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 EXPRESS INTERNATIONAL,<br>PRIORITY MAIL INTERNATIONAL &<br>FIRST-CLASS PACKAGE INTERNATIONAL SERVICE CONTRACT 1 | Docket No.<br>MC2020-97 |
| COMPETITIVE PRODUCT PRICES<br>PRIORITY MAIL EXPRESS INTERNATIONAL,<br>PRIORITY MAIL INTERNATIONAL &<br>FIRST-CLASS PACKAGE INTERNATIONAL SERVICE CONTRACT 1<br>(MC2020-97)<br>NEGOTIATED SERVICE AGREEMENT | Docket No.<br>CP2020-101 |

**USPS REQUEST TO ADD PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL INTERNATIONAL & FIRST-CLASS PACKAGE INTERNATIONAL SERVICE CONTRACT 1 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING MATERIALS UNDER SEAL**
(March 3, 2020)

In accordance with 39 U.S.C. § 3642, 39 C.F.R. § 3020.30 et seq., and 39 C.F.R. § 3015.5, the United States Postal Service requests that Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 be added to the competitive product list within the Mail Classification Schedule. This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).

Attachment A is a redacted version of Governors' Decision No. 19-1, which includes the explanation and justification required by the Commission's rules. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification Schedule product list, with the additions underlined.

Attachment D provides a statement of supporting justification, as required by 39 C.F.R. § 3020.32. Attachment E is a certification of compliance with 39 U.S.C. § 3633(a)(1), (2) and (3). Unredacted versions of the Governors' Decision, contract, and required cost and revenue data are being filed under seal. Attachment F provides an Application for Nonpublic Treatment of these materials.

As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

The Postal Service will establish the effective date of the contract that is the subject of this filing once the Postal Regulatory Commission completes its review. According to the terms of Article 11, the contract will remain in effect until June 30,2020, unless it is terminated sooner pursuant to Article 12, 13, or 31.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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March 3, 2020

# 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. 19-1)

February 7, 2019

## 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 new 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.

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 make all necessary regulatory filings with the Postal

Regulatory Commission. [redacted]

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 prices that will enable each agreement to 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 semi-annual basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives, as specified in the accompanying Management Analysis. 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 supersedes previous Governors' Decisions setting classifications and rates not of general applicability for competitive products; however, prices and classifications established under those Decisions may continue to be offered until the expiration of their terms, and contractual option periods and extension provisions that are included in the existing and future agreements can continue to be exercised.

## ORDER

In accordance with the foregoing Decision of the Governors, the new prices and terms 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 or other nonpublished rate and classification initiative 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 any necessary review by the Postal Regulatory Commission.

By The Governors:

Robert M. Duncan

Robert M. Duncan
Chairman, Board of Governors

# 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, Priority Mail Express, Parcel Return Service, Parcel Select, First-Class Package Service, First Class Package International Service, Commercial ePacket Service, Priority Mail International, Priority Mail Express International, International Priority Airmail, International Surface Air Lift, Inbound Parcel Post, Inbound Direct Entry, and Inbound EMS 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 percentage to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise from 39 U.S.C. §3633(a)(1).

The Postal Service shall submit a semi-annual report to the Governors. The report shall include information on the cost coverage for each agreement or initiative that has been executed under the authority of Governors' Decision 19-1. Agreements classified as non-published rates or rate ranges may be reported as a collective grouping; all other agreements or initiatives are to be reported separately. The report shall also include cost coverage information on any agreements and nonpublished initiatives established under previous numbered Governors' Decisions and Resolutions.

**UNITED STATES POSTAL SERVICE**
**OFFICE OF THE BOARD OF GOVERNORS**

**CERTIFICATION OF GOVERNORS' VOTE ON**
**GOVERNORS' DECISION NO. 19-1**

Consistent with 39 USC 3632(a), I hereby certify that the following Governors voted in favor of Governors' Decision No. 19-1:

Robert M. Duncan
David C. Williams

7 February 2019

Michael J. Elston
Secretary of the Board of Governors (A)

Date

***GLOBAL CUSTOMIZED MAIL AGREEMENT BETWEEN THE UNITED STATES POSTAL SERVICE AND***

This Agreement ("Agreement") is between ("Mailer"), with offices at 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 Mailer 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 Mailer 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 Mailer may make of customized mail service for Priority Mail Express International, Priority Mail International and First-Class Package International Service.

