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

COMPETITIVE PRODUCT PRICES GLOBAL EXPEDITED PACKAGE SERVICES 1 (CP2008-5) NEGOTIATED SERVICES AGREEMENT	Docket No. CP2009-51

NOTICE OF UNITED STATES POSTAL SERVICE FILING OF FUNCTIONALLY EQUIVALENT GLOBAL EXPEDITED PACKAGE SERVICES 1 NEGOTIATED SERVICE AGREEMENT
(July 16, 2009)

In accordance with 39 C.F.R. § 3015.5 and Order No. 86,[1] the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract. Prices and classifications not of general applicability for GEPS 1 contracts were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts, issued May 6, 2008 (Governors' Decision No. 08-7).[2] The Postal Regulatory Commission (Commission) has determined that individual GEPS contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. § 3633 and if they are functionally equivalent to the previously submitted GEPS contracts.[3] The contract and supporting documents establishing compliance with 39

[1] PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, July 23, 2008.
[2] A redacted copy of the Governors' Decision was filed on July 23, 2008. *See* United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, Docket No. CP2008-5, July 23, 2008. An unredacted copy of this Governors' Decision was filed earlier under seal. Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, Docket No. CP2008-4, May 20, 2008.
[3] PRC Order No. 86, at 7.

U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission, although a redacted copy of the contract and certified statement required by 39 C.F.R. § 3015.5(c) (2) are filed as Attachments 1 and 2, respectively.[4]

The first GEPS contract was filed on May 20, 2008. *See* Notice of United States Postal Service of Filing of a Global Expedited Package Services Contract, Docket No. CP2008-5, May 20, 2008. Subsequently, over 15 additional GEPS contracts have been reviewed by the Commission with minor differences not affecting the similarity of the cost and market characteristics. This filing is on behalf of the same customer as in Docket CP2008-19. The contract reviewed in that docket will come to the end of its one-year term on September 30, 2009. The Postal Service demonstrates below that this agreement is functionally equivalent to the previously submitted GEPS agreements. Accordingly, this contract should be included within the GEPS 1 product.[5]

Identification of the Additional GEPS 1 Contract

The Postal Service believes that this additional GEPS contract fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 08-7, but understands that the Commission considers this language illustrative until the MCS is completed.[6] This agreement is set to expire one year after

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[4] Because the Commission's recently established rules on confidentiality will not take effect until July 29, 2009, the Postal Service submits this justification for consideration consistent with prior practice. See PRC Order No. 255, Final Rule Establishing Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009, at 20 (ordering the rules to take effect 30 days after publication in the Federal Register) and 74 Fed. Reg. 30938.

[5] In Docket No. CP2009-50, the Postal Service requested that the agreement filed in that docket be designated as the new baseline agreement for functional equivalence comparison purposes. The agreement in this docket is in all but two respects the same. The exceptions are the liquidated damages and the tender provisions. In Docket No. CP2009-50, the Postal Service designated a single International Service Center (ISC) location for tending the mail. In this agreement, the Postal Service designated several locations within a 200-mile radius of a particular ISC. The maximum amounts the mailers agreed to pay in liquidated damages are different, but both mailers are subject to the same general provision.

[6] PRC Order No. 86, at 6.

the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained, culminating with a favorable conclusion on review by the Commission.

Confidentiality

The Postal Service maintains that the redacted portions of the contract, related financial information, names of GEPS 1 customers, and certain portions of the certified statement required by 39 C.F.R. § 3015.5(c)(2) should remain confidential. The redacted portions of the contract contain pricing, customer-identifying information and other mailer-specific information. Related financial data and portions of the certified statement contain cost and pricing information showing how prices are developed. Prices and other redacted contract terms relating to Postal Service requirements are highly confidential in the business world, and the Postal Service protects them in accordance with industry standards. The ability of the Postal Service to negotiate individual contracts would be severely compromised if prices and other information pertaining to these types of agreements were publicly disclosed. Furthermore, public disclosure would compromise the ability of respective shippers to negotiate favorable shipping services contracts in the future. Customer-identifying information should remain confidential due to the substantial likelihood that the Postal Service's competitors would use such information to target their efforts and undercut the Postal Service's prices. This pricing information is clearly of a commercial nature, and the Postal Service is aware of no competitor or private company of comparable size and scope that releases such information to the public.

Functional Equivalency of GEPS 1 Contracts

The GEPS 1 contract under consideration is functionally equivalent to the GEPS 1 contracts filed previously, in that they share similar cost and market characteristics, and they therefore should be classified as a single product.[7] With their earlier GEPS Decision, the Governors established a pricing formula and classification that ensure each contract meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each contract conform to a common description. In addition, the GEPS language proposed for the MCS requires that each GEPS 1 contract must cover its attributable costs. The contract at issue here meets the Governors' criteria and thus exhibits similar cost and market characteristics to the previous GEPS 1 contracts.

