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

COMPETITIVE PRODUCT PRICES PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL INTERNATIONAL & FIRST-CLASS PACKAGE INTERNATIONAL SERVICE CONTRACT 11	Docket No. MC2023-36
COMPETITIVE PRODUCT PRICES PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL INTERNATIONAL & FIRST-CLASS PACKAGE INTERNATIONAL SERVICE CONTRACT 11 (MC2023-36) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2023-35

USPS REQUEST TO ADD PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL INTERNATIONAL & FIRST-CLASS PACKAGE INTERNATIONAL SERVICE CONTRACT 11 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING MATERIALS UNDER SEAL

(November 8, 2022)

In accordance with 39 U.S.C. § 3642, 39 C.F.R. § 3040.130 et seq., and 39 C.F.R. § 3035.105, the United States Postal Service requests that Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11 be added to the competitive product list within the Mail Classification Schedule. This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).

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

Attachment D provides a statement of supporting justification, as required by 39 C.F.R. § 3040.132. Attachment E is a certification of compliance with 39 U.S.C. § 3633(a)(1), (2) and (3). Unredacted versions of the Governors' Decision, contract, and required cost and revenue data are being filed under seal. Attachment F provides an Application for Nonpublic Treatment of these materials.

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

The Postal Service will establish the effective date of the contract that is the subject of this filing once the Postal Regulatory Commission completes its review. The contract will remain in effect pursuant to the terms of Article 11, unless it is terminated sooner pursuant to Article 12, 13, or 35.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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November 8, 2022

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]

The cost coverage for a product equals [redacted]

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

[redacted]

[redacted]

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

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

UNITED STATES POSTAL SERVICE
OFFICE OF THE BOARD OF GOVERNORS

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

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

Robert M. Duncan
David C. Williams

7 February 2019

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

Date

GLOBAL CUSTOMIZED MAIL AGREEMENT BETWEEN THE UNITED STATES POSTAL SERVICE AND

This Agreement ("Agreement") is between ("Reseller"), with offices at , and the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the United States Government, with offices at 475 L'Enfant Plaza SW, Washington, DC 20260-9998. The Reseller and the USPS may be referred to individually as a "Party" and together as the "Parties." WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the USPS will provide certain products and/or services to the Reseller pursuant to the terms and conditions contained herein. NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

1. Purpose of the Agreement. This Agreement shall govern the use the Reseller may make of discounted prices for Priority Mail Express International, Priority Mail International, and First-Class Package International Service.

2. Definitions. As used in this Agreement: **(1)** "IMM" means the *International Mail Manual* as found on the USPS website pe.usps.com on the date of mailing. **(2)** "DMM" means the *Domestic Mail Manual* as found on the USPS website pe.usps.com on the date of mailing. **(3)** "Effective Date" means the first date on which the USPS is willing to accept Qualifying Mail shipments from the Reseller under this Agreement. **(4)** "PC Postage Provider" means any one of the USPS-authorized providers of software-based solutions for managing postage accounts listed in DMM 604.4.1.4. **(5)** "Qualifying Mail" means mail that meets the requirements set forth in Article 3 of this Agreement. **(6)** "Non-Qualifying Mail" means mail that does not meet the requirements set forth in Article 3 of this Agreement. **(7)** "Reseller's Customers" means any third party to which the Reseller agrees to offer rates under the terms of this contract. **(8)** "USPS Price List" means the *Price List (Notice 123)* as found on the USPS website pe.usps.com on the date of the mailing.

3. Qualifying Mail. With the exception of:

- **(1)** Any item destined for any country included in Country Group E-1 under Supplement No. 1 to Title 15, Code of Federal Regulations, Part 740;
- **(2)** any item addressed to persons or entities identified on the Office of Foreign Assets Control's (OFAC's) Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, the Bureau of Industry and Security's (BIS's) Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382; and
- **(3)** any item tendered on behalf of third parties or entities identified on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382;

"Qualifying Mail" means mail that: **(a)** meets the requirements set forth in IMM 220 for Priority Mail Express International, excluding all Flat Rate items; **(b)** meets the requirements set forth in IMM 230 for Priority Mail International, excluding all Flat Rate items and Priority Mail International Regional Rate Boxes; and **(c)** meets the requirements set forth in IMM 250 for First-Class Package International Service; except as those requirements conflict with the applicable specific preparation requirements set forth in Article 6.

4. Non-Qualifying Mail. The USPS, at its option and without forfeiting any of its rights under this Agreement, either may refuse to accept Non-Qualifying Mail or may accept Non-Qualifying Mail at the applicable published prices.