**2. Payment Method**. (1) The Mailer may pay postage to the USPS for Qualifying Mail in accordance with Annex 1 and Annex 2 to this Agreement through the use of a separate permit imprint through an advance deposit account using USPS-provided Global Shipping Software (GSS) or other USPS-approved software, subject to the conditions stated in IMM 152.6 and DMM 604.5 or through the intermediary of a USPS-approved PC Postage Provider that the USPS has authorized to offer services to contract rate customers. The Mailer retains the right to change the PC Postage Provider, provided that the new PC Postage Provider has been authorized by the USPS to offer services to contract rate customers. Initially, the Mailer chooses as its USPS-approved PC Postage Provider. (2) For the purposes of this Agreement, if Mailer seeks to use any USPS-approved software other than GSS, the Mailer must first secure approval from the USPS. Approval may be requested from the USPS Director of International Sales via e-mail at donald.w.ross@usps.gov.

**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 mailing. (2) "DMM" means the *Domestic Mail Manual* as found on the USPS website pe.usps.com on the date of mailing. (3) "Effective Date" means the first date on which the USPS is willing to accept Qualifying Mail. (4) "Qualifying Mail" means mail that meets the requirements set forth in Article 4 of this Agreement. (5) "Non-Qualifying Mail" means mail that does not meet the requirements set forth in Article 4 of this Agreement. Priority Mail Express International, Priority Mail International, and First-Class Package International Service tendered to the USPS at a Business Mail Entry Unit, at a USPS retail window, or at any commercial mail receiving agency are Non-Qualifying Mail. (6) "PC Postage Provider" means a provider of software-based management of postage accounts, authorized by the USPS to offer services to contract rate customers.

**4. Qualifying Mail.** Only mail that meets the requirements set forth in IMM 220 for Priority Mail Express International, in IMM 230 for Priority Mail International, or in IMM 250 for First-Class Package International Service, with the exception of: (a) Any Flat Rate item; (b) Any item destined for any country included in Country Group E-1 under Supplement No. 1 to Title 15, Code of Federal Regulations, Part 740 available at www.gpo.gov/fdsys/pkg/CFR-2013-title15-vol2/pdf/CFR-2013-title15-vol2-part740-appNo-.pdf; (c) Any item 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 pursuant to Executive Order No. 13382; and (d) Any item 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 pursuant to Executive Order No. 13382; shall be considered as Qualifying Mail, except as those requirements conflict with the applicable specific preparation requirements set forth in Article 6.

**5. Treatment of Non-Qualifying Mail.** (1) The USPS, at its option and without forfeiting any of its rights under this Agreement, may refuse to accept Non-Qualifying Mail or may accept Non-Qualifying Mail at the applicable published prices. The USPS may accept Non-Qualifying Mail at the applicable published prices. (2) Any mailings by the Mailer of Non-Qualifying Mail processed using Global Shipping Software (GSS) or other USPS-approved software must be paid for through the use of a permit imprint that is different than the permit imprint mentioned in Article 2 of this Agreement.

**6. Specific Preparation Requirements.** (1) Mailings of Qualifying Mail must be kept separate from any other type of mail the Mailer tenders. (2) International mailings must be separated from domestic mailings. (3) Mailings processed using Global Shipping Software (GSS) or other USPS-approved software must: (i) Be accompanied by a postage manifest; and (ii) Be paid for through the use of a Permit Imprint. (4) Mailings processed using software provided by a USPS-approved PC Postage Provider that the USPS has authorized to offer services to contract rate customers must be accompanied by a PS Form 3152 Confirmation Services Certification, or a PS Form 5630 Shipment Confirmation Acceptance Notice, or an equivalent form produced by the PC Postage Provider's software. (5) For all items destined for Cuba, the Mailer shall take all necessary measures to comply with all applicable BIS and OFAC provisions, and to ensure that electronic export

information about shipments under this Agreement destined to Cuba are properly filed, if necessary, under regulations of the Bureau of Census. (6) All Qualifying Mail must be paid for, prepared, and processed in accordance with the Annexes to this Agreement.

