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

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|---|---|
| COMPETITIVE PRODUCT PRICES<br>PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE<br>PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE<br>CONTRACT 204 | Docket No. MC2022–4 |
| COMPETITIVE PRODUCT PRICES<br>PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE<br>CONTRACT 204 (MC2022–4)<br>NEGOTIATED SERVICE AGREEMENT | Docket No. CP2022–5 |

**USPS REQUEST TO ADD PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE CONTRACT 204 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING MATERIALS UNDER SEAL**
(October 7, 2021)

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 Contract 204 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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October 7, 2021

**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
## AND
## FIRST-CLASS PACKAGE SERVICE

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

WHEREAS, it is the intention of the Parties to enter into a Shipping Services Contract ("SSC" or "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 and outbound packages originating from their distribution centers and retail locations ("Contract Packages"), excluding packages originating from and/or addressed to ZIP Codes contained in Table A below, as follows:

1. Priority Mail weight-based packages that do not exceed [redacted]; and
2. First-Class Package Service – Commercial packages that do not exceed [redacted].

[redacted]

C. Customer expressly commits to not offer, sell, or allow the use of Contract Pricing provided in this Contract to any other entity or party (i.e. "reselling"). Customer shall not extend pricing to a third party under this Contract, including commercial published pricing for the products defined in Section I.B, or any prices below commercial published pricing. For the avoidance of doubt, a violation of this section will constitute a material breach of this Contract. This requirement may be waived in writing by the Postal Service, expressly for the limited purpose of Customer's dropshipping activities.

D. Customer will manifest Contract Packages as specified by the Postal Service, using a separate permit number and/or PC Postage account to ship such packages, and will use the Electronic Verification System ("eVS"), other USPS approved manifest systems, or USPS approved PC Postage vendors for payment of such packages. The Parties have mutually agreed to specific shipping locations from where Contract Packages must originate, along with the associated Customer Registration ID, Mailer ID and Payment Method information required for each shipping location provided that dropshipping, as may be approved by the Postal Service, may originate from other locations. Contract pricing for any newly approved permits and/or PC Postage accounts will be effective within fifteen (15) business days after the Postal Service receives written notification from Customer. Only Priority Mail Contract Packages, plus Customer's other Priority Mail packages ("Total PM Packages"), and First-Class Package Service – Commercial Contract Packages, plus Customer's other First-Class Package Service – Commercial packages ("Total FCPS Packages"), shipped from authorized permits and/or PC Postage accounts shall count toward the volume commitments expressed in Sections I.G and I.K, with Tables C and D.

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

F. The terms and prices contained herein will take effect on the Effective Date as defined in Section II. Calendar and Contract Quarters are defined as:

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

**Table B**

| Calendar Quarters | |
|---|---|
| **Start of Period** | **End of Period** |
| January 1st | March 31st |
| April 1st | June 30th |
| July 1st | September 30th |
| October 1st | December 31st |

2. Contract Quarters. Contract Quarters will be the periods consisting of the Calendar Quarters shown in Table B, with Contract Quarter 1 being set as the Calendar Quarter in effect, as of the Effective Date of the Contract.

G. Tier threshold (Total PM Packages). As outlined in Table C below, the following quarterly average volumes must be met in order to achieve the applicable Priority Mail Contract Package prices in Section I.J.

[redacted]

H. From the Effective Date of the Contract through the end of the first full Contract Quarter, Customer will pay Tier 2 prices for Priority Mail Contract Packages, pursuant to Table 2. Subsequent tier pricing will be determined by the quarterly average of Total PM Packages shipped during the term of this Contract. If the quarterly average of Total PM Packages shipped falls below the minimum volume set for Tier 1 pricing, the Postal Service in its sole discretion has the right to revert Customer to the most current Priority Mail Commercial Plus prices for the subsequent Contract Quarter.

I. Customized Priority Mail prices for this Contract will be based on a rolling four (4) quarter average. The average will be based on the number of Total PM Packages shipped divided by the number of full Contract Quarters achieved. At the conclusion of the first four (4) full Contract Quarters, pricing for subsequent Contract Quarters will be calculated by the number of Total PM Packages shipped in the previous four (4) Contract Quarters divided by four (4). At the conclusion of each Contract Quarter, the Postal Service will calculate the total number of Total PM Packages and the number of applicable Contract Quarters to calculate and apply the appropriate rate table within thirty (30) calendar days of the conclusion of that Contract Quarter. The Postal Service will notify Customer, within thirty (30) calendar days after the start of each full Contract Quarter, of the applicable tiered prices for any Priority Mail Contract Packages shipped during that Contract Quarter. The calculated rate for the

new Contract Quarter will become effective within thirty (30) calendar days from the start of the new Contract Quarter.

J. Priority Mail Contract Package Price Tables

[redacted]

K. Tier threshold (Total FCPS Packages). Customer must ship an average of [redacted] Total FCPS Packages per Contract Quarter, and as outlined in Table D below, the applicable percentage of Total FCPS Packages shipped per Contract Quarter to Total Packages shipped per Contract Quarter, will be used to determine the applicable First-Class Package Service Contract Package price tiers in Section I.O.