In a concrete sense as well, this GEPS 1 contract shares the same cost and market characteristics as the previous GEPS 1 contracts. First, the customers for GEPS 1 contracts are smaller or medium-sized businesses which mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. In fact, this is a business that currently mails under a PRC-reviewed GEPS agreement. The term of GEPS contracts is the same – basically a one-year period.[8] The contracts also require payment through permit imprint. Prices offered under the contracts may differ depending on the volume or postage commitments made by the customers. Prices also may differ depending upon when the agreement is signed, due

[7] In Order No. 227, the Commission concluded, that the identified differences between the agreement presented in Docket No. CP2009-35 and the baseline agreement presented in Docket No. CP2008-5 did "not appear to be substantial." PRC Order No. 227, Order Concerning Additional Global Expedited Package Services 1 Negotiated Service Agreement, June 22, 2009, at 7. The only additional difference between the agreement currently presented and the one presented in Docket No. CP2009-35 is the tender provision, which is described further below.

[8] The language of the definition of the "effective date" in Article 2 is somewhat different than the first GEPS agreement, but it has no substantial impact on the term of the agreement, the product cost or its market characteristics.

to the incorporation of updated costing information. These differences, however, do not alter the contracts' functional equivalency. Because the agreements incorporate the same cost attributes and methodology, the relevant characteristics are similar, if not the same, for this GEPS 1 contract and the previously filed contracts.

Other provisions reflect relatively minor differences between the mailers, including a link between completion of the regulatory review process and expiration of a previous or existing agreement, where applicable.[9] In addition, language was added to clarify this agreement's purpose, in that other Postal Service products and services are available to the customer, but under the same regulatory standards as applied to mailers in general. Clarification was added to this agreement to exclude certain flat-rate products from the mail qualifying for discounts. Also, the proposed agreement contains a simpler notice requirement, changing the mailer's advance notification of mailing obligation. In the original GEPS contract, the mailer was required to provide at least a one week advance notice of mailing.

This agreement, like others previously approved as functionally equivalent to the GEPS 1 agreement, requires the mailer to provide notice of intent to mail and to conform to acceptance times and scheduling procedures at the acceptance site. The modified language allows individual mailers and acceptance sites to work together to accommodate their respective scheduling needs. The tender provision of Article 7 for this agreement specifies the locations proximate to the ISC at which the mail may be

[9] Some of the agreements generally provide that if all applicable reviews have not been completed at the time an older agreement expires, then the mailer must pay published prices until some alternative becomes available. In this case, the Postal Service is seeking approvals in advance of the termination date of the current agreement to maximize the potential for a smooth transition for the customer.

presented. This is a departure from the prior language which left the designation of those locations to be determined by the Postal Service.

The liquidated damages provision also differs from some but not all of the other previously approved agreements. The differences between the agreements result from negotiations with individual mailers and a general balancing of case-specific factors, such as the volume or postage commitment made by the customer, the customer's prior mailing history, and the potential for future business from the customer. The Postal Service does not view any such differences as affecting the fundamental nature or structure of the contracts.

To address the potential termination of the agreement prior to completion of its full anticipated one-year term, a paragraph was added to the termination provision. This clarifies how the mailer's volume or revenue commitment would be calculated under those circumstances.[10] This addition does not change the product offered to this mailer from that previously approved and provided to other mailers as functionally equivalent to GEPS 1.

Finally, there are differences between the terms of this agreement and the original GEPS 1 agreement that reflect changes not related to the mailers or negotiations of either party's obligations under the agreement. These are additions of clarifying language, changes responding to obligations owed by one or both parties to other regulatory bodies, or updates to references provided in prior agreements.[11]

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[10] In this particular case, the mailer satisfied its commitment prior to the anticipated term of the agreement and seeks to begin mailing under the terms of a new agreement if all appropriate approvals are secured.