5. Obligations of the USPS. The USPS hereby agrees: **(1)** Postage. To provide discounted prices for Qualifying Mail paid for and tendered as required by this Agreement. **(2)** Notice of Postage Due. To provide the Reseller with a statement to support the calculation of postage due to the USPS as a result of discrepancies between the PC postage or the postage paid through the Electronic Verification System (eVS®) administered by USPS (as described in Article 6, Paragraph 2) that was applied by Reseller's Customers sending Qualifying Mail, and the actual postage due to the USPS under this Agreement. **(3)** Confidentiality. To seek non-public treatment of information it determines to be eligible for protection from public disclosure under applicable law and practice when it files the Agreement with the Postal Regulatory Commission, or when it files information (including data) in connection with the Agreement in accordance with other regulatory requirements.

6. Obligations of the Reseller. The Reseller hereby agrees: **(1)** Prices that Reseller is to Pay USPS: To pay postage to the USPS for Qualifying Mail in accordance with the Annexes to this Agreement. **(2)** Payment Method. (a) To pay postage to the USPS through the intermediary of one or more PC Postage Providers of the Reseller's choosing provided that the PC Postage Provider(s) is listed as approved in DMM 604.4.1.4, and capable of both (i) programming rates based on this Agreement, and (ii) complying with USPS reporting requirements related to this Agreement; and/or (b) Only after notification from USPS to the Reseller that postage payment through the Electronic Verification System (eVS®) is acceptable, to pay postage through eVS®, using a permit imprint that is in the name of the Reseller subject to the conditions stated in DMM 604.5 and IMM 152.6, following standards as published in USPS Publication 205 *Electronic Verification System (eVS®) Business and Technical Guide,* USPS Publication 199 *Intelligent Mail Package Barcode (IMpb) Implementation Guide for: Confirmation Services and Electronic Verification System (eVS) Mailers*, and other related documents. Reseller may pay postage through eVS® only after USPS provides notification to the Reseller that postage payment through the eVS® system under this Agreement is permissible. **(3)** Advance Notification. (a) To provide the Manager, Customized Mail, USPS, via e-

mail to icmusps@usps.gov, with (i) notification of the USPS-approved PC Postage Provider(s) the Reseller intends to use at least fifteen (15) days in advance of the first use of that PC Postage Provider(s) in connection with this Agreement, (ii) notification of the Reseller's intent to add an additional PC Postage Provider(s), or to cease using a particular PC Postage Provider(s), at least fifteen (15) days in advance of the date of the intended change; and (iii) any and all relevant information required to identify a particular sender tendering Qualifying Mail to the USPS under the pricing terms of this Agreement, as quickly as possible after the relevant information has been determined; (iv) notification of new PC Postage Provider account number(s) used for Qualifying Mail fifteen (15) days in advance of using the new PC Postage Provider account numbers. The message should include the PC Postage Provider account number, the name of the PC Postage Provider account owner, and the requested implementation date. (b) To provide the Manager, Customized Mail, USPS, via e-mail to icmusps@usps.gov, with (i) notification that Reseller intends to pay postage pursuant to this Agreement through eVS® at least fifteen (15) days in advance of the first use of eVS® in connection with this Agreement; (ii) notification of the Reseller's intent to cease using eVS® in connection with this Agreement at least fifteen (15) days in advance of the date of the intended change; (iii) any and all relevant information required to identify a particular sender tendering Qualifying Mail to the USPS under the pricing terms of this Agreement, as quickly as possible after the relevant information has been determined; (iv) notification of the eVS® permit numbers and mailer ID numbers of the Reseller used for Qualifying Mail fifteen (15) days in advance of using the new eVS® permit numbers and mailer ID numbers. The message should include the eVS® permit numbers and mailer ID numbers of the Reseller, the name of the account owner for the eVS® permit numbers and mailer ID numbers, and the requested implementation date. **(4)** Tender. To require that the Reseller's Customers present the mailings to the USPS using any means of tender the USPS authorizes for items paid for by use of PC Postage or eVS®, with the exception of the following means of tender: when using PC Postage can't tender to the USPS at a Bulk Mail Entry Unit or a USPS retail window and when using eVS® can't tender to a USPS retail window. **(5)** Customs, Export, and Other Documentation. To provide and require that Reseller's Customers provide any necessary documentation, including data provided in electronic format, in connection with each mailing, in the form and at the time specified by the USPS, Customs & Border Protection, Transportation Security Administration, the U.S. Census Bureau, a destination country foreign government, or other authority. The Reseller further understands and agrees to notify the Reseller's Customers that the failure to provide any such required documentation may result in refusal at acceptance, delay in processing, involuntary seizure by customs authorities, and/or return of mail to the sender. **(6)** Customs, Export, and Other Requirements. To comply with and require the Reseller's Customers to comply with any regulation or order promulgated by the USPS, OFAC, the U.S. Department of the Treasury, the U.S. Census Bureau, BIS, the U.S. Department of Commerce, the U.S. Department of State, the U.S. Customs & Border Protection, the U.S. Fish and Wildlife Service, the Transportation Security Administration, a destination country foreign government, or other governmental unit, in accordance with any requirements specified by those authorities. See IMM 5 for additional information. The Reseller further understands and agrees to notify the Reseller's Customers that any non-compliance may lead to fines, denial of mailing privileges, and/or other penalties, including, but not limited to, the payment of any fines, penalties, expenses, damages, and/or other charges assessed to the Postal Service and resulting from the Reseller's Customers' failure to comply with applicable laws and regulations of the origin country, destination country, or any country through which a mailing tendered under this Agreement passes. **(7)** Software. (a) If postage payment is through a PC Postage Provider, to require the Reseller's Customers to apply address labels and Customs declarations to Qualifying Mail using the software provided by the approved PC Postage Provider which the Reseller has identified as its chosen postage payment intermediary. (b) If postage payment is through eVS® to create address labels for PMEI, PMI, and FCPIS Qualifying Mail using eVS® and to send the required Customs information for each Qualifying Mail item to USPS through USPS PTR Shipping Services file 1.7 or 2.0, in accordance with the most recent versions of USPS Export Compliance Customs Data Requirements and USPS Guidelines for Privately Printed Customs Declarations Forms. (The most recent versions of these two documents, as of July 28, 2022, were available at https://postalpro.usps.com/node/3973 and https://postalpro.usps.com/node/2713.) **(8)** Data Transmission. To exchange electronic information with the USPS according to the instructions the USPS provides. **(9)** Notices to Reseller's Customers. To provide notice to the Reseller's Customers of the terms and conditioned identified in this Agreement as requiring such notice. **(10)** Postage Due. To pay postage due to the USPS as a result of discrepancies between the PC postage or postage paid through eVS® applied by the Reseller's Customers, and the actual postage due to the USPS under this Agreement. **(11)** Confidentiality. To treat as confidential and not disclose to third parties, absent express written consent by the USPS, any information related to this Agreement that is treated as non-public by the Postal Regulatory Commission. **(12)** Technical Requirement. To develop and maintain a platform for providing access to the discounts under this agreement to Reseller's Customers, and to develop tools to furnish the specific data required under this Agreement. Reseller shall maintain and operate the platform which provides discounts under this agreement to Reseller's Customers in accordance with this Agreement. In addition, Reseller shall monitor the platform which is operated by the PC Postage® Provider. **(13)** Ineligible Customer. Reseller assumes the risk if Reseller fails to terminate access by an ineligible customer to discounted postage and must repay any differential in discounted postage to the USPS upon 10 days of written notice. **(14)** Compliance. To comply with applicable USPS regulations and orders, and in good faith, to seek to comply with all other applicable laws and regulations. **(15)** Penalties. To pay any fines or penalties, as well as any other expenses, damages, and/or charges (including any applicable duties, taxes, and/or fees vis-a-vis any federal agency other than the USPS), to the extent such are due and owing, and are no longer eligible to be contested by the Reseller (a) that result from an action of any