**7. Obligations of the USPS.** The USPS hereby agrees: (1) Transportation To arrange with carriers to transport Qualifying Mail to international destinations where the proper authority will effect delivery. (2) Undeliverable Items To return: (a) Priority Mail Express International Qualifying Mail items refused by an addressee or that are undeliverable, to the Mailer via Priority Mail Express [redacted]; (b) Priority Mail International and First-Class Package International Service items refused by an addressee or that are undeliverable, to the Mailer in accordance with the provisions of IMM 771. (3) Postage To provide prices for Qualifying Mail paid for and tendered as required by this Agreement. (4) 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, or when it files information (including data) in connection with the Agreement in accordance with other regulatory requirements. (5) Technical Assistance To provide the Mailer with technical assistance necessary to prepare information linkages, electronic data files, and data exchanges as required for the proper functioning of USPS-provided Global Shipping Software (GSS).

**8. Obligations of the Mailer – General.** The Mailer hereby agrees: (1) Postage To pay postage for Qualifying Mail in accordance with the price charts in the Annexes of this Agreement. (2) Customs and Export Documentation To provide any necessary documentation, including data provided in electronic format, in connection with each mailing, in the form and at the time specified by the USPS, Customs & Border Protection, Transportation Security Administration, the U.S. Census Bureau, a destination country foreign government, or other authority. The Mailer further understands that the failure to provide any such required documentation may result in refusal at acceptance, delay in processing, involuntary seizure by customs authorities, and/or return of mail to the sender. (3) Customs and Export Requirements To comply with any regulation or order promulgated by the USPS, OFAC, the U.S. Department of the Treasury, the U.S. Census Bureau, BIS, the U.S. Department of Commerce, the U.S. Department of State, the U.S. Customs & Border Protection, the U.S. Fish and Wildlife Service, the Transportation Security Administration, a destination country foreign government, or other governmental unit, in accordance with any requirements specified by those authorities. See IMM 5 for additional information. (4) Tender Not to: (a) Tender or attempt to tender any item under this Agreement that is destined for any country included in Country Group E-1 under Supplement No. 1 to Title 15, Code of Federal Regulations, Part 740 available at www.gpo.gov/fdsys/pkg/CFR-2013-title15-vol2/pdf/CFR-2013-title15-vol2-part740-appNo-.pdf; (b) Tender or attempt to tender any item addressed to persons 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 pursuant to Executive Order No. 13382; (c) Tender or attempt to tender any item 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 pursuant to Executive Order No. 13382. (5) 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 Postal Regulatory Commission. (6) Penalties To pay any fines or penalties 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 Mailer's failure to comply with applicable laws and regulations of the origin country, destination country, or any country through which a mailing tendered under this Agreement passes (including failure to provide necessary documentation and/or failure to obtain any required license or permit). (7) Advance Notification To provide the Manager, Customized Mail, USPS, via e-mail to icmusps@usps.gov with notification of the Mailer's intent to tender Qualifying Mail under this Agreement that requires a license from OFAC, BIS, or the U.S. Department of State not less than ten (10) days prior to tender of such items. (8) To notify USPS, via e-mail to globaltradecompliance@usps.gov and internationalmailsecurity@uspis.gov, of all criminal, civil, or administrative investigations, prosecutions, or proceedings relating to violations or potential violations of export control, customs, fraud, data, or mailability laws concerning transactions involving the Mailer, 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.

**9. Additional Obligations of the Mailer.** The Mailer hereby agrees: (1) Advance Notification To provide: (a) The Manager, Customized Mail, USPS, via e-mail to icmusps@usps.gov, with notification of new permit numbers used for Qualifying Mail ten (10) days 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 mail. (c) To provide the Manager, Customized Mail, USPS, via e-mail to icmusps@usps.gov, with notification of new PC Postage Provider account number(s) used for Qualifying Mail ten (10) days in advance of using the new PC Postage Provider account numbers. The message should include the PC Postage Provider account number, the name of the PC Postage Provider account owner, and the requested implementation date. (d) To provide the Manager, Customized Mail, USPS, via e-mail to icmusps@usps.gov with notification of the Mailer's intent to change and/or add PC Postage Providers and the name of

