Postal Regulatory Commission
Submitted 3/5/2018 4:07:21 PM
Filing ID: 104085
Accepted 3/5/2018

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES ALTERNATIVE DELIVERY PROVIDER 1 CONTRACTS (MC2017-82) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2018-176

NOTICE OF UNITED STATES POSTAL SERVICE OF FILING A FUNCTIONALLY EQUIVALENT ALTERNATIVE DELIVERY PROVIDER 1 NEGOTIATED SERVICE AGREEMENT AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL
(March 5, 2018)

In accordance with 39 C.F.R. § 3015.5 and Order No. 3793,[1] the United States Postal Service (Postal Service) hereby gives notice that it is entering into an additional Alternative Delivery Provider 1 (ADP 1) contract. Prices and classifications not of general applicability for similar contracts were previously established by the 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, issued March 22, 2011 (Governors' Decision No. 11-6).[2] Subsequently, ADP 1 was added to the competitive product list, and the contract filed in Docket No. CP2017-111 serves as the baseline agreement for comparison of

[1] PRC Order No. 3793, Order Adding Alternative Delivery Provider 1 to the Competitive Product List and Designating Baseline Agreement, Docket Nos. MC2017-82 and CP2017-111, February 16, 2017.
[2] A redacted copy of the Governors' Decision is filed as Attachment 3 to this Notice. *See* 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.

functionally equivalent agreements under the ADP 1 grouping. The Postal Regulatory Commission (Commission) determined that individual ADP 1 contracts may be included as part of the ADP 1 product if they meet the requirements of 39 U.S.C. § 3633 and if they are functionally equivalent to the ADP 1 baseline agreement.[3]

The contract and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. A redacted copy of the contract, a certified statement required by 39 C.F.R. § 3015.5(c)(2) for the contract, and Governors' Decision No. 11-6 are filed as Attachments 1, 2, and 3, respectively. Attachment 4 to this Notice is the Postal Service's Application for Non-public Treatment of materials filed under seal in this docket. A full discussion of the required elements of the application appears in Attachment 4.

I. Background

The first ADP 1 contract was filed on January 30, 2017.[4] The Postal Service demonstrates below that the agreement that is included with this filing is functionally equivalent to the contract that is the subject of Docket No. CP2017-111. Accordingly, this contract should be included within the ADP 1 product.

II. Identification of the Additional ADP 1 Contract

The Postal Service believes that this additional ADP 1 contract fits within the Mail Classification Schedule (MCS) language for the ADP 1 product, as revised and updated

[3] PRC Order No. 3793, at 6-7.

[4] Request of the United States Postal Service to Add Alternative Delivery Provider 1 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, Docket Nos. MC2017-82 and CP2017-111, January 30, 2017.

in the most recent draft working copy of the MCS available on the Commission's website.[5]

The Postal Service will establish the effective date of this agreement and file a notice to inform the Commission of the effective date of this agreement, once the Commission completes its review. If the effective date of the agreement is the first of the month, the agreement that is the subject of this docket is set to expire one year after its effective date. If the effective date of the agreement is not the first of the month, the agreement is set to expire on the last day of the month in which the effective date falls in the year subsequent to the effective date, unless the agreement is terminated earlier.

III. Functional Equivalency of ADP 1 Contracts

This ADP 1 contract is substantially similar to the contract filed in Docket No. CP2017-111. The contract shares similar cost and market characteristics with that contract. In Governors' Decision No. 11-6, the Governors established prices of general applicability for competitive products that meet the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each contract conform to a common description. In addition, the MCS requires that each ADP 1 contract must comply with the requirements in 39 U.S.C. § 3633, which means that each ADP 1 contract must cover its attributable costs. The contract at issue here meets the Governors' criteria and thus exhibits similar cost and market characteristics to the baseline ADP 1 contract.

The functional terms of the contract at issue are the same as those of the contract that is the subject of Docket No. CP2017-111, which serves as the baseline

[5] *See* PRC, Mail Classification Schedule, posted January 21, 2018, available at http://www.prc.gov/mail-classification-schedule, section 2510.13 Alternative Delivery Provider (ADP) Contracts.

agreement for the ADP 1 product grouping. The benefits of the contract to the Postal Service are comparable as well. Therefore, the Postal Service submits that the contract is functionally equivalent to the contract that is the subject of CP2017-111 and should be added to the competitive product list as an ADP 1 Contract.

In a concrete sense as well, this ADP 1 contract shares the same cost and market characteristics as the baseline ADP 1 contract filed in Docket No. CP2017-111. Customers for ADP 1 contracts are small- or medium-sized businesses that mail products directly to foreign destinations. Prices offered under the contracts may differ depending on the volume or postage commitments made by the customers. Prices also may differ depending upon when the agreement is signed, due to the incorporation of updated costing information. These differences, however, do not alter the contracts' functional equivalency. Because the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this ADP 1 contract is similar, if not the same, as the relevant characteristics of the baseline ADP 1 contract filed in Docket No. CP2017-111.

Like the contract that is the subject of Docket No. CP2017-111, this contract also fits within the parameters outlined by Governors' Decision No. 11-6. There are, however, differences between this contract and the contract that is the subject of Docket No. CP2017-111, which include:

- The name of the customer in the title, the name and address of the customer in the first paragraph, the name of the customer in the footer of each page of the agreement and its annexes, and the name of the customer in the signature page;

- A revision to Article 3(6) concerning the ADP Dropshipment Requirements;
- Revisions to Article 5;
- Revisions to Article 8(4);
- Additional Article 9(7);
- The negotiated minimum revenue commitment set forth in Article 10;
- Removal of Article 14(4);
- Revisions to Article 21 concerning limitation of liability;
- Revisions to Article 22 concerning indemnity;
- Revisions to Article 25 concerning assignment;
- Revisions to Article 29 concerning warranties and representations;
- The identification of the customer's representative to receive notices under the agreement in Article 30 and the identity of the signatory to the agreement;
- Additional Article 37 concerning sovereign acts;
- Additional Article 38 concerning record keeping and audit; and
- Revised Annex 1.