governmental entity that regulates exports and/or imports in relation to any item tendered under this Agreement, or (b) that result from the Reseller's and/or Reseller's Customer's failure to comply with applicable laws and regulations of the origin country, destination country or any country through which a mailing tendered under this Agreement passes (including failure to provide necessary documentation and/or failure to obtain any required license or permit). **(16)** Qualifying Mail to Cuba. For all items destined for Cuba, the Reseller shall take all necessary measures to ensure that the Reseller's Customers comply with all applicable BIS and OFAC provisions and ensure that electronic export information about shipments under this Agreement destined to Cuba are properly filed, if necessary, under regulations of the Bureau of Census. **(17)** Notice of Investigations, Prosecutions, or Proceedings. To notify USPS, via e-mail to globaltradecompliance@usps.gov and internationalmailsecurity@uspis.gov, of all criminal, civil, or administrative investigations, prosecutions, or proceedings relating to violations or potential violations of export control, customs, fraud, data, or mailability laws concerning transactions involving the Reseller, any of its subsidiaries or affiliates, or any of its directors, officers, employees, or agents, in no case more than 5 business days after discovery. **(18)** At the discretion of the USPS, Qualifying Mail under this Agreement may be carried through an alternative delivery provider in lieu of the designated foreign postal operator serving that country. To the extent that Reseller wishes to continue to send Qualifying Mail to any such destination country for which final delivery is furnished by an alternative delivery provider, Reseller agrees to abide by any additional preparation requirements prescribed by the USPS, which shall be set forth in an alternative delivery provider Preparation Requirements Document furnished by USPS to the Reseller with reasonable advance notice. Delivery by an alternative delivery provider is subject to terms and conditions determined in the sole discretion of the USPS, and may be subject to change. Such terms and conditions could affect certain product features, terms, and conditions that are set forth in this Agreement or the IMM.

