Postal Regulatory Commission
Submitted 7/24/2020 2:22:53 PM
Filing ID: 114035
Accepted 7/24/2020

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

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| COMPETITIVE PRODUCT PRICES<br>PRIORITY MAIL,<br>FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT<br>PRIORITY MAIL,<br>FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT<br>CONTRACT 1 | Docket No. MC2020–204 |
| COMPETITIVE PRODUCT PRICES<br>PRIORITY MAIL,<br>FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT<br>CONTRACT 1 (MC2020–204)<br>NEGOTIATED SERVICE AGREEMENT | Docket No. CP2020–231 |

**USPS REQUEST TO ADD PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT CONTRACT 1 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING MATERIALS UNDER SEAL**
(July 24, 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, First-Class Package Service, and Parcel Select 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 the Governors' Decision, 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) 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.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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July 24, 2020

**ATTACHMENT A TO REQUEST**

**REDACTED GOVERNORS' DECISION**

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 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 at least 100 percent of the attributable 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]

[redacted]

The cost coverage for a product equals [redacted]

[redacted]

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, 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]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[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

**ATTACHMENT B TO REQUEST**

**REDACTED SHIPPING SERVICES CONTRACT**

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

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

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

NOW, THEREFORE, the Parties agree as follows:

## I. Terms

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

A. Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300_landing.htm) and of other postal laws and standards, including USPS Publication 52 – *Hazardous, Restricted, and Perishable Mail*, apply to mail tendered under this Contract.

B. This Contract applies to Customer's inbound packages that are returned to Customer's platform users ("Merchants"), excluding packages originating from and/or addressed to ZIP Codes listed in Table A below, as follows (collectively, "Contract Packages"):

1. Priority Mail weight-based packages that do not exceed [redacted];
2. First-Class Package Service – Commercial packages that do not exceed [redacted]; and
3. Parcel Select Ground weight-based packages, excluding Oversized packages, that do not exceed [redacted].

[redacted]

C. Customer will manifest Contract Packages as specified by the Postal Service, using a separate permit number and the Electronic Verification System ("eVS"), successor eVS system or other approved payment method directly with the Postal Service (without intermediaries or Third Party Payment vendors) to ship such packages, and will use the Enterprise Payment System ("EPS"). Customer shall submit Type 1 Shipping Services files for shipment of Contract Packages. For avoidance of doubt, Customer's packages shipped using a different pay method are not covered by this Contract and will not receive Contract Prices in this Contract. Customer shall provide the Postal Service, in writing, a list of its MIDs and permit numbers prior to the effective date, which list will be recorded in Attachment A if approved by an authorized representative of the Postal Service in writing (including by email). Attachment A may be modified from time to time if mutually agreed to by authorized representatives of the Parties in writing (including by email). No permit, account or payment method may be used for Contract Packages unless such permit, account or payment method has been approved by the Postal Service and is set forth on Attachment A. Contract pricing for any newly approved permits or pay methods will be effective within fifteen (15) business days after the Parties mutually agree to update Attachment A as described above, and Attachment A will be deemed updated at such time. Only Contract Packages shipped from permits or pay methods set forth on Attachment A shall count toward the good faith volume estimate in Section I.G below.

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

E. The terms and prices contained herein will take effect on the effective date as defined in Section III below. The Contract Years and Contract Quarters are defined as:
   1. Contract Years. The twelve (12) month period commencing on July 1st each year of the Contract.
   2. Contract Quarters. "Quarter(s)" or "Contract Quarter(s)", refer to the periods as follow in Table B.

**Table B**

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

F. Contract Pricing Discounts. The Postal Service will apply the discounts in Exhibit 1 Tables 1 through 3 to the published price tables as detailed in this section and round up to the nearest whole cent.

1. Priority Mail and Parcel Select Ground Discounts. Beginning on the effective date of the Contract and for this Contract's term and any extension of the initial Contract term which may be effected pursuant to Section IV below, Customer will pay prevailing Priority Mail Commercial Plus and published Parcel Select Ground prices less the discounts in Exhibit 1 Tables 1 and 2 for Priority Mail and Parcel Select Ground Contract Packages shipped using payment methods set forth in Attachment A.