[11] Specifically, in Article 2, the reference to usps.com has been updated to refer to pe.usps.gov; Article 6 refers now to "Training" rather than "On-Site Training;" the titles in paragraphs 7 and 8 of Article 7 now include the words "and Export," and the text of those paragraphs now refers to the U.S. Census Bureau

As demonstrated, the cost and market characteristics of this agreement are substantially similar to those of previously filed GEPS contracts. Incidental differences to accommodate the respective mailers do nothing to detract from the conclusion that these agreements are "functionally equivalent in all pertinent respects."[12]

Conclusion

For the reasons discussed and as demonstrated by the financial data filed under seal, the Postal Service has established that this new GEPS 1 contract is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to other GEPS 1 contracts. Accordingly, this contract should be added to the existing GEPS 1 product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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as an interested regulatory body; verbiage is now included in Article 18 to express the value of insurance in paragraph 2, while "under the terms of this agreement" has been added to paragraph 3 to modify the relevant EMI and PMI items; email addresses are now identified in Article 27 as sufficient for use to provide official notices; and in Annex 1, a series of numbers now appears below the table to document it more specifically.

[12] PRC Order No. 85, at 8.

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

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

INTRODUCTION

WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the USPS will provide certain products and/or services to the Mailer pursuant to the terms and conditions contained herein;

WHEREAS, the Parties acknowledge and understand that the commencement of performance under this Agreement is subject to the approval of various entities with oversight responsibilities, which may include but not be limited to the USPS management's executive committee, the USPS Governors, the USPS Pricing Steering Committee, and/or the Postal Regulatory Commission. Accordingly, the Mailer acknowledges and understands that the ability of the USPS to perform under this Agreement may not occur;

WHEREAS, in light of the aforementioned acknowledgements, the Parties desire to be bound by the terms of this Agreement as well as the terms of Exhibit A of this Agreement entitled: ADDITIONAL AND SUPERSEDING TERMS AND CONDITIONS TO THIS AGREEMENT INCORPORATED BY REFERENCE;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

ARTICLE 1. PURPOSE OF THE AGREEMENT

This Agreement shall govern the use the Mailer may make of customized mail service for Express Mail International, with the exception of the Express Mail International Flat-Rate Envelope, and Priority Mail International, with the exception of the Priority Mail International Flat-Rate Envelope, the Priority Mail International Small Flat-Rate Box, the Priority Mail International Regular/Medium Flat-Rate Box, and the Priority Mail International Large Flat-Rate Box. The use of all other USPS products and services shall be governed by the appropriate USPS regulations.

ARTICLE 2. DEFINITIONS

As used in this Agreement:

1. "IMM" means the *International Mail Manual* as found on the USPS website pe.usps.gov on the date of mailing.
2. "DMM" means the *Domestic Mail Manual* as found on the USPS website pe.usps.gov on the date of mailing.
3. "Qualifying Mail" means mail that meets the requirements set forth in Article 3 of this Agreement.
4. "Non-Qualifying Mail" means mail that does not meet the requirements set forth in Article 3 of this Agreement.
5. "Effective Date" means the first date on which the USPS is willing to accept Qualifying Mail.

ARTICLE 3. QUALIFYING MAIL

Only mail that meets the requirements set forth in IMM 220 for Express Mail International and in IMM 230 for Priority Mail International shall be considered as Qualifying Mail under this Agreement except as those requirements conflict with the applicable specific preparation requirements set forth in Article 5.

ARTICLE 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.

ARTICLE 5. SPECIFIC PREPARATION REQUIREMENTS

1. Mailings of Qualifying Mail must be kept separate from any other type of mail the Mailer tenders.
2. International mailings must be separated from domestic mailings.
3. The mailing must be accompanied by a postage manifest.
4. For method of payment, the Mailer shall use Permit Imprints and IMM 221.21 shall not be applicable.

ARTICLE 6. OBLIGATIONS OF THE USPS

The USPS hereby agrees:

1. Supplies. To furnish the Mailer, or its agent(s), with the postal equipment and postal supplies required for the use of Qualifying Mail.
2. Training. To provide the Mailer, or its agent(s), with any training necessary to prepare mail shipments in conformity with the requirements for Qualifying Mail.
3. Technical Assistance. To provide the Mailer with technical assistance necessary to prepare the necessary information linkages, electronic data files, and data exchanges.

4. Transportation. To arrange with carriers to transport Qualifying Mail to international destinations where the proper authority will effect delivery.

5. Reports. To provide the Mailer with access to tracking reports, if applicable to the service, and delivery performance reports on a regular basis.

6. Customs Notification. To send, at the Mailer's request, an electronic data file for Express Mail International to Japan and Singapore, and to send, at the Mailer's request, an electronic data file for Priority Mail International to Singapore, that will allow the Customs officials to review the contents of each shipment before the packages arrive.

7. Undeliverable Items. To return:

   a. Express Mail International items refused by an addressee and undeliverable Express Mail International items to the Mailer via Express Mail [redacted] provided that the return rate is no more than [redacted] of the total volume.

   b. Priority Mail International items refused by an addressee and undeliverable Priority Mail International items to the Mailer according to the provisions of IMM 771.