The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contract. Nothing detracts from the conclusion that this agreement is "functionally equivalent in all pertinent respects"[6] to the contract that is the subject of Docket No. CP2017-111.

---

[6] *See* PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9, and CP2008-10, June 27, 2008, at 8.

Conclusion

For the reasons discussed, and as demonstrated by the financial data filed under seal, the Postal Service has established that this ADP 1 contract is in compliance with the requirements of 39 U.S.C. § 3633. In addition, the contract is functionally equivalent to the baseline contract that is the subject of Docket No. CP2017-111. Accordingly, the contract should be added to the ADP 1 product grouping.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony F. Alverno
Chief Counsel
Global Business and Service Development
Corporate and Postal Business Law Section

Christopher C. Meyerson
LaSandy K. Raynor
Kyle R. Coppin

Attorneys

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-2368; Fax -5628
Kyle.R.Coppin@usps.gov
March 5, 2018

GLOBAL CUSTOMIZED COMMERCIAL SHIPPING AGREEMENT BETWEEN THE UNITED STATES POSTAL SERVICE AND [redacted]

This Agreement ("Agreement") is between [redacted] ("Shipper"), with offices at [redacted] and the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the United States Government, with offices at 475 L'Enfant Plaza SW, Washington, DC 20260-9998. The Shipper and the USPS may be referred to individually as a "Party" and together as the "Parties."

Introduction. Whereas, the Parties desire to enter into a non-exclusive relationship whereby the USPS will provide certain products and/or services to the Shipper pursuant to the terms and conditions contained herein; whereas, the Parties desire to be bound by the terms of this Agreement; now, therefore, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

1. Purpose of the Agreement. This Agreement shall govern the use the Shipper may make of the customized cross-border commercial shipping service with an alternative delivery provider ("ADP Commercial Shipping").

2. Payment Method. The Shipper shall pay postage to the USPS through the use of a permit imprint using USPS-provided Global Shipping Software ("GSS"), subject to the conditions set forth in Article 8(1), IMM 152.6 and DMM 604.5. The Shipper shall establish or hold at least one GSS permit imprint to be used for the purpose of sending Qualifying Shipments under this Agreement. The Shipper must hold a permit imprint in the ZIP Code™ of the drop shipment location to qualify for the service. The Shipper shall verify payment of postage through either a hard copy postage statement or the *Electronic Verification System (eVS®)*, if authorized in advance by the USPS, as specified in the *ADP Drop Shipment Requirements*.

3. Definitions. As used in this Agreement: (1) "IMM" means the *International Mail Manual* as found on the USPS website pe.usps.com on the date of shipment. (2) "DMM" means the *Domestic Mail Manual* as found on the USPS website pe.usps.com on the date of shipment. (3) "Effective Date" means the first date on which the USPS is willing to accept a Qualifying Shipment. (4) "Qualifying Shipment" means a shipment that meets the requirements set forth in Article 4 of this Agreement. (5) "Non-Qualifying Shipment" means a shipment that does not meet the requirements set forth in Article 4 of this Agreement. (6) "*ADP Drop Shipment Requirements*" means the document entitled "Alternative Delivery Provider (ADP) Commercial Drop Shipment Shipper Preparation Requirements: [redacted]" as effective on the date of shipment. (7) "Destination Country" means the country or countries to which the Items are sent under this Agreement, as identified in the *ADP Drop Shipment Requirements*. (8) "Supplier" means the alternate delivery provider that carries and delivers Qualifying Shipments. (9) "Acceptance" means the USPS's verification of the shipment, including producing the A scan and collection of postage. (10) "Tender" means the Supplier's receipt and verification of the shipment. (11) "Consignee" means the person or entity purchasing the item from the Shipper.

4. Qualifying Shipment. A Qualifying Shipment is a shipment using ADP Commercial Shipping that: (a) is suitable for carriage by air internationally; (b) is addressed to a Destination Country; (c) meets all applicable mailability and export requirements set forth in the IMM, the DMM, and the *ADP Drop Shipment Requirements* (d) meets the specific preparation requirements set forth in Article 6; (e) is accompanied by a postage manifest containing accurate and complete data; (f) is tendered to a USPS approved location in accordance with Article 9(2); and (g) is not: (i) a letter as defined by 39 C.F.R. § 310.1, unless the letter accompanies and relates in all substantial respects to some part of the cargo or to the ordering, shipping, or delivering of the cargo pursuant to 39 C.F.R. 310.3(a); (ii) destined for any country included in Country Group E-1 under Supplement No. 1 to Title 15, Code of Federal Regulations, Part 740; (iii) addressed to persons or entities identified on the Office of Foreign Assets Control's (OFAC's) Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, the Bureau of Industry and Security's (BIS's) Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State; (iv) tendered on behalf of third parties or entities identified on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State; (v) listed on the Commodity Control List (unless the item is listed for only anti-terrorism reasons); (vi) subject to the International Traffic in Arms Regulations; (vii) an item or material that requires an export license from any U.S. government agency; (viii) a shipment to a single Consignee that is a combined value greater than 2000 RMB; (ix) either individually or as a group of items within the same U.S. Census Bureau Schedule B code or the same Harmonized Tariff Schedule category, tendered on the same day with a combined value greater than $2499.

5. Treatment of Non-Qualifying Shipment. The USPS, at its option and without forfeiting any of its rights under this Agreement, may refuse to accept a Non-Qualifying Shipment. The Supplier, at its option and without forfeiting any of the USPS's rights under this Agreement, may refuse to accept a Non-Qualifying Shipment prior to Tender. If a shipment is deemed a Non-Qualifying Shipment after Tender, but before it leaves the United States, is not detained by the Postal Service, Customs & Border Protection, or any other domestic or foreign governmental authority, and does not contain any dangerous goods that are prohibited from all international mail, as set forth in Exhibit 331 of USPS Publication 52, the shipment shall be returned to the Shipper unless otherwise required by law. If the shipment is

returned to the Shipper, the Shipper shall pick it up from the Supplier facility at which it was tendered. If a shipment is deemed a Non-Qualifying Shipment after it leaves the United States, there shall be no reimbursement of postage, and the USPS shall not be responsible for any destruction costs or refund of duties, taxes, and/or fees, or reimbursement for the contents.