[redacted]

L. From the Effective Date of the Contract through the end of the first full Contract Quarter, Customer will pay Tier 2 prices for its First-Class Package Service – Commercial Contract Packages, pursuant to Table 6. Tiered pricing in subsequent Contract Quarters will be determined by the quarterly average of Total FCPS Packages shipped and the percentage of Total FCPS Packages shipped to Total Packages shipped per Contract Quarter. If Customer fails to meet the quarterly average of Total FCPS Packages shipped in a Contract Quarter, as specified in Section I.K above, the Postal Service in its sole discretion reserves the right to revert Customer to the most current First-Class Package Service - Commercial prices in the subsequent Contract Quarter.

M. Customized First-Class Package Service prices for this Contract will be based on a rolling four (4) quarter average. The average will be based on the number of Total FCPS Packages shipped divided by the number of full Contract Quarters achieved. At the conclusion of the first four (4) full Contract Quarters, pricing for subsequent Contract Quarters will be calculated by the number of Total FCPS Packages shipped in the previous four (4) Contract Quarters divided by four (4). At the conclusion of each Contract Quarter, the Postal Service will calculate the total number of Total FCPS Packages and the number of applicable Contract Quarters to calculate and apply the appropriate rate table within thirty (30) calendar days of the conclusion of that Contract Quarter. The Postal Service will notify the designated Customer contact via email, within thirty (30) calendar days after the start of each full Contract Quarter, of the applicable tiered prices for any First-Class Package Service - Commercial Contract Packages shipped during that Contract Quarter. The calculated rate for the new Contract Quarter will become effective within thirty (30) calendar days from the start of the new Contract Quarter.

N. At the conclusion of each Contract Quarter, the Postal Service will determine the quantity of Total FCPS Packages and the quantity of Total Packages shipped during that Quarter to calculate the ratio of Total FCPS Packages to Total Packages shipped and apply the appropriate rate table within thirty (30) calendar days of the conclusion of that Contract Quarter.

O. First-Class Package Service Contract Package Price Tables

[1] Tier 1 Contract Package pricing for Customer's First-Class Package Service Contract Packages weighing up to [redacted] will be prevailing published prices for First-Class Package Service – Commercial throughout the term of the Contract.

[2] Tier 2 Contract Package pricing for Customer's First-Class Package Service Contract Packages weighing up to [redacted] will be prevailing published prices for First-Class Package Service – Commercial throughout the term of the Contract.

P. Annual Adjustment

1. For subsequent years of the Contract, beginning on the first anniversary of the Contract's Effective Date, customized Priority Mail prices under this Contract, found in Tables 1, 2, 3 and 4, will be the previous year's prices plus the lesser of: (a) the most recent (as of the anniversary date) overall percentage increase in prices of general applicability for Priority Mail Commercial Plus, as calculated by the Postal Service, or (b) the applicable percent referenced in Table E below.
2. For subsequent years of the Contract, beginning on the first anniversary of the Contact's Effective Date, customized First-Class Package Service prices under this Contract, found in Tables 5, 6 and 7, for Contract Packages weighing more than [redacted], will be the previous year's prices plus the most recent (as of

[3] Tier 3 Contract Package pricing for Customer's First-Class Package Service Contract Packages weighing up to [redacted] will be prevailing published prices for First-Class Package Service – Commercial throughout the term of the Contract.

the anniversary date) overall percentage increase in prices of general applicability for First-Class Package Service - Commercial, as calculated by the Postal Service.

3. Contract Package pricing for Customer's First-Class Package Service Contract Packages weighing up to [redacted] will be prevailing published prices for First-Class Package Service – Commercial throughout the term of the Contract.
4. Customized prices for the subsequent years will be calculated by the Postal Service and rounded up to the nearest whole cent. If the Postal Service maintains or decreases published rates of applicability for Priority Mail Commercial Plus and First-Class Package Service – Commercial, there shall be no change to Contract Package pricing for that Contract Year for the respective product.

[redacted]

Q. Surcharges, Additional Fees and Time-Limited Price Changes. To the extent the Postal Service promulgates a surcharge, additional fee, or time-limited price change, applicable to the products defined and referenced in Term I.B, during the term of this Contract, such surcharge, fee, or time-limited price change will be applied to the then applicable prices for those products under this Contract, subject to the same terms as such surcharge or fee is applied to the prices of general applicability for those products, respectively, as calculated by the Postal Service. The surcharge, fee, or time-limited change ("TLPC") shall not exceed the limits express in Table F below for Contract Packages, and shall not be considered the "most recent price change" for the purposes of the Annual Adjustment provision in Section I.P above. The Postal Service reserves the right to forego an increase pursuant to this section, or increase by a lesser amount (but no less than zero), at its sole discretion.