the new PC Postage Provider the Mailer intends to use at least twenty (20) days in advance of the anticipated change or addition. (2) Tender To present the mailings to the USPS in accordance with the Annexes to this Agreement and any supplementary documents referred to therein. For Qualifying Mail for which postage payment is through a PC Postage Provider, the following means of tender are not authorized: tender at a USPS retail window, or a commercial mail receiving agency. (3) Address Labels and Customs Declarations To create address labels and Customs declarations for all Qualifying Mail in accordance with the Annexes to this Agreement using either USPS-provided Global Shipping Software (GSS), other USPS-approved software, or using the software provided by the USPS-approved PC Postage Provider which the Mailer has identified as its selected postage payment intermediary. (4) Information Link To establish the necessary linkages with the USPS so that: (a) The Mailer and the USPS can exchange data transmissions concerning the Mailer's packages; (b) The USPS can, at the Mailer's request, extract information by scanning the Mailer-provided barcode on each package. (5) Data Transmission To exchange electronic information with the USPS according to the instructions the USPS provides. (6) Postage Due To pay any postage due to the USPS as a result of discrepancies between the actual PC postage applied to the mailings and the postage required under this Agreement.

**10. Minimum Commitment.** The Mailer is required to meet an annualized minimum commitment [redacted] 2) [redacted]

**11. Term of the Agreement.**. (1) The USPS will notify the Mailer of the Effective Date of the Agreement as soon as possible, but no later than thirty (30) days, after receiving the approval of the entities that have oversight responsibilities for the USPS. This Agreement shall remain in effect until June 30, 2020, unless terminated sooner pursuant to Article 12, 13, or 31 of this Agreement. (2) At the discretion of the USPS and subject to Article 30 Conditions Precedent, as well as official notification to the Postal Regulatory Commission at least seven (7) days prior to the expiration date of this Agreement, the USPS may, provide notice to the Mailer in accordance with Article 32 that this Agreement has been extended for up to an additional three (3) months, with the option for the USPS to extend this Agreement for a second additional three (3) months, and the USPS reserves the right to adjust the duration of such extension, depending on the effective date, if any, of a successor agreement with the Mailer.

**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 below in Paragraph 3 of this Article, 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) If the Mailer is not in compliance with this Agreement, USPS will have the right to immediately terminate or suspend performance under this Agreement. (3) In the event that this Agreement is terminated for any reason before the termination date provided for in Article 11 (including for the reasons and under the terms set forth in Article 31), any penalties arising under Article 8 or any other article of this Agreement, 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. (4) The USPS is under no obligation to remind the Mailer of the termination of this Agreement. In addition, the USPS is under no obligation to enter into a subsequent agreement with the Mailer.

**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, 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 Postal Regulatory 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 will notify the Mailer 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 Mailer of the status of the approval process or of potential fulfillment of the approval process.

**14. Postage Updates.** (1) In the event that the USPS incurs [redacted] the USPS shall notify the Mailer and modify the prices established under this Agreement. [redacted] (2) The USPS will give the Mailer thirty (30) days' notice of changes to the prices in the Annexes of this Agreement. (3) Any revision of prices in the Annexes shall not be retroactive. (4) No price shall increase beyond the non-discounted published price for the affected service.

**15. Customs Duties and Taxes.** Customs duties, taxes, and/or fees for packages mailed under this Agreement are the responsibility of the addressee.

**16. Entire Agreement and Survival.** This Agreement, including all Annexes thereto, shall constitute the entire agreement between the Parties regarding customized prices for Qualifying Mail commencing on the Effective Date of the 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 4; Article 8, Paragraph 5; 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 Mailer acknowledges that this Agreement and supporting documentation will be filed with the Postal Regulatory Commission ("Commission") in a docketed proceeding. The Mailer 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 Mailer 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 Mailer 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 Commission for non-public treatment of materials believed to be protected from disclosure is found in part 3007 of the regulations concerning the Commission in Title 39 of the Code of Federal Regulations.

**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 Mailer is allowed the factual use of the following trademarks to identify the appropriate USPS service: "Priority Mail Express International®," "Priority Mail International®," and "First-Class Package International Service®," and the acronyms "PMEI™," "PMI™," and "FCPIS®." 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 other than to factually identify the trademark owner or the trademark owner's services until such time that a license for marketing use has been executed by the Parties. Mailer agrees to cooperate and execute any necessary filings required to perfect such license's effectiveness in the applicable jurisdictions, including, but not limited to the recording of such licenses.