ARTICLE 7. OBLIGATIONS OF THE MAILER

The Mailer hereby agrees:

1. Information Link. To establish the necessary linkages with the USPS so that:

   a. The Mailer and the USPS can exchange data transmissions concerning the Mailer's packages;

   b. The USPS can, at the Mailer's request, extract information by scanning the Mailer-provided barcode on each package.

2. Data Transmission. To exchange electronic information with the USPS according to the instructions the USPS provides.

3. Advance Notification. To provide:

   a. The Manager, Customized Mail, USPS, via e-mail to icmusps@usps.gov, with notification of new permit numbers used for Qualifying Mail one week in advance of using the new permit numbers. The message should include the permit number, the city, state, and ZIP Code where the permit is held, the name of the permit owner, and the requested effective date.

   b. The appropriate USPS acceptance site(s) with notice of intent to mail and to adhere to the acceptance times and scheduling procedures in place at the appropriate acceptance site(s).

4. Postage. To pay postage for Qualifying Mail according to the price charts in Annex 1. The prices listed in Annex 1 are contingent upon any and all necessary approvals for corresponding USPS prices by the USPS Governors, the USPS Board of Governors, the USPS Pricing Steering Committee, and/or the United States Postal Regulatory Commission.

5. Payment Method. To pay postage to the USPS, either directly or through a mailing agent, for all Qualifying Mail by use of a permit imprint subject to the conditions stated in DMM 604.5, with the exception that DMM 604.5.1.1 shall not apply, and IMM 152.3.

6. Tender. To present the mailings to the USPS at a Business Mail Entry Unit within the area served by one of the following three digit ZIP Codes: 005, 010-013, 015-017, 028-029, 052, 060-098, 100-127, 138-139, 170-171, 173-176, 178-199, 210, 212, 216, 219, each of these ZIP Codes being within two hundred (200) miles of the USPS International Service Center in New York City.

7. Customs and Export Documentation. To provide any necessary documentation, including data provided in electronic format, in connection with each mailing, in the form and at the time specified by the USPS, Customs & Border Protection, Transportation Security Administration, the U.S. Census Bureau, a destination country foreign government, or other authority. The Mailer further understands that the failure to provide any such required documentation may result in refusal at acceptance, delay in processing, involuntary seizure by customs authorities, and/or return of mail to the sender.

8. Customs and Export Requirements. To comply with any regulation or order promulgated by the USPS, Customs & Border Protection, Transportation Security Administration, the U.S. Census Bureau, a destination country foreign government, or other governmental unit with jurisdiction over mail, to facilitate the Customs processing of its mail, according to any requirements specified by those authorities.

9. Software. To apply address labels and Customs declarations to Qualifying Mail:

   a. Using USPS-provided Global Shipping Software (GSS) or a functional equivalent of that software;

   b. In the event that the Mailer decides to use functionally equivalent software not provided by the USPS, the Mailer must seek the approval of the USPS prior to deploying such software. Such approval shall be in the sole and unreviewable discretion of the USPS.

ARTICLE 8. MINIMUM COMMITMENT

1. The Mailer is required to meet an annualized minimum commitment of [redacted] Qualifying Mail. [redacted]

2. The Mailer acknowledges that preparing and gaining approval for the terms set forth in this Agreement requires substantial resources on the part of the USPS and that these resources will not be recouped in the event the Mailer does not meet its minimum commitment as set forth above in Paragraph 1 of this Article. Accordingly, the Mailer agrees to pay to the USPS the maximum sum of [redacted]

as liquidated damages if such minimum commitment is not met. Such liquidated damages shall be payable within thirty (30) days of receipt of a written demand by the USPS. Any such demand shall not exceed the total discount the Mailer received under this Agreement.

ARTICLE 9. POSTAGE UPDATES

1. In the event that the USPS incurs an increase in costs [redacted] associated with providing this service, the USPS shall notify the Mailer and modify the prices established under this Agreement. [redacted]
2. The prices in Annex 1 are related to the non-discounted published postage for Express Mail International and Priority Mail International. In the event that the non-discounted published postage for these services should change, the prices in Annex 1 will also change. Such increases to the prices in Annex 1 shall be calculated using the same assumptions and constraints used to determine the prices in the existing Annex 1.
3. The USPS will give the mailer thirty (30) days notice of changes to the prices in Annex 1.
4. Any revision of prices in Annex 1 shall not be retroactive.
5. No price shall increase beyond the non-discounted published price for the affected service.

ARTICLE 10. 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.

