**Postal Regulatory Commission**
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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268–0001

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|---|---|
| COMPETITIVE PRODUCT PRICES<br>PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE<br>PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE<br>CONTRACT 57 | Docket No. MC2017–201 |
| COMPETITIVE PRODUCT PRICES<br>PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE<br>CONTRACT 57 (MC2017–201)<br>NEGOTIATED SERVICE AGREEMENT | Docket No. CP2017–304 |

**REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE CONTRACT 57 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING (UNDER SEAL) OF UNREDACTED GOVERNORS' DECISION, CONTRACT, AND SUPPORTING DATA**
(September 13, 2017)

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service hereby requests that Priority Mail & First-Class Package Service Contract 57 be added to the competitive product list within the Mail Classification Schedule.[1] This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).[2] Attachment A is a redacted version of the Governors' Decision and accompanying analysis.[3] An explanation and justification is provided in the Governors' Decision and analysis, which are being filed in unredacted version under seal.[4] Attachment B is a redacted version of the contract. Attachment C shows the

[1] 39 C.F.R. § 3020.31(a), (c).
[2] *Id.* § 3020.31(d).
[3] *Id.* § 3020.31(b).
[4] *Id.* § 3015.5(b)

requested changes in the Mail Classification product list with the addition underlined.[5] Attachment D provides a statement of supporting justification for this request, as specified in 39 C.F.R. § 3020.32.[6] Attachment E is the certification of compliance with 39 U.S.C. § (a)(1) and (3).[7] Attachment F provides the Application for Nonpublic Treatment of the materials filed under seal.[8] Those materials are the unredacted contract and the required cost and revenue data.[9]

As explained in the supporting justification, the Postal Service believes that it is appropriate to add this contract to the list of competitive products. The Commission should therefore approve this request as set forth in its rules. As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

John F. Rosato
Acting Chief Counsel
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September 13, 2017

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[5] *Id.* § 3020.31(f).
[6] *Id.* § 3020.31(e).
[7] *Id.* § 3015.5(c)(2).
[8] *Id.* § 3007.21.
[9] *Id.* § 3015.5(c)(1).

**ATTACHMENT A TO REQUEST**

**REDACTED GOVERNORS' DECISION**

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 11-6)**

March 22, 2011

**STATEMENT OF EXPLANATION AND JUSTIFICATION**

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments, but nonetheless arise from other sources, such as the Universal Postal Convention.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to present such product description to the Postal Regulatory Commission.

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established all prices that will cover [redacted] costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a quarterly basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant, new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision does not supersede or otherwise modify Governors' Decision Nos. 08-5, 08-6, 08-7, 08-8, 08-10, 08-20, 08-24, 09-5, 09-6, 09-7, 09-14, 09-15, 09-16, 10-1, 10-2, 10-3, 10-6, and 10-7, nor does it affect the validity of prices and classifications established under those Decisions. Management may also continue to present to the Postal Regulatory Commission for its review, as appropriate, rate and classification changes to succeed the minimum and maximum non-published rates in Decision Nos. 10-2 and 10-6.

## ORDER

In accordance with the foregoing Decision of the Governors, the prices set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

Louis J. Giuliano
Chairman

## Attachment A

### Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be [redacted]

[redacted]

The cost coverage for a product equals [redacted]

[redacted]

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Express Mail, Parcel Return Service, Priority Mail International, Express Mail International, International Priority Airmail, International Surface Air Lift, Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and Inbound International Expedited Services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.

[redacted]

[redacted]

[redacted] Prices established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C.§ 3633(a)(3), which, as implemented by (39 C.F.R.§ 3015.7(c)) requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C.§ 3633(a)(1)).

**CERTIFICATION OF GOVERNORS' VOTE**
**IN THE**
**GOVERNORS' DECISION NO. 11-6**

I hereby certify that the Governors voted on adopting Governors' Decision No. 11-6, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

Julie S. Moore

Date: 3/22/2011

Julie S. Moore
Secretary of the Board of Governors

**ATTACHMENT B TO REQUEST**

**REDACTED SHIPPING SERVICES CONTRACT**

# SHIPPING SERVICES CONTRACT
## BETWEEN
## THE UNITED STATES POSTAL SERVICE
## AND
## [redacted]
## REGARDING
## PRIORITY MAIL SERVICE
## AND
## FIRST-CLASS PACKAGE SERVICE

This Contract for Shipping Services is made by and between [redacted] a corporation organized and existing under the laws of [redacted] with its principal office at [redacted] ("Customer") and the United States Postal Service, an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260 (the "Postal Service"). The Postal Service and Customer are referred to herein collectively as the "Parties" and each as a "Party".