**21. Limitation of Liability.** (1) The liability of the USPS under this Agreement shall be limited to the refund of postage for Qualifying Mail that is lost or destroyed in bulk after being tendered to the USPS and prior to being received by the delivery authority outside of the United States. The USPS shall not be liable for any actual or consequential damages suffered by the Mailer as a result of late delivery or non-delivery of any Qualifying Mail. (2) The USPS shall not be liable for any loss or expense, including, but not limited to fines and penalties, for the Mailer's or any other person's failure to comply with any export laws, rules, or regulations. (3) The USPS shall not be liable for any act or omission by any person not employed or contracted by the USPS, including any act or omission of the Mailer, the Mailer's customer, or the recipient of an item tendered under this Agreement. (4) Priority Mail Express International Qualifying Mail, Priority Mail International Qualifying Mail, and First-Class Package International Service Qualifying Mail mailed under this Agreement are not guaranteed against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay. (5) Unless otherwise specified by notice published in a future issue of the *Postal Bulletin* that a date-certain, postage-refund guarantee will be offered for this particular type of Global Customized Mail Agreement, Priority Mail Express International With Money-Back Guarantee Service Qualifying Mail mailed under this agreement is not guaranteed against delay in delivery, and neither indemnity payments nor postage refunds will be made in the event of delay. (6) The USPS bears no responsibility for the refund of postage for Qualifying Mail in connection with actions taken by Customs authorities. (7) 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 Mailer shall indemnify 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 Mailer or its agent(s) of any undertaking contained in this Agreement, including Claims that result from the noncompliance of the Mailer with the laws of the United States and other countries.

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

**24. Suspensions of Mail Service.** In the event that a suspension of Priority Mail Express International service, Priority Mail International service, or First-Class Package International Service from the United States to a country would prevent delivery of Qualifying Mail to addressees in that country, the Mailer shall not tender Priority Mail Express International, Priority Mail International, or First-Class Package International Service, as appropriate, to the USPS until service is restored. The annualized minimum commitment for Qualifying Mail 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 Mailer 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 Mailer to a subsidiary of the Mailer for which the Mailer 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. 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. Mailability, Exportability, and Importability.** (1) All items mailed under this Agreement must conform to the mailability 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; and all applicable importation restrictions of the destination countries. For each item mailed under this Agreement, the Mailer is responsible for notifying the Mailer's Customers of their responsibility for determining export and import requirements, obtaining any required licenses and permits, and ensuring that the recipient of the item is authorized by the laws of the United States as well as destination countries to receive the item, and for the exportation and importation status of the products mailed under this Agreement as detailed in IMM 112. (2) The Mailer is responsible for ensuring that no item mailed under this Agreement includes non-mailable dangerous goods. Internationally mailable dangerous goods include only certain biological substances, certain radioactive materials, and small lithium batteries packaged in the devices they are meant to operate, as described in greater detail in IMM 135. Hazardous materials listed within the Department of Transportation's regulations, including at 49 C.F.R. § 172.101, are known as dangerous goods that are prohibited from all international mail, as set forth in Exhibit 331 of USPS Publication 52. These substances and items are in addition to any prohibitions or restrictions on imports that may be found in the Individual Country Listings in the IMM. Penalties for knowingly mailing dangerous goods may include civil penalties pursuant to 39 U.S.C. § 3018 and criminal charges pursuant to 18 U.S.C. § 1716.

**29. Warranties, Representations and Covenants.** The Mailer warrants, represents, and covenants to the Postal Service as follows: (1) that the execution, delivery, and performance by the Mailer of its obligations under this Agreement (a) are within the Mailer'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 Mailer, (ii) any contractual restriction binding on the Mailer, (iii) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on the Mailer, or (iv) the organizational documents of the Mailer; (2) that the Mailer 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 Mailer 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 Mailer is not in arrears for any amount due to the USPS; (3) that the Mailer is not aware of any pending investigations that would be subject to the notice obligation under Article 8, Paragraph 8; (4) that there has been no criminal, civil, or administration enforcement action in the past 5 years against the Mailer, 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 Mailer is a duly authorized officer of

the Mailer with the power and authority to enter into the Agreement on behalf of Mailer; and (6) that the Mailer shall comply with all applicable federal, state and local laws, rules and regulations.

**30. Conditions Precedent.** (1) The Parties acknowledge and understand that all obligations of the USPS under this Agreement, including the prices listed in the Annexes to this Agreement, 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 Postal Regulatory Commission, and/or any other governmental body with oversight responsibility for the USPS. The Parties acknowledge that the Agreement might 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 Mailer 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.