2. First-Class Package Service Discounts.

   a. Beginning on the effective date of the Contract until July 1, 2021, Customer will pay published First-Class Package Service - Commercial prices less the Tier 2 discounts in Exhibit 1 Table 3 for First-Class Package Service Contract Packages shipped using payment systems set forth in Attachment A.
   b. For the Contract Year beginning July 1, 2021, Customer will pay published First-Class Package Service – Commercial prices less the discounts in Exhibit 1 Table 3 based on the percentage of Customer's First-Class Package Service package spend out of the spend on Total Packages shipped ("FCPS%") from the effective date of the Contract through March 31, 2021.
   c. For subsequent Contract Years, Customer will pay published First-Class Package Service – Commercial prices less the discounts in Exhibit 1 Table 3 based on the percentage of Customer's FCPS% during the most recent twelve (12) months ending March 31st the same year. For example, the tier effective July 1, 2022 through June 30, 2023 will be based on the FCPS% for the period April 1, 2021 through March 31, 2022.
   d. The Postal Service will calculate the FCPS% and notify Customer of the applicable tier for the following Contract Year prior to each Contract Year.

G. The discounts afforded by the Contract through the end of the first Contract Year are provided based on Customer's good faith estimate of at least [redacted] Total Packages shipped during Contract Year 1. At least sixty (60) days prior to each subsequent Contract Year, the Parties will mutually agree to an estimate for the following Contract Year's volume of Total Packages which is expected to be larger than the preceding Contract Year's actual volume shipped of Total Packages.

H. Quarterly Business Reviews. The Parties shall jointly conduct a business review of Customer's performance expectations under this Contract either in person, by telecom or by webinar each Contract Quarter in each year of the Contract. If either Party is unable to conduct a business review in any calendar quarter, it shall notify the other Party in writing (i.e. email or mail) of that fact and propose a date as soon as practicable thereafter. Upon request by the Postal Service, no more often than on a quarterly basis, Customer shall provide the Postal Service proof of how it positions USPS shipping options on its platform. The initial Quarterly Business Review will take place after the first full Contract Quarter.

I. Record Keeping and Audit. Customer shall respond to the Postal Service's or its designated auditor's quarterly and/or yearly transaction requests for books and records related to Postal Service transactions and this Contract; and such other assistance as commercially reasonably required by the Postal Service or its designated auditors in connection with Customer's performance under this Contract.

## II. Marketplace Requirements

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

## III. Regulatory Review and Effective Date

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

## IV. Expiration Date, Term and Termination

This Contract shall expire on June 30, 2023 unless:

1. Terminated by either Party with one thirty (30) calendar days' notice to the other Party in writing;
2. Superseded by a subsequent contract between the Parties;
3. Ordered by the Commission or a court;
4. Required to comply with subsequently enacted legislation; or

If, at the conclusion of the term of this Contract or any one (1) year extension period, both Parties agree that preparation of a successor SSC is active, the SSC will be extended for

up to two (2) ninety (90) calendar day periods with official notification to the Commission at least seven (7) calendar days prior to the Contract's expiration date.

## V. Appeals

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal via email, along with any and all supporting documentation, within thirty (30) calendar days of receipt of notification of the determination giving rise tothe appeal to: [redacted]. The appeal is forwarded to the Pricing and Classification Service Center (PCSC). The PCSC manager issues the final agency decision. Any decision that is not appealed as prescribed becomes the final agency decision.

## VI. Confidentiality

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

## VII. Amendments

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

## VIII. Assignment

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

## IX. Waiver

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

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

UNITED STATES POSTAL SERVICE

Signed by: E-SIGNED by Timothy.R Costello on 2020-07-06 16:40:40 CDT

Printed Name: Timothy R. Costello

Title: Vice President Sales

Date: 2020-07-06 16:40:40 CST

[redacted]

## Appendix to Shipping Services Contract

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

### I. Marketplace Requirements

[redacted]

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

1. Ensure that each Merchant agrees (i) to comply with all applicable requirements that the Customer is subject to under this Contract, and (ii) that access to Product may be terminated or suspended in accordance with the Contract terms. In addition, in the event that the Customer receives a written notice from the Postal Service indicating that any Merchant has breached any Contract term, the Customer shall terminate the Merchant's access to the Product effective as of the termination date set forth in said notice (the "Termination Date"), unless the Merchant, as applicable, cures such breach to the Postal Service's satisfaction prior to the Termination Date.