6. Specific Preparation Requirements. Qualifying Shipments must be prepared in accordance with the *ADP Drop Shipment Requirements*, including but not limited to being: (1) kept separate from any other type of item that the Shipper tenders to the USPS; (2) prepared using GSS; (3) accompanied by a postage manifest containing accurate and complete data, transmitted electronically in advance if required; (4) accompanied by accurate and complete information and data, including customs information, as set forth in the *ADP Drop Shipment Requirements*, transmitted electronically in advance if required; and (5) paid for through the use of a Permit Imprint in accordance with Articles 2 and 8(1) of this Agreement.

7. Obligations of the USPS. The USPS hereby agrees: (1) Transportation. To arrange with the Supplier to transport Qualifying Shipments to the Destination Country where the Supplier shall effect delivery. (2) Postage To provide prices, set forth in Annex 1, for Qualifying Shipments that are paid for and tendered as required by this Agreement. (3) Confidentiality. To seek non-public treatment of information it determines to be eligible for protection from public disclosure under applicable law and practice when it files the Agreement with the Postal Regulatory Commission ("Commission"), or when it files information (including data) in connection with the Agreement in accordance with other regulatory requirements. (4) Technical Assistance. To provide the Shipper with technical assistance necessary to prepare information linkages, electronic data files, and data exchanges as required for proper functioning of USPS-provided GSS. (5) Duties and Taxes. To render payment to the Supplier for any duties, taxes, and/or fees due to the Destination Country, which shall then render them to the Destination Country, if, as specified in Article 15, such prepayment option is authorized in advance by the USPS in the *ADP Drop Shipment Requirements*.

8. Obligations of the Shipper – General. The Shipper hereby agrees: (1) Payment. To pay postage, fees, and penalties in accordance with this Agreement and any supplementary documents referred to therein. The Shipper shall pay any amounts owed to the USPS, the Supplier, and/or the Destination Country, as specified in the *ADP Drop Shipment Requirements*. (2) Customs and Export Documentation. To provide any necessary documentation, including data provided in electronic format, in connection with each Qualifying Shipment, in accordance with the requirements set forth in the *ADP Drop Shipment Requirements*, and in the form and at the time specified by the USPS, the Supplier and/or any other U.S. or foreign governmental authority. The Shipper further understands that such documentation must be accurate and complete and that the failure to provide any such required documentation may result in refusal at Acceptance or Tender, delay in processing, involuntary seizure by customs or other governmental authorities, and/or return of the shipment to the Shipper. (3) Tender. Not to Tender or attempt to Tender any Non-Qualifying Shipment under this Agreement. (4) Confidentiality. To treat as confidential and not disclose to third parties, absent express written consent by the USPS, any information related to this Agreement that is treated as non-public by the Commission. The Shipper hereby acknowledges and agrees that the form, substance, and timing of any press release or other public disclosure of matters related to this Agreement or the relationship between Shipper and the USPS prepared and/or to be disclosed by Shipper shall be subject to the prior review and written approval of the USPS. The USPS 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 Paragraph 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. (5) Penalties. To pay any fines or penalties the Shipper owes to the USPS or the Supplier under this Agreement as well as any other expenses, damages, and/or charges, including any applicable duties, taxes, and/or fees that result from an action of any other governmental entity that regulates exports and/or imports in relation to any item tendered under this Agreement, or that results from the Shipper's failure to comply with applicable laws and regulations of the origin country, Destination Country, or any country through which a Qualifying Shipment passes (including failure to provide accurate and/or complete documentation and/or failure to obtain any required license or permit).

9. Additional Obligations of the Shipper. The Shipper hereby agrees: (1) Advance Notification. To provide: (a) The Manager, Customized Commercial Shipping, USPS, via e-mail to icmusps@usps.gov and GSSHELP@usps.gov, with notification of new permit numbers used for Qualifying Shipment at least one week in advance of using the new permit numbers. The message should include the permit number, the city, state, and ZIP Code where the permit is held, the name of the permit owner, and the requested implementation date. (b) The appropriate USPS acceptance site(s) with notice of intent to ship. (2) Acceptance and Tender. To present Qualifying Shipment only at locations approved by the USPS to receive Qualifying Shipments in accordance with the *ADP Drop Shipment Requirements* and the scheduling procedures in place at the approved acceptance location(s). (3) Confirmation of Contents. That neither Qualifying Shipments nor Non-Qualifying Shipments are sealed against inspection at any time, and the USPS, foreign or domestic

customs authorities, and/or the Supplier may open and inspect the contents of parcels to ensure compliance with requirements for Qualifying Shipments. (4) Address Labels. To create address labels for Qualifying Shipments using USPS-provided GSS. (5) Information Link. To establish the necessary linkages with the USPS so that: (a) The Shipper and the USPS can exchange data transmissions concerning the Shipper's packages; (b) The USPS and/or the Supplier can extract information by scanning the Shipper-provided barcode on each package. (6) Data Transmission. To exchange electronic information with the USPS in accordance with the *ADP Drop Shipment Requirements*, including information related to shipment characteristics, payments, customs, duties, taxes, and/or fees. (7) Notice of Investigations, Prosecutions, or Proceedings. To notify USPS, via e-mail to globaltradecompliance@usps.gov and internationalmailsecurity@uspis.gov, of all criminal, civil, or administrative investigations, concerning any transactions involving the Shipper, any of its subsidiaries or affiliates, or any of its directors, officers, employees, or agents, in no case more than 5 business days after discovery.