**31. Sovereign Acts** The USPS and the Mailer 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 executive authority, agency, branch, or independent establishment of the United States Government. The USPS and the Mailer 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 executive authority, branch, agency or independent establishment of the United States Government 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 executive authority, 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 32 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, except as set forth in Article 12, Paragraph 3. 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 32 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.

**32. Notices.** (1) All notices or demands to the Parties required by this Agreement shall be sufficient if delivered personally or mailed via Priority Mail Express to the following individuals: (a) To the USPS: Managing Director, Global Business; United States Postal Service; 475 L'Enfant Plaza SW Room 5012; Washington, DC 20260-4016; (b) To the Mailer: [redacted]; or via e-mail to the USPS at: icmusps@usps.gov; or to the Mailer at: [redacted] (2) The Mailer hereby agrees to provide the USPS with any updates to the contact information in Paragraph 1 of this Article.

**33. Fraud.** The Mailer understands that providing false information with the intent to access discounted rates through the use of a PC Postage Provider may subject the Mailer to criminal and/or civil penalties, including fines and imprisonment.

**34. 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.

**35. Record Keeping and Audit.** Mailer 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 Mailer hereunder, in furtherance of the audit requirement under § 3654 of Title 39, United States Code, as well as compliance with export control laws. Mailer 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. Mailer 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 Mailer's performance under this Agreement.

**36. Expiration of Agreement Rates.** The rates offered to the Mailer under this Agreement expire unless the Mailer signs this Agreement within the month, or the month subsequent to, the creation of this Agreement as indicated by the month number in the footer of this Agreement.

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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 O** [redacted] | |
|---|---|---|---|
| Signature: | DocuSigned by: Donald Ross A19A1D8E7A8D4EF... | Signature: | |
| Name: | Donald Ross | Name: | |
| Title: | Director International Sales | Title: | |
| Date: | 12-10-2019 | Date: | 12/3/2019 |

ANNEX 1 PRICES FOR PRIORITY MAIL EXPRESS INTERNATIONAL AND PRIORITY MAIL INTERNATIONAL

ANNEX 2 PRICES FOR FIRST-CLASS PACKAGE INTERNATIONAL SERVICE

[redacted]



**ANNEX 1A**
**PRICES IN UNITED STATES DOLLARS FOR**
**PRIORITY MAIL EXPRESS INTERNATIONAL AND**
**PRIORITY MAIL INTERNATIONAL**
**TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES**

Postage prices for Priority Mail Express International Qualifying Mail and Priority Mail International Qualifying Mail tendered to the USPS within one of the following ZIP-Codes defined areas shall be in accordance with the price charts in this Annex 1A.

1. 005, 010-043, 045, 048, 050-089, 100-149, 155, 157-159, 166-212, 214-239, 244, 254, 267-268, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in New York, NY.
2. 321, 327-342, 346-347, 349, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in Miami, FL.
3. 090-098, 430-438, 440-469, 478-509, 514, 520-528, 530-532, 534-535, 537-539, 541-545, 547-549, 600-620, 622-631, 633-639, 650-653, 962-966, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in Chicago, IL.
4. 864, 889-891, 900-908, 910-928, 930-936, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in Los Angeles, CA.
5. 894-895, 897, 937-961, 975, 976, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in San Francisco, CA.

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## ANNEX 1A – PRICE CHART 1
## PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL EXPRESS INTERNATIONAL TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES FOR COUNTRY GROUPS 1-17

| Weight Not Over (LBS) | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
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## ANNEX 1A – PRICE CHART 2
## PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES FOR COUNTRY GROUP 1

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## ANNEX 1A – PRICE CHART 3
## PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL
## TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES
## FOR COUNTRY GROUPS 2-17

| Weight Not Over (LBS) | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
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**ANNEX 1B**
**PRICES IN UNITED STATES DOLLARS FOR**
**PRIORITY MAIL EXPRESS INTERNATIONAL AND**
**PRIORITY MAIL INTERNATIONAL**
**TENDERED AT LOCATIONS OTHER THAN THOSE SPECIFIED IN ANNEX 1A**

Postage prices for Priority Mail Express International Qualifying Mail and Priority Mail International Qualifying Mail tendered to the USPS within any three digit ZIP Code location other than those listed in Annex 1A shall be in accordance with the price charts listed in this Annex 1B.