WHEREAS, it is the intention of the Parties to enter into a Shipping Services Contract ("SSC") that will benefit the Postal Service, the postal system as a whole, and Customer, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006.

NOW, THEREFORE, the Parties agree as follows:

## I. Terms

The following terms apply as of the effective date, as defined below:

A. Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300_landing.htm) and of other postal laws and standards apply to mail tendered under this Contract.

B. This contract applies to Customer's outbound packages (collectively "Contract Packages"), as follows:

1. Customer's Priority Mail packages [redacted] and
2. Customer's First-Class Package Service - Commercial packages [redacted]

C. Customer will manifest Contract Packages as specified by the Postal Service, using a separate permit number and/or PC Postage account to ship such packages, and will use the Electronic Verification System (eVS), other USPS approved manifest systems, or USPS approved PC Postage vendors for payment of such packages. Customer shall provide the Postal Service, in writing, a list of its permit numbers and/or PC Postage accounts for approval. Contract pricing for any newly approved permits and/or PC Postage accounts will be effective within fifteen (15) business days after the Postal Service receives written notification from Customer. Only Contract Packages shipped from authorized permits and/or PC Postage accounts shall count toward the volume commitment in Section I.E below.

D. The Postal Service will not provide Customer with Priority Mail packaging.

E. Volume Commitment. Customer should ship at least [redacted] Contract Packages annually. Included in Customer's annual volume commitment, Customer should ship at least [redacted] Priority Mail Contract Packages annually. If the volume falls below the annual volume commitment for any Contract Year, the Postal Service at its sole discretion has the right to revert Customer to the most current Priority Mail Commercial Plus prices and First-Class Package Service – Commercial published prices.

F. The terms and prices contained herein will take effect on the effective date as defined in Section III. The Contract Quarters are defined as:

1. Contract Quarters. "Quarter(s)" or "Contract Quarter(s)", refer to the periods as follow in Table 1.

**Table 1**

| Period Name | Start of Period | End of Period |
|---|---|---|
| Quarter 1 | January 1st | March 31st |
| Quarter 2 | April 1st | June 30th |
| Quarter 3 | July 1st | September 30th |
| Quarter 4 | October 1st | December 31st |

G. The following prices in Tables 2 and 3, apply to Customer's Contract Packages from this Contract's effective date, as defined in Section III, until the first anniversary of the Contract's effective date.

[redacted]

[redacted]

H. Annual Adjustment

1. For subsequent years of the Contract, beginning on the first anniversary of the Contract's effective date, customized prices under this Contract will be the previous year's prices plus the most recent (as of the anniversary date) percentage change in prices of general applicability for Priority Mail Commercial Plus and First-Class Package Service - Commercial, as calculated by the Postal Service.

2. Customized prices for the subsequent years will be calculated by the Postal Service and rounded up to the nearest whole cent. If the Postal Service maintains or decreases published rates of applicability for Priority Mail Commercial Plus and First-Class Package Service - Commercial, there shall be no change to Contract pricing for that Contract Year.

I. Quarterly Business Reviews. The Parties shall, within fifteen (15) calendar days after the conclusion of each Contract Quarter in each Contract Year, jointly conduct a business review of Customer's Contract Packages and other performance expectations under this Contract either in person, by telecom or by webinar. If either Party is unable to conduct a business review within fifteen (15) calendar days after the conclusion of the above referenced Contract Quarters, it shall notify the other Party in writing (i.e. email or mail) of that fact and propose a date as soon as practicable thereafter.

## II. Marketplace Requirements

The Parties (1) acknowledge and agree that the Appendix to Shipping Services Contract attached hereto is hereby incorporated into and made a part of this Contract by this reference, and (2) agree to comply with the terms set forth therein as if fully set forth herein.

## III. Regulatory Review and Effective Date

This Contract is subject to approval by Postal Service senior management and/or the Governors of the Postal Service as well as by the Postal Regulatory Commission (the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, the Postal Service will make required filings with the Commission. The effective date of this Contract shall be two (2) business days following the day on which the Commission issues all necessary regulatory approval. For the purposes of this SSC, business days are defined as Monday through Friday, excluding federal holidays and days on which the Postal Service Headquarters is administratively closed.

## IV. Expiration Date and Termination

This Contract shall expire three (3) years from the effective date, unless 1) terminated by either Party with thirty (30) calendar days' notice to the other Party in writing, 2) renewed by mutual agreement in writing, 3) superseded by a subsequent contract between the Parties, 4) ordered by the Commission or a court, or 5) required to comply with subsequently enacted legislation.