10. Minimum Commitment. The Shipper is required to meet an annualized minimum commitment of [redacted] in postage paid for Qualifying Shipments. The postage commitment is for postage after all discounts have been applied.

11. Term of the Agreement. The USPS shall notify the Shipper of the Effective Date of the Agreement as soon as possible, but no later than thirty (30) days, after receiving the signed Agreement from the Shipper. If the Effective Date of this Agreement is the first of the month, the Agreement shall remain in effect for one calendar year from the Effective Date (for example, if the Effective Date of the Agreement is April 1, the Agreement will expire on March 31 of the subsequent year), unless terminated sooner pursuant to Article 12 or Article 13. If the Effective Date of this Agreement is not the first of the month, the Agreement shall remain in effect until the last day of the month in which the Effective Date falls in the year subsequent to the Effective Date (for example, if the Effective Date of the Agreement is April 2 or a later day in April, the Agreement will expire on April 30 in the subsequent year), unless terminated sooner pursuant to Article 12 or Article 13.

12. Termination of the Agreement. (1) Either Party to this Agreement, in its sole discretion, may terminate the Agreement for any reason, without cost, fault, or penalty, except as provided for in paragraph 2 below, regardless of whether either Party is in default, upon a thirty (30) day written notification, unless a time frame longer than thirty (30) days that falls within the term of the Agreement is indicated by the terminating Party. (2) In the event that this Agreement is terminated for any reason before the termination date provided for in Article 11, any penalties arising under Articles 8, 33, 34, and/or 35 shall be enforceable, and the minimum commitment in Article 10 shall be calculated on a pro rata basis to reflect the actual duration of the Agreement. (3) The USPS may terminate this Agreement effective immediately if any U.S. government or Destination Country authority investigates, fines, penalizes, or settles with the Shipper for any claims that the Shipper has engaged in exports that violate U.S. or Destination Country law.

13. Modification of the Agreement. (1) Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement, with the exception of changes to prices under the terms of Article 14 and changes to the *ADP Drop Shipment Requirements*, shall be binding only if placed in writing and signed by each party. (2) Modifications may be contingent upon any and all necessary approvals by USPS management's executive committee, the Board of Governors of the USPS, the Governors of the USPS, the Commission, and/or any other governmental body with oversight responsibility for the USPS. (3) If such approvals are required, the modifications will not become effective until such time as all necessary approvals are obtained. (4) The USPS shall notify the Shipper of the date the modification becomes effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the USPS. (5) The USPS shall have no obligation to notify the Shipper of the status of the approval process or of potential fulfillment of the approval process. (6) The USPS reserves the right to unilaterally modify the *ADP Drop Shipment Requirements* and will provide notice to the Shipper as specified in Article 30. Such modifications shall become effective 30 days following transmission of such notice, except any modifications required by changes to U.S. or Destination Country law may be effective immediately or when enacted.

14. Pricing Updates. (1) In the event that the USPS incurs an increase in costs [redacted] the USPS shall notify the Shipper and modify the prices established under this Agreement. [redacted]. (2) The USPS shall give the Shipper thirty (30) days' notice of changes to the prices in Annex 1 to this Agreement. (3) Any revision of prices in Annex 1 shall not be retroactive.

15. Customs Duties and Taxes. Customs duties, taxes, and/or fees for items shipped under this Agreement are the responsibility of the Shipper. The Shipper or, at Shipper's direction, Consignee, shall pay such duties, taxes, and/or fees as specified in the *ADP Drop Shipment Requirements*. The *ADP Drop Shipment Requirements* may direct Shipper to (1) pay, or direct Consignee to pay, any such duties, taxes, and/or fees directly to the Destination Country; (2) pay, or direct Consignee to pay, any such duties, taxes, and/or fees to the Supplier, which shall render payment to the

Destination Country; or (3) prepay such duties, taxes and/or fees to the USPS, which shall render such payment to the Supplier, which shall in turn render it to the Destination Country.

16. Entire Agreement and Survival. This Agreement, including any Annexes thereto, shall constitute the entire agreement between the Parties regarding customized prices for Qualifying Shipments commencing on the Effective Date of this Agreement, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement. The provisions of Article 7, Paragraph 3; Article 8, Paragraph 4; and Article 18 shall expire ten (10) years from the date of termination or expiration of this Agreement.

17. Force Majeure. Neither Party shall be liable for its failure to perform under the terms of this Agreement due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages; governmental laws, ordinances, rules and regulations, whether valid or invalid; court orders whether valid or invalid; inability to obtain material, equipment, or transportation; and any other similar or different contingency.

18. Confidentiality. The Shipper acknowledges that this Agreement and supporting documentation will be filed with the Commission in a docketed proceeding. The Shipper authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding in which information related to this Agreement must be filed. The Shipper further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, www.prc.gov. In addition, the USPS may be required to file information in connection with this Agreement (including revenue, cost, or volume data) in other Commission dockets, including the Commission docket number for the Annual Compliance Report (ACR) for the USPS fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which "201#" signifies the USPS fiscal year to which the ACR pertains. The Shipper has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the PRC for non-public treatment of materials believed to be protected from disclosure is found at 39 C.F.R. § 3007.22 found on the Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf.

19. Effect of Partial Invalidity. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect.

20: Intellectual Property, Co-Branding, and Licensing. The Parties acknowledge that in the service of marketing the products under this Agreement that such product marketing may be enhanced through the use of co-branding or the use of each Party's trademarks, logos or intellectual property. In such instances, the Parties acknowledge and agree that any use shall be subject to separate written agreements. The Parties acknowledge and agree that neither Party shall use the other Party's trademarks, logos, or intellectual property until such time that a license for such use has been executed by the Parties and all laws and regulations required for such license's effectiveness have been perfected, which shall include but not be limited to any recordation requirements.