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## ANNEX 1B – PRICE CHART 1
## PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL EXPRESS INTERNATIONAL TENDERED AT LOCATIONS OTHER THAN THOSE SPECIFIED IN ANNEX 1A FOR COUNTRY GROUPS 1-17

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## ANNEX 1B – PRICE CHART 2
## PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL TENDERED AT LOCATIONS OTHER THAN THOSE SPECIFIED IN ANNEX 1A FOR COUNTRY GROUP 1

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## ANNEX 1B – PRICE CHART 3
## PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL TENDERED AT LOCATIONS OTHER THAN THOSE SPECIFIED IN ANNEX 1A FOR COUNTRY GROUPS 2-17

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**ANNEX 2**
**PRICES IN UNITED STATES DOLLARS FOR**
**FIRST-CLASS PACKAGE INTERNATIONAL SERVICE**

| Weight Not Over (Oz) | Price Group 1 | Price Group 2 | Price Group 3 | Price Group 4 | Price Group 5 | Price Group 6 | Price Group 7 | Price Group 8 | Price Group 9 |
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**PART B—COMPETITIVE PRODUCTS**
**2000 COMPETITIVE PRODUCT LIST**
*******
**NEGOTIATED SERVICE AGREEMENTS**
**International**

*********

## 2510.15 Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts

Each product is followed by a list of agreements included within that product.

- Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1

## Statement of Supporting Justification

I, Frank Cebello, Manager, International Products & Major Accounts, am sponsoring this request that the Postal Regulatory Commission (Commission) add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 to the list of competitive products. This statement supports the United States Postal Service's (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 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 Express International, Priority Mail International & First-Class Package International Service Contract 1 product 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 competitive products' ability collectively to meet the required minimum contribution requirement under Section 3633(a)(3). The contract will increase contribution toward competitive products' currently required minimum contribution of 8.8 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 Express International (PMEI), Priority Mai International (PMI), and First-Class Package International Service (FCPIS) to the customer. PMEI, PMI, and FCPIS 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 PMEI, PEMI, and FCPIS, 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 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

PMEI, PMI, and FCPIS are products intended primarily for merchandise, and any letters contained in these items would be covered by one or more exceptions or suspensions to the Private Express Statutes.

*(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 PMEI, PMEI, and FCPIS is widely available from well-known and successful private firms at both published and contract prices.

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

Having entered into this contract with the Postal Service, we naturally expect that the customer would support 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 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.

**Certification of Prices for**
**Priority Mail Express International, Priority Mail International &**
**First-Class Package International Service Contract 1**

I, Nan K. McKenzie, Manager, Pricing Innovation, Finance Department, United States Postal Service, am familiar with the prices and terms for Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1. 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, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, adopted February 7, 2019 (Governors' Decision No. 19-1).

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.

Nan K. McKenzie

Digitally signed by Nan K. McKenzie
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Date: 2020.02.26 09:21:02 -05'00'

Nan K. McKenzie

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

In accordance with 39 C.F.R. § 3007, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the unredacted Governors' Decision, the unredacted Priority Mail Express International, Priority Mail International & First-Class Package International Service 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 39 C.F.R. § 3007.201(b), 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.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.**

The materials designed 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).[1] 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 the Postal Service's determination that these materials are exempt from public disclosure and grant the Postal Service's application for their non-public treatment.

Information of a commercial nature, which under good business practice would

[1] 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).

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).[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) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.[3]**

In the case of this Priority Mail Express International, Priority Mail International, and First-Class Package International Service contract, the Postal Service believes that

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[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] Section 3007.201(b)(2) further states the following:
(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the Materials.
(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.
(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

the parties with a proprietary interest in the materials would be the counterparty to the contract, the PC Postage Provider(s) (if the contract allows for and the customer intends to use a PC Postage Provider), and foreign postal operators.

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and customer-identifying information should be withheld from public disclosure. Therefore, in compliance with 39 C.F.R. § 3007.200(b), rather than identifying the customer, the Postal Service gives notice that it has already informed the customer,[4] and the PC Postage Provider (if applicable),[5] that have a proprietary interest in the materials for the contract that is the subject of this docket 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 the customer with proprietary interest in the materials filed in this docket is Ms. Amy E. Douvlos, Marketing Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 5427, Washington, DC 20260-4017, whose email address is Amy.E.Douvlos@usps.gov, and whose telephone number is 202-268-3777.