7. Postage Updates. [redacted]

8. Minimum Commitment. (1) The Reseller is required to meet an annualized minimum commitment of [redacted] **(2)** [redacted]

9. No Service Guarantee. Nothing in this Agreement shall be construed as a representation or guarantee by the USPS that Qualifying Mail will be delivered to the appropriate addresses within any particular time. The Reseller shall notify the Reseller's Customers that there is no service guarantee for mail tendered to the USPS at the discounted prices provided through this Agreement.

10. Customs Duties and Taxes. Customs duties and taxes for packages mailed under this Agreement are the responsibility of the addressee. The Reseller shall notify the Reseller's Customers that Customs duties and taxes for packages mailed under this Agreement are the responsibility of the addressee.

11. Term of the Agreement. (1) The USPS will notify the Reseller of the Effective Date of the Agreement within thirty (30) days after receiving the approval of the entities that have oversight responsibilities for the USPS. This Agreement shall remain in effect until 11:59 p.m. on April 30, 2023, unless the Agreement is terminated pursuant to Article 12, Article 13, or Article 35. **(2)** The USPS shall have no obligation to notify the Reseller of the status of the approval process or of potential fulfillment of the approval process. **(3)** At the discretion of the USPS and subject to Article 23 Conditions Precedent, as well as official notification by the USPS to the Postal Regulatory Commission at least seven (7) days prior to the expiration date of this Agreement, the USPS may, prior to the expiration of this Agreement, provide notice to the Reseller in accordance with Article 28 that this Agreement has been extended for up to an additional three (3) months, with the option for USPS to extend this Agreement for a second additional three (3) months, and the USPS reserves the right to adjust the duration of such extension, depending on the effective date, if any, of a successor agreement with the Reseller.

12. Termination of the Agreement. (1) Either Party to this Agreement, in its sole discretion, may terminate the Agreement for any reason, without cost, fault, or penalty, regardless of whether either Party is in default, upon a thirty (30) day written notification, unless a time frame longer than thirty (30) days that falls within the term of the Agreement is indicated by the terminating Party. **(2)** If the Reseller is not in compliance with this Agreement, USPS will have the right to immediately terminate or suspend performance under this Agreement. **(3)** In the event that this Agreement is terminated for any reason before the termination date provided for in Article 11 (including for the reasons and under the terms set forth in Article 35), any penalties arising under Articles 6 and 26, or any other article of this Agreement, shall be enforceable, and the minimum commitment in Article 8 shall be calculated on a pro rata basis to reflect the actual duration of the Agreement. **(4)** In the event of early termination under this Article, the Reseller shall notify its PC Postage Provider(s) and the Resellers'

Customers of the date the discounted prices will no longer be available to them through this Agreement. **(5)** The USPS is under no obligation to remind the Reseller of the termination of this Agreement. In addition, the USPS is under no obligation to enter into a subsequent agreement with the Reseller. **(6)** The Reseller shall ensure that the Reseller's Customers approved hereunder are bound by and agree to comply with all requirements that the Reseller is subject to under this Agreement, and agrees that the Reseller's Customers' access to rates in accordance with Article 6 of this Agreement may be terminated or suspended in accordance with the terms of this Agreement. In addition, in the event that the Reseller receives a written notice from the USPS indicating that any Reseller's Customer has breached any term of this Agreement, the Reseller shall terminate the Reseller's Customer's access effective as of the termination date set forth in said notice, unless the Reseller's Customer, as applicable, cures such breach to the USPS's satisfaction prior to said date.

13. Modification of the Agreement. **(1)** Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement, with the exception of changes to prices under the terms of Article 7 and with the exception of a notice of termination under the terms of Article 12, shall be binding only if placed in writing and signed by each Party. **(2)** Modifications may be contingent upon any and all necessary approvals by USPS management's executive committee, the Board of Governors of the USPS, the Governors of the USPS, the Postal Regulatory Commission, and/or any other governmental body with oversight responsibility for the USPS. **(3)** If such approvals are required, the modifications will not become effective until such time as all necessary approvals are obtained. **(4)** The USPS will notify the Reseller of the date the modification becomes effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the USPS. **(5)** The USPS shall have no obligation to notify the Reseller of the status of the approval process or of potential fulfillment of the approval process.

14. Entire Agreement and Survival of Obligations. **(1)** This Agreement, including all Annexes thereto, shall constitute the entire agreement between the Parties regarding Priority Mail Express International Qualifying Mail, Priority Mail International Qualifying Mail, and First-Class Package International Service Qualifying Mail as defined in Article 3 of this Agreement. **(2)** The obligations of the Parties with respect to confidentiality, as provided for in Article 5, Paragraph 3; Article 6, Paragraph 12; and Article 16 will expire ten (10) years from the date of termination or expiration of this Agreement. **(3)** The obligations of the Parties with respect to notice and payment of postage due, as provided for in Article 5, Paragraph 2, and Article 6, Paragraph 11, will expire ninety (90) days from the date of termination or expiration of this agreement. **(4)** The Reseller is responsible for any remaining obligations under any Reseller agreement between the Reseller and USPS. **(5)** With the exception of the Agreement mentioned in Article 14, Paragraph 4 above, any prior understanding or representation of any kind preceding the date of this Agreement regarding Priority Mail Express International, Priority Mail International, and First-Class Package International Service shall not be binding upon either Party except to the extent incorporated in this Agreement.