21. Limitation of Liability. (1) The USPS shall not be liable under this Agreement for any Qualifying or Non-Qualifying Shipment that lost, destroyed, or undeliverable. (2) Qualifying Shipments under this Agreement are not guaranteed against delay in delivery. Neither indemnity payments nor postage refunds shall be made in the event of delay. (3) The USPS does not bear any responsibility for the refund of postage for Qualifying Shipment in connection with actions taken by Customs or other governmental authorities in the United States or the Destination Country. (4) The USPS shall not be liable for any actual or consequential losses, delay, concealed damage, spoilage of perishable items, articles improperly packaged, articles too fragile to withstand normal handling, or prohibited articles. (5) The USPS shall not be liable for any loss or expense, including, but not limited to fines and penalties, for the Shipper's or any other person's failure to comply with any export laws, rules, or regulations or importation requirements of the Destination Country. (5) The USPS shall not be liable for any act or omission by any person not employed by the USPS, including any act or omission of the Supplier, the Shipper, the Consignee, or the recipient of an item tendered under this Agreement. (6) The USPS shall not be liable for any loss or expense, including but not limited to fines and penalties, for the Shipper's, the Shipper's Customers, or any other person's failure to comply with any export laws, rules, or regulations. (7) The USPS bears no responsibility for the refund of postage in connection with actions by Customs authorities. (8) The USPS is not liable for any of the Shipper's actions or the Shipper's Customers' actions and bears no liability in the event of termination with or without cause. (9) The USPS as well as its agents, suppliers, and vendors, shall not be liable for any damages of any type, including but not limited to, any lost profits (both actual and anticipated) or other incidental or consequential damages arising out of any action by the USPS. The USPS is further not liable for any loss due to the use of, programming related to, or inability to use the USPS or other vendors' or suppliers' software.

22. Indemnity. The Shipper shall indemnify, reimburse and save harmless the USPS and its officers, directors, agents, and employees from any and all claims, losses, costs, damages, or expenses or liabilities, including but not limited to

penalties, fines, liquidated damages, charges, taxes, fees, duties, or other money due ("Claims") growing out of or connected in any other way with the discharge by the Shipper or its agent(s) of any undertaking contained in this Agreement, including any third party Claims and Claims that result from the noncompliance of the Shipper with the laws of the United States and other countries.

23. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with United States federal law.

24. Suspensions of Service. In the event that a suspension of service from the United States to a Destination Country would prevent delivery of Qualifying Shipment to addressees in that country, the Shipper shall not bring a shipment to the USPS for Acceptance or the Supplier for Tender, as appropriate, until service is restored. The annualized minimum commitment for Qualifying Shipment set forth in Article 10 shall be recalculated pro rata to reflect the reduction in available service time.

25. Assignment. Neither Party may, or shall have the power to, assign its rights under this Agreement 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 the Shipper is merged with or into or acquires another firm, corporation, or entity, pricing under this Agreement 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 Agreement applicable to the merged or acquired entity. Assignment by the Shipper to a subsidiary of the Shipper for which the Shipper is the majority owner shall be allowed.

26. No Waiver. The failure of either Party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if such forbearance or waiver had not occurred.

27. Paragraph Headings and Reference Citations. The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement. All citations to provisions in the DMM, IMM, or Code of Federal Regulations within this Agreement are intended to refer to the substantive information found within the cited section(s) at the time this Agreement was drafted. Subsequent changes to the citations or the relevant substantive information due to published revisions of the DMM, IMM, or Code of Federal Regulations shall be applicable to this Agreement upon the effective date of such revisions.

28. Content Eligibility, Exportability, and Importability. (1) All Qualifying Shipments under this Agreement must conform to the content eligibility requirements of the USPS as detailed in the IMM 130 and USPS Publication 52; all applicable United States laws and regulations, including export control and customs laws and regulations; all applicable importation restrictions and requirements of the Destination Countries; and all requirements identified in the *ADP Drop Shipment Requirements*. In the event of any conflict between or among these requirements, the *ADP Drop Shipment Requirements* shall prevail except to the extent that it contradicts U.S. or Destination Country law. For each Qualifying Shipment under this Agreement, the Shipper is responsible for providing accurate and complete information for export and import requirements, notifying the Shipper's customers of their responsibility to provide accurate and complete information for export and import requirements, obtaining any required licenses and permits, ensuring that the recipient of the shipment(s) is authorized by the laws of the United States as well as Destination Countries to receive the shipment(s) and verifying the exportation and importation status of the items under this Agreement as detailed in IMM 112 and the *ADP Drop Shipment Requirements*. (2) The Shipper is responsible for ensuring that no Qualifying Shipment under this Agreement includes ineligible dangerous goods.

29. Warranties, Representations, and Covenants. The Shipper warrants, represents, and covenants to the Postal Service as follows: (1) that the execution, delivery, and performance by the Shipper of its obligations under this Agreement (a) are within the Shipper's power and authority; (b) have been duly authorized; and (c) do not and will not contravene (i) any law or regulation binding on or affecting the Shipper, (ii) any contractual restriction binding on the Shipper, (iii) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on the Shipper, or (iv) the organizational documents of the Shipper; (2) that the Shipper is not subject to, and is not related to an entity that is subject to, a temporary or other denial of export privileges by BIS and that the Shipper is not listed on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382, and that the Shipper is not in arrears for any amount due to the USPS; (3) that the Shipper is not aware of any pending investigations that would be subject to the notice obligation under Article 9, Paragraph 7; (4) that there has been no criminal, civil, or administration enforcement action in the past 5 years against the Shipper, any of its subsidiaries or affiliates, or

any of its directors, officers, employees, or agents; (5) that the individual signing the Agreement on behalf of the Shipper is a duly authorized officer of the Shipper with the power and authority to enter into the Agreement on behalf of Shipper; and (6) that the Shipper shall comply with all applicable federal, state and local laws, rules and regulations.