If, at the conclusion of this Contract term, both Parties agree that preparation of a successor SSC is active, the SSC will be extended for up to two (2) ninety (90) calendar day periods with official notification to the Commission at least seven (7) calendar days prior to the Contract's expiration date. Upon both Parties agreement of the extension, the escalation clause will be implemented in Section I.H, throughout the extension period.

## V. Appeals

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal within thirty (30) calendar days of receipt of notification of the

determination giving rise to the appeal to: Manager, Pricing and Classification Service Center ("PCSC"), 90 Church St. Ste. 3100, New York, NY 10007-2951 ((212) 330-5300 / Fax: (212) 330-5320). The decision of the PCSC Manager will be administratively final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

## VI. Confidentiality

Customer acknowledges that as part of securing approval of this Contract, the Contract and supporting documentation will be filed with the Commission in a docketed proceeding. The Postal Service shall request from the Commission non-public treatment of information that the Postal Service deems to be eligible for protection from public disclosure when it files such material with the Commission, including Customer's identity, the terms of this Contract, and supporting data relating to postal costs, prices, and Customer's shipping profile. The Postal Service will redact such information from its public filing. Customer authorizes the Postal Service to determine the scope of information that must be made publicly available in the Commission's docketed proceeding. Customer further understands that any unredacted portion of this Contract or supporting information will be available on the Commission's public website, www.prc.gov. At the request of Customer, the Postal Service will notify Customer of the docket number of the Commission proceeding once assigned. Customer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. Customer agrees to treat as confidential and not disclose to third parties absent express written consent by the Postal Service any information related to this Contract that is determined by the Commission to be non-public.

## VII. Amendments

This Contract shall not be amended except expressly, in writing, by authorized representatives of the Parties.

## VIII. Assignment

Neither Party may, or shall have the power to, assign its rights under the Contract or, delegate its obligations hereunder, without the prior consent of the other; such consent is not to be unreasonably withheld. In addition, in the event that Customer is merged with or into or acquires another entity, pricing under this Contract following such merger or acquisition shall apply only to mail sent by the entity existing prior to the merger or acquisition. Following any such merger or acquisition, the parties may negotiate in good faith to extend, modify or enter into a new contract applicable to the merged or acquired entity.

## IX. Waiver

Any waiver by a party shall not constitute a waiver for any future occurrence. No waiver shall be valid unless set forth in writing executed by the party waiving such provision.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed as of the later date below:

UNITED STATES POSTAL SERVICE

Signed by: _____

Printed Name: Cliff Rucker

Title: Senior Vice President, Sales and Customer Relations

Date: 9/6/17

[redacted]

## Appendix to Shipping Services Contract

The terms set forth in this Appendix are attached to and incorporated by reference into the Shipping Services Contract (as it may be amended, restated, supplemented or otherwise modified from time to time, and together with all attachments thereto, the "SSC" or "Contract"), by and between the United States Postal Service (the "Postal Service" or "USPS"), an independent establishment of the executive branch of the Government of the United States, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260, and [redacted], a [redacted] corporation, with its principal office at [redacted] ("Customer"), regarding Priority Mail Service and First-Class Package Service ("Product"). Capitalized terms used but not otherwise defined in this Appendix have the meaning set forth in the Contract.

### I. Marketplace Requirements

A. Approval Requirements and Pricing

[redacted]

[redacted]

B. Reporting and Additional Marketplace Requirements

In the event that the Customer is authorized to offer access to Product to one or more Third Parties under this Section I, Customer shall, for so long as Customer offers access to Product to any Third Party:

1. Ensure that each Third Party approved hereunder is bound by and expressly agrees to comply with all requirements that the Customer is subject to under the Contract, and expressly agrees that the Third Party's access to reduced Product prices in accordance with Section I.A. above may be terminated or suspended in accordance with the Contract terms. In addition, in the event that the Customer receives a written notice from the Postal Service indicating that any Third Party has breached any Contract term, the Customer shall terminate the Third Party's access to the Product effective as of the termination date set forth in said notice (the

"Termination Date"), unless the Third Party, as applicable, cures such breach to the Postal Service's satisfaction prior to the Termination Date.

2. Upon request of the Postal Service (not more than four (4) times per Contract year), deliver complete and accurate transaction level data for all Third Party transactions within four (4) weeks of the date of the written request, which data shall be sufficient for the Postal Service to accurately compare postage amounts paid to the Postal Service by Customer with postage amounts paid to Customer by each Third Party and shall be in an electronic file format as specified by the Postal Service.