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

16. Confidentiality. **(1)** The Reseller acknowledges that as part of securing approval of this Agreement, and in other subsequent regulatory filings, the Agreement and supporting documentation will be filed with the Postal Regulatory Commission ("Commission") in a docketed proceeding. The Reseller authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding. The Reseller further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, www.prc.gov. In addition, the USPS may be required to file information in connection with this Agreement (including revenue, cost, or volume data) in other Commission dockets, including the Commission docket number for the Annual Compliance Report (ACR) for the USPS fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR202#, in which "202#" signifies the USPS fiscal year to which the ACR pertains. The Reseller has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found in part 3011 of the regulations concerning the Commission in Title 39 of the Code of Federal Regulations. **(2)** The Reseller hereby acknowledges and agrees that the form, substance, and timing of any press release or other public disclosure of matters related to this Agreement or the relationship between Reseller and the USPS prepared and/or to be disclosed by Reseller shall be subject to the prior review and written approval of the USPS. The USPS shall endeavor to respond to the Customer with written comments or written approval within five (5) business days of receipt of the proposed disclosure, but failure to approve in writing within that time frame shall be deemed disapproval. This paragraph does not prohibit either Party from disclosing information that is required to be disclosed by law or that is requested by any federal, state, or local governmental body in the proper exercise of its oversight or investigatory jurisdiction.

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

18. Indemnity.

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

20. Suspensions of Mail Service. In the event that USPS announces a suspension of Priority Mail Express International, Priority Mail International, or First-Class Package International Service from the United States to a country, which would prevent delivery of Qualifying Mail to addressees in that country, the Reseller shall notify the Reseller's Customers not to tender Priority Mail Express International, Priority Mail International, or First-Class Package International Service, as appropriate, to the USPS until service is restored.

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

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

23. Conditions Precedent. (1) The Parties acknowledge and understand that all obligations of the USPS under this Agreement, including the prices listed in the Annexes thereto, shall be contingent upon the USPS receiving approvals hereinafter ("Conditions Precedent") from one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include, but are not limited to: approvals or, if applicable, non-objection, from responsible USPS management officials, the USPS Board of Governors, the USPS Governors, the Postal Regulatory Commission, and/or any other governmental body with oversight responsibility for the USPS. The Parties acknowledge that the Agreement may not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to allow the Postal Service to provide the products or services contemplated under the Agreement, no obligation shall exist for and no benefit shall inure to either Party. **(2)** In the event that the Conditions Precedent are not fulfilled, the USPS shall have no liability, which shall include no obligation to pay costs associated with any action taken by the Reseller prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, the USPS shall not be held liable for any damages including, without limitation, actual; special; indirect; incidental; punitive; consequential, or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or for costs incurred by either Party attributable to such non-approval, such as attorney's fees. **(3)** The prices listed in the Annexes to this Agreement are contingent upon any and all necessary approvals for corresponding USPS prices by the USPS Governors, the USPS Board of Governors, and/or the United States Postal Regulatory Commission.

24. Mailability, Exportability, and Importability. (1) All items mailed under this Agreement must conform to the mailability requirements of the USPS as detailed in the IMM 130 and USPS Publication 52; all applicable United States laws and regulations, including export control and customs laws and regulations; and all applicable importation restrictions of the destination countries. For each item mailed under this Agreement, the Reseller is responsible for notifying the Reseller's Customers of their responsibility for determining export and import requirements, obtaining any required licenses and permits, and ensuring that the recipient of the item is authorized by the laws of the United States as well as destination countries to receive the item, and for the exportation and importation status of the products mailed under this Agreement as detailed in IMM 112. **(2)** The Reseller is responsible for ensuring that no item mailed under this Agreement includes non-mailable dangerous goods. Internationally mailable dangerous goods include only certain biological substances, certain radioactive materials, and small lithium batteries packaged in the devices they are meant to operate, as described in greater detail in IMM 135. Hazardous materials listed within the Department of Transportation's regulations, including at 49 C.F.R. § 172.101, are known as dangerous goods that are prohibited from all international mail, as set forth in Exhibit 331 of USPS Publication 52. These substances and items are in addition to any prohibitions or restrictions on imports that may be found in the Individual Country Listings in the IMM. Penalties for knowingly mailing dangerous goods may include civil penalties pursuant to 39 U.S.C. § 3018 and criminal charges pursuant to 18 U.S.C. § 1716.