2

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

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

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

**II.**

## III. Representations, Warranties and Covenants

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

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

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

C. The Customer shall comply with all applicable federal, state and local laws, rules and regulations in performing its obligations under this Contract.

## IV. Confidentiality; Public Disclosures

In addition to the confidentiality obligations set forth in the Contract, Customer hereby agrees to treat as confidential, and not disclose to third parties absent express written consent by the prices offered to Merchants under this Contract and the terms of this Appendix.

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

## V. Sovereign Acts

The Postal Service and Customer acknowledge and agree that the Contract is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government. Notwithstanding anything to the contrary set forth herein, the Postal Service and Customer further acknowledge and agree that the Contract in no way waives the Postal Service's authority to act in its sovereign capacity and to promulgate and amend from time to time regulations and policies and that, pursuant to the sovereign acts doctrine, the Postal Service shall not be held liable for any acts performed in its sovereign capacity, or for any acts performed by any branch, agency or independent establishment of the United States in their sovereign capacities that may

directly or indirectly affect the terms of the Contract. In the event that either Party is required by legislation enacted by the Congress of the United States or any orders or regulations that might be promulgated by any branch, agency, regulatory body, or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under the Contract, either Party may give the other Party a notice of termination of the Contract, which termination shall be effective immediately or on the effective date of such requirement, whichever is later. The Parties agree that in the event that the Contract is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with the Contract by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. To the extent that any applicable law, regulation or policy adopted after the Effective Date expressly supersedes the terms of this Appendix, such law, regulation or policy shall control.

## VI. Notices

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

[redacted]

## VII. Governing Law

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

## VIII. Counterparts

The Contract may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties. A facsimile or other electronically or digitally transmitted copy of a signature on any counterpart shall be

deemed to be an original signature. The Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.

**ATTACHMENT A**

[redacted]

**Exhibit 1 – Priority Mail and Parcel Select Discount Tables**

[redacted]

**MAIL CLASSIFICATION SCHEDULE**

**PART B—COMPETITIVE PRODUCTS**

**2000 COMPETITIVE PRODUCT LIST**

***

**NEGOTIATED SERVICE AGREEMENTS**

Domestic

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Priority Mail, First-Class Package Service & Parcel Select Contract 1

**Statement of Supporting Justification**

I, Shibani S. Gambhir, Director, Field Sales Strategy and Contracts, am sponsoring this request that the Commission add Priority Mail, First-Class Package Service & Parcel Select Contract 1 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

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

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

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

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

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

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 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, First-Class Package Service, and Parcel Select to the customer. Priority Mail, First-Class Package Service, and Parcel Select are provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

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

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

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

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

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

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

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

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

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

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

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

**Certification of Prices for Priority Mail,**

**First-Class Package Service, and Parcel Select Service Contract 1**

I, Nan K. McKenzie, Manager, Pricing Innovation, Finance Department, am familiar with the prices and terms for Priority Mail, First-Class Package Service, and Parcel Select 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 (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
DN: cn=Nan K. McKenzie, o, ou=Manager, Pricing Innovation, email=nan.k.mckenzie@usps.gov, c=US
Date: 2020.07.24 12:23:42 -04'00'

Nan K. McKenzie

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

In accordance with 39 C.F.R. Part 3007, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.201(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 designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).[1] Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to

[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). 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.

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.**

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information is sensitive and should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is Elizabeth.A.Reed@usps.gov and whose telephone number is 202-268-3179.

**(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,**

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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.

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

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

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

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

**(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each 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 commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(6) The extent of 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 market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

**(7) The length of time 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, 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.