30. Notices. All notices or demands to the Parties required by this Agreement, except as provided for in Article 9(1) and Article 34, shall be sufficient if delivered personally, mailed via Priority Mail Express, or sent via e-mail, to the USPS: Managing Director, Global Business; United States Postal Service; 475 L'Enfant Plaza SW Room 5012; Washington, DC 20260-4016 or icmusps@usps.gov; or to the Shipper: [redacted]

31. Counterparts. The Parties may execute this Agreement in one or more counterparts (including by facsimile or by electronic means such as .pdf format), not all Parties need be signatories to the same documents, and all counterparty-signed documents shall be deemed an original and one instrument.

32. Conditions Precedent. (1) The Parties acknowledge and understand that all obligations of the USPS under this Agreement, including the prices listed in the Annex(es), shall be contingent on the USPS receiving approvals hereinafter ("Conditions Precedent") from one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include, but are not limited to: approvals or, if applicable, non-objection, from responsible USPS management officials, the USPS Board of Governors, the USPS Governors, the Commission, and/or any other governmental body with oversight responsibility for the USPS. The Parties acknowledge that the Agreement may not be approved by such individuals or bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to allow the Postal Service to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS and no benefit shall inure to either Party. (2) In the event that the Conditions Precedent are not fulfilled, the USPS shall have no liability, which shall include no obligation to pay costs associated with any action taken by the Shipper prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, the USPS shall not be held liable for any damages including, without limitation, actual; special; indirect; incidental; punitive; consequential; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or for costs incurred by either Party attributable to such non-approval such as attorney's fees.

33. Fraud. The Shipper understands that providing false information with the intent to access discounted rates or to circumvent any U.S. or Destination Country law or regulation may subject the Shipper to immediate termination of this Agreement and/or criminal and/or civil penalties, including fines and imprisonment.

34. Undeliverable Shipments. Neither the USPS nor the Supplier shall be liable if a shipment is undeliverable. Reasons a shipment may be undeliverable include, but are not limited to, failure of the Shipper or Consignee to pay duties, taxes, and/or fees associated with the Qualifying Shipment, failure of the addressee to accept delivery of the Qualifying Shipment, and/or use of an incorrect shipping address. The *ADP Drop Shipment Requirements* shall set forth any available option(s) for disposition of any Qualifying Shipments that cannot be delivered. If permitted by the *ADP Drop Shipments Requirements*, the Shipper shall, within 30 days of notification of such option(s), select from among the option(s) listed and shall send notification of its selection via e-mail to icmusps@usps.gov and GSSHELP@usps.gov. If a Qualifying Shipment is undeliverable, there shall be no refund of postage or of any prepaid duties or taxes. The *ADP Drop Shipment Requirements* in effect at the time a Qualifying Shipment is tendered shall describe and control the processes and fees involved in such disposition.

35. Customs and Export Compliance. (1) The Shipper shall be the exporter of record. Fines, penalties, storage charges, or other expenses related to a shipment levied by any U.S. government or foreign government entity regulating imports or exports, or as a result of the failure of the Shipper or Consignee to provide complete, true, and correct documentation, statements, or information required by the laws of the origin and destination countries (including the failure to obtain a required license or permit) (collectively, "customs and export fines") will be charged to the Shipper by Supplier. (2) Supplier may seek reimbursement or contribution from the Shipper, including through recourse in U.S. federal court, of any customs and export fines. Shipper consents to jurisdiction in any U.S. federal court for such an action. (3) The Shipper shall comply with any regulation or order promulgated by the USPS, U.S. Customs & Border Protection, OFAC, BIS, the U.S. Census Bureau, the U.S. Department of State, the U.S. Fish and Wildlife Service, the Transportation Security Administration, any Destination Country government, or any other governmental authority, in accordance with any requirements specified by those authorities.

36. Power of Attorney. At its option, the Supplier may submit customs and other shipment related documentation in the name of the Shipper to domestic or foreign customs, postal, or aviation authorities and/or USPS or Supplier agents or suppliers on behalf of the Shipper. The Shipper hereby authorizes the Supplier to act for and on its behalf as a true and lawful agent and attorney of the Shipper for and in the name, place, and stead of the Shipper to: (1) act as an agent for export control and customs purposes; (2) make, endorse, or sign any export declaration or other documents, or to

perform any act which may be required by law or regulation in connection with the exportation or transportation of any merchandise shipped or consigned by the Shipper; and (3) Ship any merchandise on behalf of the Shipper. This power of attorney remains in full force and effect throughout the duration of this Agreement. The Shipper hereby accepts responsibility for all representations made on its behalf by the Supplier or its agents or suppliers in any connection with any of the Supplier's shipments to domestic or foreign customs, postal, or aviation authorities and/or USPS or Supplier. The Shipper hereby certifies that all statements and information contained in any documentation provided to the USPS or the Supplier relating to any of its shipments are complete, comprehensive, and correct. Furthermore, the Shipper understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any United States laws or regulations on exportation.

37. Sovereign Acts. The USPS and the Shipper acknowledge and agree that this Agreement 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. The USPS and the Shipper further acknowledge and agree that this Agreement in no way waives the USPS's authority to act in its sovereign capacity and that, pursuant to the sovereign acts doctrine, the USPS 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 this Agreement. 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 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 this Agreement, either Party may give notice of termination pursuant to Article 12 of this Agreement, 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 this Agreement is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with this Agreement by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. Further, the USPS will evaluate the impact on the Agreement of amendments to statutes affecting its ability to perform under this Agreement and may give notice of termination pursuant to Article 12 of this Agreement based upon such amendments, which termination shall be effective immediately or as determined by the USPS. To the extent of termination on this basis, the USPS shall not be subject to any liability by reason of such termination.

38. Record Keeping and Audit. Shipper shall prepare and maintain complete and accurate records, in accordance with good industry practice, to verify and document compliance with its obligations under this Agreement and substantiate any and all postage and penalties, and any related fees and expenses, payable by Shipper hereunder, in furtherance of the audit requirement under § 3654(c) of Title 39, United States Code, as well as compliance with export control laws. Shipper will retain all such records in the ordinary course of its business for a period of at least five (5) years after expiration or termination of this Agreement. Shipper shall respond to the USPS' or its designated auditor's quarterly and/or yearly transaction confirmations related to Postal Service transactions; and such other assistance as required by the Postal Service or its designated auditors in connection with Shipper's performance under this Agreement.