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

26. Fraud. The Reseller shall notify the Reseller's Customers that providing false information to access discounted rates or pay less than the applicable postage due through the use of a PC Postage provider or through eVS® may subject the Reseller's Customers to criminal and/or civil penalties, including fines and imprisonment.

27. Disclaimer. The Reseller is not an agent of the USPS and must act in its own capacity in securing business from the Reseller's Customer.

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

29. Notice. The Reseller acknowledges and understands that the USPS may review its product offerings during the term of this Agreement and that the USPS may modify existing product offerings during the term of this Agreement in a manner that could affect the Reseller's ability to achieve the volume commitment in Article 8.

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

31. USPS Sales. Nothing in this Agreement prohibits the USPS from soliciting sales from the Reseller's customers.

32. Intellectual Property, Co-Branding and Licensing. The Reseller is allowed the factual use of the following trademarks to identify the appropriate USPS service: "Priority Mail Express International®," "Priority Mail International®," and "First-Class Package International Service®," and the acronyms "PMEI™," "PMI™," and "FCPIS®". The Parties acknowledge that in the service of marketing the products under this Agreement, that such product marketing may be enhanced through the use of co-branding or the use of each Party's trademarks, logos or intellectual property. In such instances, the Parties acknowledge and agree that any use shall be subject to separate written agreements. The Parties acknowledge and agree that neither Party shall use the other Party's trademarks, logos or intellectual property other than to factually identify the trademark owner or the trademark owner's services until such time that a license for marketing use has been executed by the Parties. Reseller agrees to cooperate and execute any necessary filings required to perfect such license's effectiveness in the applicable jurisdictions, including, but not limited to the recording of such licenses.

33. Limitation of Liability. (1) Priority Mail Express International, Priority Mail International, and First-Class Package International Service shipments mailed under this Agreement are not insured against delay in delivery. **(2)** Unless otherwise specified by notice published in a future issue of the *Postal Bulletin* that a date-certain, postage-refund guarantee will be offered for this particular type of Global Customized Mail Agreement, Priority Mail Express International With Money-Back Guarantee Service Qualifying Mail mailed this agreement is not guaranteed against delay in delivery, and neither indemnity payments nor postage refunds will be made in the event of delay. **(3)** The USPS shall not be liable for any loss or expense, including but not limited to fines and penalties, for the Reseller's, the Reseller's Customers, or any other person's failure to comply with any export laws, rules, or regulations. **(4)** The USPS shall not be liable for any act or omission by any person not employed or contracted by the USPS including any act or omission of the Reseller, the Reseller's Customers, or recipient of an item tendered under this Agreement. **(5)** The USPS bears no responsibility for the refund of postage in connection with actions by Customs authorities. **(6)** The USPS is not liable for any of the Reseller's actions or the Reseller's Customers' actions and bears no liability in the event of termination with or without cause. **(7)** The USPS bears no responsibility for the refund of postage for Qualifying Mail in connection with actions taken by Customs authorities. **(8)** The USPS as well as its agents, suppliers, and vendors, shall not be liable for any damages of any type, including, but not limited to, any lost profits (both actual and anticipated) or other incidental or consequential damages arising out of any action by the USPS. The USPS is further not liable for any loss as a result of the use of, programming related to, or inability to use, the USPS or other vendors' or suppliers' software.

34. Warranties, Representations and Covenants The Reseller warrants, represents, and covenants to the Postal Service as follows: **(1)** that the execution and delivery by the Reseller and the performance by the Reseller of its obligations under this Agreement (a) are within the Reseller's power and authority; (b) have been duly authorized; and (c) do not and will not contravene (i) any law or regulation binding on or affecting the Reseller, (ii) any contractual restriction binding on the Reseller, (iii) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision

thereof, binding on the Reseller, or (iv) the organizational documents of the Reseller; **(2)** that the Reseller is not subject to, and is not related to an entity that is subject to, a temporary or other denial of export privileges by BIS and that the Reseller is not listed on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382, and that the Reseller is not in arrears for any amount due to the USPS; **(3)** that the Reseller is not aware of any pending investigations that would be subject to the notice obligation under Article 6, Paragraph 18; **(4)** that there has been no criminal, civil, or administration enforcement action in the past 5 years against the Reseller, any of its subsidiaries or affiliates, or any of its directors, officers, employees, or agents; **(5)** that each PC Postage Provider account, each permit imprint, and each eVS® account permit that the Reseller requests to use, or uses, for Qualifying Mail under this Agreement is owned by (a) the Reseller or (b) a subsidiary of the Reseller for which the Reseller is the majority owner; **(6)** that the individual signing the Agreement on behalf of the Reseller is a duly authorized officer of the Reseller with the power and authority to enter into the Agreement on behalf of Reseller; and **(7)** that the Reseller shall comply with all applicable federal, state and local laws, rules and regulations.