[redacted]

R. Quarterly Business Reviews. The Parties shall, within thirty (30) calendar days after the conclusion of each full Contract Quarter in each Contract Year, jointly conduct a business review of Customer's Contract Packages, the agreed-upon locations referred to in Section I.D, and other performance expectations under this Contract either in

person, by telecom, or by webinar. If either Party is unable to conduct a business review within thirty (30) calendar days after the conclusion of the above referenced Contract Quarters, it shall notify the other Party in writing (i.e. email or mail) of that fact and propose a date as soon as practicable thereafter.

S. Memorandum of Understanding. The Parties will endeavor to mutually agree to operational procedures and service level commitments as it pertains to Priority Mail and First-Class Package Service packages. Such procedures are intended to be documented in an agreement between the Parties.

T. Record Keeping and Audit. Customer shall respond to the Postal Service's 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 Customer's performance under this Contract.

## II. Regulatory Review and Effective Date

This Contract is subject to approval by Postal Service senior management and/or the Governors of the Postal Service as well as by the Postal Regulatory Commission ("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, the Postal Service will make required filings with the Commission. The effective date of this Contract shall be three (3) 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.

## III. Expiration, Termination, and Extension

Unless the effective date of this Contract occurs between December 1st and March 31st, this Contract shall expire three (3) years from the effective date, unless (1) terminated by either Party with thirty (30) calendar days' notice to the other Party in writing; (2) renewed by mutual agreement in writing and subsequent approval by the Commission; (3) superseded by a subsequent contract between the Parties; (4) ordered by the Commission or a court; or (5) required to comply with subsequently enacted legislation.

If the effective date of this Contract occurs between December 1st and March 31st, the Contract will expire on March 31st following the third anniversary of the Contract's effective date, unless (1) terminated by either Party with thirty (30) calendar days' notice to the other Party in writing; (2) renewed by mutual agreement in writing and subsequent approval by the Commission; (3) superseded by a subsequent contract between the Parties; (4) ordered by the Commission or a court; or (5) required to comply with subsequently enacted legislation.

If, at the conclusion of this Contract term, both Parties agree that preparation of a successor SSC is active, the SSC will be extended for up to two (2) ninety (90) calendar day periods with official notification to the Commission at least seven (7) calendar days prior to

Contract's expiration date. Upon both Parties agreement of the extension, the escalation clause will be implemented in Section I.O, throughout the extension period.

## IV. 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 to the 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.

## V. 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.

## VI. 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 Patty 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 the Contract, such law, regulation or policy shall control.

## VII. Limitation of Liability

A. Waiver. IN NO EVENT SHALL EITHER PARTY BE HELD LIABLE FOR ANY LOSS OF PROFIT OR GOODWILL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS CONTRACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE.

B. Basis of the Bargain. EACH PARTY ACKNOWLEDGES THAT THE MUTUAL LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION VII REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS CONTRACT AND THAT NEITHER PARTY WOULD ENTER INTO THIS CONTRACT WITHOUT THESE LIMITATIONS ON LIABILITY.

## VIII. Indemnity

The Postal Service agrees to defend, indemnify, and hold Customer harmless from and against any and all claims, losses, damages, judgments, liabilities, and costs (including reasonable attorneys' fees and expenses) of any kind or nature that Customer incurs or that are asse1 1ed against Customer arising directly or indirectly from the Postal Service's provision of shipping services under this Contract, including any violations of any federal, state, and/or local laws, including any claims of bodily injury or death to any person or from damage to or distribution of any property, arising from or related to the Postal Services' services, acts, or omissions. Customer agrees to defend, indemnify, and hold the Postal Service harmless from and against any and all claims, losses, damages, judgments, liabilities, and costs (including reasonable attorneys' fees and expenses) of any kind or nature that the Postal Services incurs or that are asserted against the Postal Service arising directly or indirectly from Customer's breach of this Contract, including any violations of any federal, state, and/or local laws, including any claims of bodily injury or death to any person or from damages to or distribution of any property, arising from or related to Customer's acts or omissions related to this Contract.

## IX. Amendments

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

## X. 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.

## XI. 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: jacqueline krage strako

Printed Name: Jacqueline Strako

Title: Chief Commerce & Business Solutions Officer and Executive Vice President

Date: 10/4/2021

[redacted]

**MAIL CLASSIFICATION SCHEDULE**

**PART B—COMPETITIVE PRODUCTS**

**2000 COMPETITIVE PRODUCT LIST**

***

**NEGOTIATED SERVICE AGREEMENTS**

Domestic

***

Priority Mail & First-Class Package Service Contract 204

**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 Contract 204 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Certification of Prices for**

**Priority Mail & First-Class Package Service Contract 204**

I, Lisa H. Arcari, Director, Domestic Package Pricing, Finance Department, am familiar with the prices and terms for Priority Mail & First-Class Package Service Contract 204. 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.

Lisa Arcari Digitally signed by Lisa Arcari Date: 2021.10.07 15:27:05 -04'00'

Lisa H. Arcari

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

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

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

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

**(4) Particular identification of the nature and extent of 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.