In witness whereof, each Party to this Agreement has caused it to be executed on the latter of the two dates accompanying the Parties' signatures.

ON BEHALF OF USPS:		**ON BEHALF OF** [redacted]	
Signature:	Donald W. Ross	Signature:	[redacted]
Name:	Donald W Ross	Name:	[redacted]
Title:	Director International Sales	Title:	[redacted]
Date:	2-15-2018	Date:	02/15/18

ANNEX 1 PRICES FOR COMMERCIAL SHIPPING

ANNEX 1
PRICES IN UNITED STATES DOLLARS FOR
COMMERCIAL SHIPPING TO [redacted]

Weight Not Over (lb)	[redacted]
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	

adp (c) 01 18

Certification of Prices for the Alternate Delivery Provider Contract with [redacted]

I, Steven Phelps, Manager of Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Alternate Delivery Provider Contract with [redacted] The prices contained in this Contract were established in accordance with the 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, issued March 22, 2011 (Governors' Decision No. 11-6), which established prices by means of price floor formulas.

I hereby certify that the numerical cost values underlying the prices in the [redacted] contract are the appropriate costs to use in the formulas and represent the best available information. The prices, resulting in a cost coverage of in excess of the minimum required by the Governors' Decision, exclusive of pickup on demand and international ancillary services fees, are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the Contract should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. International competitive mail accounts for a relatively small percentage of the total contribution by all competitive products. Contribution from Alternate Delivery Provider Contracts should be even smaller. The Agreement with [redacted] 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 Pricing and Costing, ou Pricing, email steven.r.phelps@usps.gov, c US
Date: 2018.02.27 12:2 :10 -0 '00'

Steven Phelps

RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE

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]

The cost coverage for a product equals [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

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

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to an additional Alternative Delivery Provider 1 (ADP 1) contract that the Postal Service believes is functionally equivalent to a previously filed ADP 1 agreement. Governors' Decision No. 11-6, the ADP 1 Contract that is the subject of this docket, the certified statement required by 39 C.F.R. § 3015.5(c)(2) for the contract, and related financial information are being filed separately under seal with the Commission, although redacted copies of these materials are filed with the Notice as Attachments 1, 2, and 3, and in separate Excel files.[1]

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(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);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (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

[1] The Postal Service informed the customer for the contract prior to filing a notice that the Postal Service would be seeking non-public treatment of the redacted portions of the contract. The Postal Service also informed the customer for the contract that it could file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3007.22

a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).[2] 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 e-mail 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;

In the case of an ADP 1 contract, the Postal Service believes that the parties with a proprietary interest in the materials are the counterparty to the contract, along with the Postal Service's delivery agent. The Postal Service maintains that customer and delivery agent identifying information should be withheld from public disclosure. Therefore, rather than identifying the interested third parties of the contract under consideration, the Postal Service gives notice that it has already informed the third parties with a proprietary interest in the materials for the contract that is the subject of this docket, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and their ability to address their confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to any third parties with proprietary interest in the materials filed in this docket is Mr. Frank Cebello, Director, Global Business Solutions (A), United States Postal Service, 475 L'Enfant Plaza, SW, Room 5146, Washington, DC 20260-4017, whose email address is Frank.A.Cebello@usps.gov, and whose telephone number is 202-268-8058

[2] 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;

In connection with its Notice filed in this docket, the Postal Service included Governors' Decision No. 11-6, the ADP 1 contract that is the subject of this docket, the certified statement concerning the ADP 1 contract that is the subject of this docket, and related financial information. These materials were filed under seal, with redacted copies filed publicly. The Postal Service maintains that the redacted portions of these materials should remain confidential as sensitive business information.

Redactions appear on page two of Governors' Decision No. 11-6, pages one and two of Attachment A of that Decision, throughout the ADP 1 contract that is the subject of this docket, and the certified statement concerning the ADP 1 contract that is the subject of this docket. These redactions protect sensitive commercial information concerning rates in ADP 1 Contracts and their formulation, the applicable cost-coverage, and the specific rates in the ADP 1 contract that is the subject of this docket.

With regard to the ADP 1 agreement filed in this docket, some customer-identifying and delivery agent-identifying information appears in the redacted sections of the agreement on page 1, in Article 30, in the signature block, and in the footer of the agreement and its annex or annexes. This information constitutes the name or address of a postal patron or delivery agent whose identifying information may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c)(2). Therefore, such information is redacted.

The redactions to Articles 3, 10, and 14, protect information with specific impact on the customer or delivery agent, including the preparation requirements, the minimum commitment to the Postal Service, and the timing and manner in which the Postal Service might change prices under the contract. In addition, the prices in Annex 1 of the agreement are redacted.

The redactions applied to the Governors' Decision and financial workpapers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, business information of interested third parties, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages, such as words or numbers in text, may be replaced with general terms describing the redacted material.

To the extent that the Postal Service files data in future filings that will show the actual revenue and cost coverage of the customer's completed contract, the Postal Service will redact in its public filing all of the values included that are commercially sensitive information and will also protect any customer identifying information from disclosure.

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

Governors' Decision No. 11-6 and its Attachment A, the ADP 1 contract that is the subject of this docket, and the accompanying financial models, include the Postal Service's desired cost-coverage for ADP 1 agreements, specific rate information, pricing

of the Postal Service's delivery agent, and a detailed description of the methodology used to establish the rates, which are highly confidential in the business world.