35. Sovereign Acts. The USPS and the Reseller acknowledge and agree that this Agreement is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any executive authority, agency, branch, or independent establishment of the United States Government. The USPS and the Reseller further acknowledge and agree that this Agreement in no way waives the USPS's authority to act in its sovereign capacity and that, pursuant to the sovereign acts doctrine, the USPS shall not be held liable for any acts performed in its sovereign capacity, or for any acts performed by any executive authority, branch, agency or independent establishment of the United States Government in their sovereign capacities that may directly or indirectly affect the terms of this Agreement. In the event that either Party is required by legislation enacted by the Congress of the United States or any orders or regulations that might be promulgated by any executive authority, branch, agency or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under this Agreement, either Party may give notice of termination pursuant to Article 28 of this Agreement, which termination shall be effective immediately or on the effective date of such requirement, whichever is later. The Parties agree that in the event that this Agreement is terminated, as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with this Agreement by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. Further, the USPS will evaluate the impact on the Agreement of amendments to statutes affecting its ability to perform under this Agreement and may give notice of termination pursuant to Article 28 of this Agreement based upon such amendments, which termination shall be effective immediately or as determined by the USPS. To the extent of termination on this basis, the USPS shall not be subject to any liability by reason of such termination.

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

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

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

ON BEHALF OF USPS:

Signature: Rob Ferraro

Name: Rob Ferraro

Title: Director of Specialized Sales

Date: 11/2/2022

ON BEHALF OF [redacted]:

Sign [redacted]

Na

Title:

Date: 11/2/2022

ANNEX 1	PMEI ANNEX – PRICES FOR PRIORITY MAIL EXPRESS INTERNATIONAL QUALIFYING MAIL
ANNEX 2	PMI ANNEX – PRICES FOR PRIORITY MAIL INTERNATIONAL QUALIFYING MAIL
ANNEX 3	FCPIS ANNEX – PRICES FOR FIRST-CLASS PACKAGE INTERNATIONAL SERVICE QUALIFYING MAIL

ANNEX 1 PMEI ANNEX – PRICES FOR PRIORITY MAIL EXPRESS INTERNATIONAL QUALIFYING MAIL

Postage prices for Priority Mail Express International Qualifying Mail items under this Agreement are as follows.

[redacted]

[redacted]

ANNEX 2 PMI ANNEX –
PRICES FOR PRIORITY MAIL INTERNATIONAL QUALIFYING MAIL

Postage prices for Priority Mail Qualifying Mail items under this Agreement are as follows.

[redacted]

[redacted]

ANNEX 3 FCPIS ANNEX –
PRICES FOR FIRST-CLASS PACKAGE INTERNATIONAL SERVICE QUALIFYING MAIL

Postage prices for First-Class Package International Service Qualifying Mail items under this Agreement are as follows.

[redacted]

[redacted]

PART B—COMPETITIVE PRODUCTS
2000 COMPETITIVE PRODUCT LIST

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

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

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- Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11

Statement of Supporting Justification

I, Frank Cebello, Manager, International Products & Major Accounts, am sponsoring this request that the Postal Regulatory Commission (Commission) add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11 to the list of competitive products. This statement supports the United States Postal Service's (Postal Service's) request by providing the information required by each applicable subsection of 39 C.F.R. § 3040.132. I attest to the accuracy of the information contained herein.

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

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

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

Not applicable. The Postal Service is proposing that this Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11 product be added to the competitive products list.

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

The service to be provided under the contract will cover its attributable costs and make a positive contribution to competitive products' ability collectively to meet the required minimum contribution requirement under Section 3633(a)(3). The contract will increase contribution toward competitive products' currently required minimum contribution of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

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

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

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with PMEI, PMI, and FCPIS, in general, the Postal Service may not decrease quality or output without

risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.

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

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

See part (d) above. Expedited shipping, similar to PMEI, PMI, and FCPIS, is widely available from well-known and successful private firms at both published and contract prices.

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

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

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

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

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

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

Certification of Prices for
Priority Mail Express International, Priority Mail International &
First-Class Package International Service Contract 11

I, Karen Meehan, Manager, Director, International Pricing and Financial Reporting, United States Postal Service, am familiar with the prices and terms for Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11. The prices and terms contained in this contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, adopted February 7, 2019 (Governors' Decision No. 19-1).

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

Karen B. Meehan

Digitally signed by Karen B. Meehan
Date: 2022.11.07 15:24:10 -05'00'

Karen Meehan

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

In accordance with 39 C.F.R. § 3011, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the unredacted Governors' Decision, the unredacted Priority Mail Express International, Priority Mail International & First-Class Package International Service contract, and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3035.105. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3011.201(b), as enumerated below.

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

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

The materials designed as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).[1] Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support the Postal Service's determination that these materials are exempt from public disclosure and grant the Postal Service's application for their non-public treatment.

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

[1] In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g) (3) (A).