As for foreign postal operators, the Postal Service recently provided notice to all foreign postal operators within the Universal Postal Union network through an International Bureau Circular issued on December 9, 2019, that the Postal Service will be regularly submitting certain business information to the Commission. Some UPU-

[4] 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. § 3007.204.

[5] The Postal Service has provided a blanket notice to PC Postage Providers in light of the fact that these filings are fairly routine. To the extent required, the Postal Service seeks a waiver from having to provide each PC Postage Provider notice of this docket.

designated foreign postal operators may have a proprietary interest in such information. The circular includes information on how third parties may address any confidentiality concerns with the Commission. In addition, contact information for all UPU Designated Operators is available at the following link, which is incorporated by reference into the instant application: http://pls.upu.int/pls/ap/addr_public.display_addr?p_language=AN.[6]

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

The Governors' Decision establishing International Competitive contracts, including those for Priority Mail Express International, Priority Mail International, and First-Class Package International 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 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). The additional redactions to the agreement protect information with specific impact on the customer, including the minimum commitment to the Postal Service and the timing and manner in which the

[6] To the extent required, the Postal Service seeks a waiver from having to provide each foreign postal operator notice of this docket. It is impractical to communicate with dozens of operators in multiple languages about this matter. Moreover, the volume of contracts would overwhelm both the Postal Service and the applicable foreign postal operators with boilerplate notices.

Postal Service might change prices under the contract. In addition, certain terms and the prices in the annexes of the agreement are redacted.

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

The redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, 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 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, or certain words or numbers in text were 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 information that identifies the customer from disclosure.

**(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each alleged harm alleged to result from disclosure.**

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 commercial 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 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.

The financial workpapers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, business information of foreign postal operators, 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 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.

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 interested third parties. Such information would be extremely valuable to competitors of both the Postal Service and third parties. Using detailed information about such agreements, competitors would be able to better understand the counterparty's underlying costs, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the counterparty could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service. And competitors of foreign postal operators could use the information in the financial spreadsheets to understand their nonpublished pricing to better compete against them.

Information in the financial models may also include sensitive commercial information related to agreements between the Postal Service and PC Postage Providers. Such information would be extremely valuable to competitors of both the Postal Service and the PC Postage Providers. Using detailed information about such an agreement, competitors would be able to better understand the costs of the postage programs used, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the PC Postage Providers 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 information that identifies the customer 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 rates 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.

Also, 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 workpapers 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 workpapers. It analyzes the workpapers 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. The competing package delivery service 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.

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 unless the Postal Service offers Customer B even lower prices than Customer A's, Customer B 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.

Identified harm: Public disclosure of the information in the contract and the financial workpapers 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 workpapers. The customer's competitor analyzes the workpapers 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.

Identified harm: Public disclosure of information in the contract and financial workpapers would be used by the competitors of a foreign postal operator to the detriment of the Postal Service, the counterparty to the agreement and/or the foreign postal operator.

Hypothetical: A firm competing with a foreign postal operator 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 business information concerning the foreign postal operator in the contract and financial workpapers, 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 the 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 the contract's expiration, to "qualify" potential customers. The competitor might focus its marketing efforts only on customers that have a certain mailing profile, and use information filed after the contract's expiration to determine whether a customer met that profile.

Identified harm: Public disclosure of information in any contract involving postage payment through a PC Postage Provider, and of related information in financial workpapers for that contract, would be used by the competitors of the PC Postage Provider to the Postal Service and/or the PC Postage Provider's detriment.

Hypothetical: A firm competing with the customer's PC Postage Provider (if applicable) obtains a copy of the unredacted version of a contract involving postage payment through a PC Postage Provider, and financial workpapers, from the Commission's website. The firm uses the information to assess the PC Postage

Provider's revenue sources and growth opportunities, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other PC Postage Providers in their negotiations with the Postal Service concerning financial arrangements that PC Postage Providers make with the Postal Service in the future.

**(6) The extent of the protection from public disclosure alleged 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 for which non-public treatment is alleged to be necessary 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 otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years or decades, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

**(8) Any other relevant factors or reasons 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.