of an IBRS Competitive Contract 3 that expired on September 30, 2013.³ New proposed contingency prices are to be effective April 1, 2014 and remain in effect, indefinitely, unless the Postal Service chooses to modify the rates. Notice at 3.

In this proceeding, the Postal Service requests that the Commission add the contingency price arrangement within the IBRS Competitive Contract 3 designation list,

¹ PRC Order No. 2025, Notice and Order Concerning Change in Prices Under International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 18, 2014.

² Notice of the United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 14, 2014 (Notice).

³ United States Postal Service Response to Order No. 1480 concerning Effective Dates of an International Business Reply Service Competitive Contract 3 Negotiated Service Agreement Docket, Docket No. CP2012-59, January 15, 2013.

due to its functional equivalence to the IBRS 3 baseline contract submitted in Docket Nos. MC2011-21 and CP2011-59 (IBRS 3 baseline contract).⁴ *Id.* at 2-3.

COMMENTS

The open-ended term of the contingency price arrangement proposed in this instant docket, as well as that in Docket CP2013-28, are departures from other contingency price arrangements within an IBRS Competitive Contract, and the examples provided to the Commission when the IBRS product was first added to the competitive products list.⁵ In Docket CP2013-28, the PR noted that: “Such an open-ended term potentially raises questions as to the functional equivalency of the instant contingency price arrangement to the previous arrangements previously included in the IBRS Competitive Contract 1 product.”⁶ Based on the contingency pricing arrangement examples in expired contracts the Postal Service had enacted in the past,⁷ it’s clear to the Public Representative, that the surviving contingency price arrangement clause was intended to operate, in a fundamentally, similar manner (not indefinitely).⁸ Since customer behavior as well as the Postal Service’s costs may vary substantially from year-to-year, in general, the PR believes an open-ended price arrangement (within an expired contract), is not ideal.

⁴ PRC Order No. 1480, Order Approving New International Business Reply Service Competitive Contract 3 Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011.

⁵ See Attachments 2-A and 2-B in the Response of the United States Postal Service to Order No. 164, and Notice of Filing Redacted Contract and Other Requested Material, Docket Nos. MC2009-14 and CP2009-20, January 12, 2009.

⁶ Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, September 21, 2012 at 3.

⁷ Response of the United States Postal Service to Order No. 164, and Notice of Filing Redacted Contract and Other Requested Material, Docket Nos. MC2009-14 and CP2009-20, Attachments 2-A and 2-B, January 12, 2009.

⁸ The IBRS baseline contracts wording around this surviving contingency price provision clause for the baseline Competitive Contracts 1 (CP2009-20) and 3 (CP2011-59), differ. However, the PR believes the interpretation and intended use for this particular provision, within a product, should be generally consistent with the original intent, as well as across other group products.

Because actual costs may be underestimated in this proceeding, the Public Representative does not comment on whether the contingency prices cover attributable costs. The specific types of costs the Public Representative believes may have been underestimated⁹ are referenced by the Excel file footnotes row number only, for the Commission's consideration and review. The cost areas of concern are located in the Postal Service's nonpublic Excel file, first cost inputs worksheet, footnotes section, rows 179, 186-187, and 188-189 included with their Notice. In addition, the Public Representative believes the Postal Service may have made a numeric typo tied to the cost coverage formula.¹⁰

Overall, the PR believes contingency prices are a benefit to the customer given the particular nature of the IBRS as return service that is permitted by a surviving provision of an expired contract and where a successor contract between the Postal Service and the contracting partner has not been executed. However, the PR believes the application of the contingency price provision contract term, was intended to be used within a context of periodic terms, for important reasons.

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

/s/ Manon A. Boudreault

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⁹Based on the input costs descriptions, assumptions in the Excel file first cost inputs worksheet footnotes filed with the Postal Service's Notice, and cost category groups selected from USPS-FY13-NP2, Docket No. ACR 2013)

¹⁰ See the value in cell C33 of the first cost inputs worksheet filed in this current proceeding and the comparable value in the financial model filed with the Commission for Docket No. CP2012-59, on September 13, 2012.