3. Upon request of the Postal Service, deliver to the Postal Service the Shipper Information and Payment Information listed below, as well as such other information that may be reasonably requested (not more than four (4) times per Contract year, except in cases of suspected fraud, short-paid postage or breach of any Contract term), within four (4) weeks of the date of the written request. Notwithstanding the foregoing, in the event that the Postal Service suspects that a Third Party has short-paid postage, committed fraud or breached any Contract term, Customer shall furnish the Shipper Information and Payment Information listed below, as well as such other information that may be reasonably requested, to the Postal Service immediately upon receipt of a written request from the Postal Service. The Customer shall ensure that any and all Shipper Information, Payment Information and other information furnished to the Postal Service hereunder shall be complete and accurate in all respects and in an electronic file format as specified by the Postal Service.

   **Shipper Information:**
   - Unique Shipper ID
   - Shipper Legal Name(s) and DBAs at the Account Level
   - Shipper Name at the Site Level
   - Shipper Address, City, State, ZIP Code
   - Legal Address Sufficient for Delivering Service of Process
   - Email Address
   - Contact Phone Number
   - Trusted Address Verification

   **Payment Information:**
   - Legal Name of Shipper
   - Product Code/Description at the Mail Category Code Level
   - Payment Type
   - Payment Date and Time
   - Payment Amount
   - Reported Package Characteristics, including but not limited to mailing date, weight, dimensions, and origin and destination ZIP Codes

4. In the event that any Third Party short-pays postage, fully support the Postal Service's efforts to recoup unpaid amounts, which may include, without limitation,

immediately suspending the Third Party's access to Product if requested by the Postal Service.

[redacted]

6. Provide the below-listed privacy notice to all Third Parties when the Customer is collecting Third Party information on behalf of the Postal Service to administer financial transactions for purchasing postage and to meet postage system reporting requirements. A Privacy Act Statement meets privacy notice requirements when the Customer asks individual Postal Service customers to provide information about themselves and that information will be maintained in a Privacy Act System of Records by the Postal Service. In addition, when collecting Third Party information for its own purposes, the Customer shall disclose to all Third Parties that such information is subject to the Customer's privacy policy.

   **Privacy Act Statement:** Your information will be used to facilitate the purchase of U.S. Postal Service (USPS) postage and fulfill transactional reporting requirements for USPS postage systems. Collection is authorized by 39 U.S.C. 401, 403, and 404. Providing the information is voluntary, but if not provided, your transaction may not be processed. USPS does not disclose your information to third parties without your consent, except to facilitate the transaction, to act on your behalf or request, or as legally required. This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transaction issues; to a USPS auditor; to entities, including law enforcement, as required by law or in legal proceedings; and to contractors and other entities aiding us to fulfill the service (service providers). For more information regarding our privacy policies, visit www.usps.com/privacypolicy.

7. Deliver to the Postal Service, upon request, such other items and perform such other actions, as the Postal Service may reasonably determine are necessary in order to permit Customer to continue to offer Product to Third Parties, such as executing a trademark license.

## II. Termination and Remedies

[redacted]

[redacted]

## III. Representations, Warranties and Covenants

Customer hereby represents, warrants and covenants to the Postal Service as follows:

A. The execution and delivery by Customer of the Contract and the performance by the Customer of its obligations under the Contract (1) are within the Customer's power and authority; (2) have been duly authorized; and (3) do not and will not contravene (i) any law or regulation binding on or affecting Customer, (ii) any contractual restriction binding on Customer, (iii) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Customer, or (iv) the organizational documents of Customer; and

B. The individual signing the Contract on behalf of Customer is a duly authorized officer of the Customer with the power and authority to enter into the Contract on behalf of Customer; and

C. The Customer shall comply with all applicable federal, state and local laws, rules and regulations.

## IV. Confidentiality; Public Disclosures

In addition to the confidentiality obligations set forth in the Contract, Customer hereby agrees to treat as confidential, and not disclose to third parties absent express written consent by the Postal Service, the Third Party Data, Shipper Information, Payment Information, the prices offered to Third Parties, and the terms of this Appendix.

Customer hereby acknowledges and agrees that the form, substance, and timing of any press release or other public disclosure of matters related to the Contract or the relationship between Customer and the Postal Service prepared and/or to be disclosed by Customer shall be subject to the prior review and written approval of the Postal Service. The Postal Service shall endeavor to respond to the Customer with written comments or written approval within five (5) business days of receipt of the proposed disclosure, but failure to approve in writing within that time frame shall be deemed disapproval. This Section does not prohibit either Party from disclosing information that is required to be disclosed by law or that is requested by any federal, state, or local governmental body in the proper exercise of its oversight or investigatory jurisdiction.