If the portions of the contract that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. First, revealing customer identifying information would enable competitors to focus marketing efforts on current postal customers that have been cultivated through the efforts and resources of the Postal Service. The Postal Service considers that it is highly probable that if this information were made public, its competitors would take immediate advantage of it. The ADP 1 competitive contracts include a provision allowing the mailer to terminate its contract without cause by providing at least 30 days' notice. Therefore, there is a substantial likelihood of the Postal Service losing customers to a competitor that targets customers of the Postal Service with lower pricing.

Other redacted information in the contract includes negotiated contract terms, such as the minimum revenue commitment agreed to by the customer, the identifying information of any delivery agent(s) and the percentage of cost increase that may trigger a consequential price increase. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to assess offers made by the Postal Service to its customers for any possible comparative vulnerabilities and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, other potential customers could use the information to their advantage in

negotiating the terms of their own agreements with the Postal Service. Finally, the Postal Service's delivery partner(s) or any delivery partners with which the Postal Service negotiates in the future could use the information to their advantage in negotiating the terms of their agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The Governors' Decision and financial workpapers filed with this notice include specific information such as costs, assumptions used in pricing formulas, the formulas themselves, customer profile information, projections of variables, contingency rates included to account for market fluctuations and the exchange risks. Similar information may be included in the cost, volume and revenue data associated with the ADP 1 agreement that the Commission may require the Postal Service to file after the expiration of this agreement. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required by the Mail Classification Schedule to demonstrate that each negotiated agreement within this group covers its attributable costs. Furthermore, the Postal Service's Governors have required that each contract be submitted to the Commission with a notice that complies with 39 C.F.R. § 3015.5. Competitors could take advantage of the information to offer lower pricing to ADP 1 competitive contract customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant market. Given that these spreadsheets are filed in their native format, the Postal

Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers and/or delivery agents could also deduce from the rates provided in the contract, from the information in the workpapers, or from the cost, volume and revenue data that the Commission may require the Postal Service to file after the agreement's expiration, whether additional margin for net profit exists between the contract and the contribution that ADP 1 competitive contracts must make. From this information, each customer or delivery agent could attempt to negotiate ever-increasing incentives, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even customers involved in ADP 1 competitive contracts could use the information in the workpapers, or the cost, volume and revenue data associated with the expired agreement, in an attempt to renegotiate their own rates, threatening to terminate their current agreements, although the Postal Service considers this to be less likely than the risks previously identified.

Price information in the contract, the Governors' Decision, the financial spreadsheets, and any cost, volume, and revenue data concerning the contract filed after the agreement's expiration consists of sensitive commercial information of the customer. Disclosure of such information could be used by competitors of the customer to assess the customer's underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

Information in the financial spreadsheets and any cost, volume, and revenue data concerning this agreement filed after the expiration of this contract also consists of sensitive commercial information related to agreements between the Postal Service and

its delivery agents. Such information would be extremely valuable to competitors of both the Postal Service and its delivery agents. Using detailed information about such agreements, competitors would be able to better understand the Postal Service's delivery agent's prices, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the Postal Service's delivery agent could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service.

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

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

Hypothetical: The identity of the customer that signed an ADP 1 contract is revealed to the public. Another delivery service has an employee monitoring the filing of ADP 1 competitive contracts and passing along the information to its sales function. The competitor's sales representatives could quickly contact the Postal Service's customer and offer the customer lower rates or other incentives to terminate its contract with the Postal Service in favor of using the competitor's services.

Identified harm: Public disclosure of the pricing included in the agreement would provide potential customers extraordinary negotiating power to extract lower rates.

Hypothetical: Customer A's negotiated rates are disclosed publicly on the Postal Regulatory Commission's website. Customer B sees the rates and determines that

there may be some additional profit margin between the rates 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. Customer B, which was offered rates identical to those published in Customer A's agreement, then uses the publicly available rate information to insist that Customer B must receive lower rates than those the Postal Service has offered it, or Customer B will not use the Postal Service for its delivery needs.

Identified harm: Public disclosure of information in the financial workpapers would be used by competitors and customers to the detriment of the Postal Service and the Postal Service's delivery agents.

Hypothetical: A competing delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competing delivery service analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to meet the Postal Service's minimum statutory obligations for cost coverage and contribution to institutional costs. The competing delivery service then sets its own rates for products similar to what the Postal Service offers its ADP 1 competitive contract customers under that threshold and markets its ability to guarantee to beat the Postal Service on price. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal

Service and associated foreign postal operators out of the markets for which the ADP 1 competitive contract product is designed.

Identified harm: Public disclosure of information in the contract and the financial workpapers would be used by the counterparty's competitors to its detriment.

Hypothetical: A firm competing with the customer obtains a copy of the unredacted version of the contract and financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the prices and the workpapers to assess the customer's underlying costs, volumes, and volume distribution for the corresponding delivery products. The competitor uses that information to (i) conduct market intelligence on the customer's business practices and (ii) develop lower-cost alternatives using the customer's costs as a baseline.

Identified harm: Public disclosure of information in the contract and financial workpapers would be used by the competitors of the Postal Service's delivery agents to the detriment of the Postal Service, its delivery agent, and/or the counterparty to the agreement.

Hypothetical: A firm competing with the Postal Service's delivery agent obtains a copy of the unredacted version of the contract and financial workpapers from the Commission's website. The firm uses the information to assess the delivery agent's prices, and thereby develop benchmarks for competitive alternatives. In addition,

disclosure of such information could provide leverage to other parties in their negotiations with the Postal Service concerning financial arrangements that they may make with the Postal Service in the future.

Identified harm: Public disclosure of any cost, volume, and revenue data concerning this agreement that the Commission may require the Postal Service to file after the contract's expiration would give competitors a marketing advantage.

Hypothetical: A competitor could use any cost, volume, and revenue data associated with this agreement, which the Commission may require the Postal Service to file in this docket after this agreement's expiration, to "qualify" potential customers. The competitor might focus its marketing efforts on only customers that have a certain mailing profile, and use information filed after the contract's expiration to determine whether a customer met that profile.

(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 relevant market for parcel and expedited services, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar 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;

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.

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

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.