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

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

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

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

[3] Section 3011.201(b)(2) further states the following:
(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.
(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.
(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

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

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and customer-identifying information should be withheld from public disclosure. Therefore, in compliance with 39 C.F.R. § 3011.200(b), rather than identifying the customer, the Postal Service gives notice that it has already informed the customer,[4] and the PC Postage Provider (if applicable),[5] that have a proprietary interest in the materials for the contract that is the subject of this docket of the nature and scope of this filing and their ability to address their confidentiality concerns directly with the Commission.

The Postal Service employee responsible for providing notice to the customer with proprietary interest in the materials filed in this docket is Ms. Amy E. Douvlos, Marketing Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 5427, Washington, DC 20260-4017, whose email address is Amy.E.Douvlos@usps.gov, and whose telephone number is 202-268-3777.

As for foreign postal operators, the Postal Service recently provided notice to all foreign postal operators within the Universal Postal Union network through an International Bureau Circular issued on November 8, 2021, that the Postal Service will be regularly submitting certain business information to the Commission. Some UPU-

[4] The Postal Service informed the customer for the contract prior to filing a notice that the Postal Service would be seeking non-public treatment of the redacted portions of the contract. The Postal Service also informed the customer for the contract that it could file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3011.204.

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

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

http://pls.upu.int/pls/ap/addr_public.display_addr?p_language=AN.[7]

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

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

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[6] In addition, in the event of a preliminary determination of non-public status under 39 C.F.R. § 3011.103, or a request for access to non-public materials under 39 C.F.R. § 3011.301, or a motion for disclosure of non-public materials under 39 C.F.R. § 3011.400, or a request for disclosure of materials for which non-public treatment has expired under 39 C.F.R. § 3011.401, the Postal Service notes, on Canada Post's behalf that differences in the official observation of national holidays might adversely and unduly affect Canada Post's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, Canada Post has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect Canada Post's interests. A listing of Canada's official holidays can be found at: https://www.canadapostpostescanada.ca/cpc/en/support/kb/sending/general-information/find-out-operating-hours-on-holidays.

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

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer, such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). The additional redactions to the agreement protect information with specific impact on the customer, including the minimum commitment to the Postal Service and the timing and manner in which the Postal Service might change prices under the contract. In addition, certain terms and the prices in the annexes of the agreement are redacted.

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

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

To the extent that the Postal Service files data in future filings that will show the actual revenue and cost coverage of the customer's completed contract, the Postal

Service will redact in its public filing all of the values included that are commercially sensitive information and will also protect any information that identifies the customer from disclosure.

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

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm. The information is commercial sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

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

The financial workpapers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, business information of foreign postal operators, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors

would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

Information in the financial spreadsheets and any cost, volume and revenue data concerning this agreement filed after the expiration of this contract also consists of sensitive commercial information related to agreements between the Postal Service and interested third parties. Such information would be extremely valuable to competitors of both the Postal Service and third parties. Using detailed information about such agreements, competitors would be able to better understand the counterparty's underlying costs, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the counterparty could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service. And competitors of foreign postal operators could use the information in the financial spreadsheets to understand their nonpublished pricing to better compete against them.

Information in the financial models may also include sensitive commercial information related to agreements between the Postal Service and PC Postage Providers. Such information would be extremely valuable to competitors of both the Postal Service and the PC Postage Providers. Using detailed information about such an

agreement, competitors would be able to better understand the costs of the postage programs used, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the PC Postage Providers could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service.

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

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

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and offer the customer lower rates or other incentives, taking away the business anticipated by the Postal Service.

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

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

Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

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

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

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

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

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices

identical to Customer A's, Customer B uses the publicly available information to insist that unless the Postal Service offers Customer B even lower prices than Customer A's, Customer B will not use the Postal Service but will give its business to a competitor of the Postal Service.

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

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

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

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

Hypothetical: A firm competing with a foreign postal operator obtains a copy of the unredacted version of the contract and financial workpapers from the Commission's website. The firm uses the information to assess the business information concerning the foreign postal operator in the contract and financial workpapers, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other parties in their negotiations with the Postal Service concerning financial arrangements that they may make with the Postal Service in the future.

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

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

Identified harm: Public disclosure of information in any contract involving postage payment through a PC Postage Provider, and of related information in financial

workpapers for that contract, would be used by the competitors of the PC Postage Provider to the Postal Service and/or the PC Postage Provider's detriment.

Hypothetical: A firm competing with the customer's PC Postage Provider (if applicable) obtains a copy of the unredacted version of a contract involving postage payment through a PC Postage Provider, and financial workpapers, from the Commission's website. The firm uses the information to assess the PC Postage Provider's revenue sources and growth opportunities, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other PC Postage Providers in their negotiations with the Postal Service concerning financial arrangements that PC Postage Providers make with the Postal Service in the future.

(6) The extent of the protection from public disclosure alleged to be necessary.

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

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years or decades, the

Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(b-c).

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

None.

Conclusion

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