## V. Sovereign Acts

The Postal Service and Customer acknowledge and agree that the Contract is subject to any legislation that might be enacted by the Congress of the United States or any orders or

regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government. Notwithstanding anything to the contrary set forth herein, the Postal Service and Customer further acknowledge and agree that the Contract in no way waives the Postal Service's authority to act in its sovereign capacity and to promulgate and amend from time to time regulations and policies and that, pursuant to the sovereign acts doctrine, the Postal Service shall not be held liable for any acts performed in its sovereign capacity, or for any acts performed by any branch, agency or independent establishment of the United States in their sovereign capacities that may directly or indirectly affect the terms of the Contract. In the event that either Party is required by legislation enacted by the Congress of the United States or any orders or regulations that might be promulgated by any branch, agency, regulatory body, or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under the Contract, either Party may give the other Party a notice of termination of the Contract, which termination shall be effective immediately or on the effective date of such requirement, whichever is later. The Parties agree that in the event that the Contract is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with the Contract by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. To the extent that any applicable law, regulation or policy adopted after the Effective Date expressly supersedes the terms of this Appendix, such law, regulation or policy shall control.

## VI. Notices

Any notice or other communication to be provided to a Party hereunder shall be in writing and shall be sent via certified mail (with return receipt requested) or by email to the individual and at the address listed below unless otherwise specified by the Party in writing. Notices shall be deemed given when received by the Party.

If to the Postal Service, to: [redacted]

If to the Customer, to: [redacted]

## VII. Governing Law

THE CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH PRINCIPLES OF FEDERAL LAW.

## VIII. Counterparts

The Contract may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties. A facsimile or other electronically or digitally transmitted copy of a signature on any counterpart shall be deemed to be an original signature. The Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.

**MAIL CLASSIFICATION SCHEDULE**

**PART B—COMPETITIVE PRODUCTS**

**2000 COMPETITIVE PRODUCT LIST**

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**NEGOTIATED SERVICE AGREEMENTS**

Domestic

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Priority Mail & First-Class Package Service Contract 57

**Statement of Supporting Justification**

I, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, am sponsoring this request that the Commission add Priority Mail & First-Class Package Service Contract 57 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

*(a) Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

*(b) Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C.§ 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c).*

Not applicable. The Postal Service is proposing that this Priority Mail and First-Class Package Service contract be added to the competitive products list.

*(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.*

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

*(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The contract sets specific terms and conditions for providing Priority Mail and First-Class Package Service to the customer. Priority Mail and First-Class Package Service are provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Priority Mail and First-Class Package Service in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

*(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.*

I am advised that merchandise sent by Priority Mail and First-Class Package Service and this contract are not covered by these provisions. See part (d) above.

*(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Expedited shipping, similar to Priority Mail and First-Class Package Service, is widely available from well-known and successful private firms at both published and contract prices.

*(g) Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.*

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

*(h) Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

*(i) Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

Attachment E

**Certification of Prices for**

**Priority Mail & First-Class Package Service Contract 57**

I, Steven R. Phelps, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for Priority Mail & First-Class Package Service Contract 57. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 11-6).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

Steven Phelps

Digitally signed by Steven Phelps
DN: cn=Steven Phelps, o, ou, email=steven.r.phelps@usps.gov, c=US
Date: 2017.09.13 13:23:02 -04'00'

Steven R. Phelps

# APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials. The Postal Service further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

## (1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).[10] Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

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[10] In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C.§ 504(g)(3)(A).The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).[11] Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is elizabeth.a.reed@usps.gov and whose telephone number is 202-268-3179.

[11] The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

The Governors' Decision establishing Domestic Competitive contracts, including those for Priority Mail and First-Class Package Service, the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract are being filed under seal in this docket. Redacted copies of the Governors' Decision and the contract are being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the contract, name of the customer and related financial information should remain confidential.

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are the negotiated price structure and the terms directly related to implementation of the price structure.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing Domestic Competitive contracts, and the analysis of those costs.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial work papers relating to the contract would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity, other than customer identifying information. The Postal Service believes that customer-identifying information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. Disclosure of customer identifying information leaves the Postal Service vulnerable to competitive "cherry-picking." Customers may seek to extend or renew their contracts, but the implementation of a new 10-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. Therefore, the Postal Service seeks indefinite non-public treatment of the customer's name, address and other identifying information in the non-public materials.

**(8) Any other factors or reasons relevant to support the application.**

None.