ARTICLE 11. CUSTOMS DUTIES AND TAXES

Customs duties and taxes for packages mailed under this Agreement are the responsibility of the addressee.

ARTICLE 12. TERM OF THE AGREEMENT

1. The USPS will notify the Mailer 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. The Agreement will remain in effect for one calendar year from the Effective Date, unless terminated sooner pursuant to Article 13.
2. The USPS shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process.

ARTICLE 13. 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. In the event that this Agreement is terminated for any reason before the termination date provided for in Article 12, the minimum commitment in Article 8 shall be calculated on a *pro rata* basis to reflect the actual duration of the Agreement.

ARTICLE 14. 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 9, 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 USPS Pricing Steering Committee, the Postal Regulatory Commission, the Antitrust Division of the Department of Justice, the Federal Trade Commission and/or any other governmental body with oversight responsibility for the USPS.
3. If such approvals are required, the modifications will not become effective until such time as all necessary approvals are obtained.
4. The USPS will notify the Mailer of the date the modification becomes effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the USPS.
5. The USPS shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process.

ARTICLE 15. ENTIRE AGREEMENT

This Agreement, including all Exhibits and Annexes thereto, shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.

ARTICLE 16. FORCE MAJEURE

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

ARTICLE 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.

Article 18. LIMITATION OF LIABILITY: INSURANCE

1. Except as noted in Paragraphs 2 and 3 of this Article, the liability of the USPS under this Agreement shall be limited to the refund of postage for Qualifying Mail that is lost or destroyed in bulk after being tendered to the USPS and prior to being received by the delivery authority outside of the United States. The USPS shall not be liable for any actual or consequential damages suffered by the Mailer as a result of late delivery or non-delivery of Qualifying Mail. Qualifying Mail mailed under this Agreement is not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

2. Express Mail International items that are tendered to the USPS under the terms of this Agreement include document reconstruction insurance for non-negotiable documents up to one hundred dollars ($100.00), and merchandise insurance up to one hundred dollars ($100.00), at no additional charge. Insurance is provided against loss, damage, or rifling. Optional additional merchandise insurance over one hundred dollars ($100.00) may be purchased for an additional fee, subject to the maximum indemnity available to the country of destination. Express Mail International items that are tendered to the USPS under the terms of this Agreement are not insured against delay in delivery. Indemnity is payable in accordance with IMM 221.3 and IMM 935; and DMM 609 and DMM 503.

3. Except as noted in Paragraph 4 of this Article, Priority Mail International items that are tendered to the USPS under the terms of this Agreement include indemnity coverage against loss, rifling, or damage at no additional charge. Indemnity is limited to the lesser of the actual value of the contents or the maximum indemnity based on the weight of the item. Priority Mail International items that are tendered to the USPS under the terms of this Agreement are not insured against delay in delivery. Indemnity will be paid in accordance with IMM 230 and IMM 933.

4. For a separate fee, Priority Mail International parcels may be insured against loss, rifling, or damage. Indemnity is based on the actual value of the article at the time of mailing and is limited to the amount of insurance purchased by the fee paid. Insured mail is not available to all countries and is subject to the maximum indemnity limits of the destination country. If insured mail service is purchased, it replaces the ordinary parcel indemnity specified in Paragraph 3. Indemnity will be paid in accordance with IMM 320, IMM 932, and IMM 933.

5. The USPS bears no responsibility for the refund of postage in connection with actions taken by Customs authorities.

ARTICLE 19. INDEMNITY

The Mailer shall indemnify and save harmless the USPS and its officers, agents, and employees from any and all claims, losses, costs, damages, or expenses ("Claims") growing out of or connected in any other way with the discharge by the Mailer or its agents(s) of any undertaking contained in this Agreement, except for Claims arising out of the negligence or willful misconduct of the USPS or of its officers, agents, or employees. Notwithstanding its obligation to indemnify the USPS, the Mailer shall not be liable for any consequential damages suffered by the USPS.

ARTICLE 20. GOVERNING LAW

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

ARTICLE 21. SUSPENSIONS OF MAIL SERVICE

In the event that a suspension of either Express Mail International or Priority Mail International service from the United States to a country would prevent delivery of Qualifying Mail to addressees in that country, the Mailer shall not tender Express Mail International or Priority Mail International, as appropriate, to the USPS until service is restored. Under these circumstances, the Mailer shall have the option to make alternative arrangements for the delivery of Qualifying Mail without penalty. The annualized minimum [redacted] commitment for Qualifying Mail set forth in Article 8 shall be recalculated *pro rata* to reflect the reduction in available service time.

ARTICLE 22. ASSIGNMENT

The rights of each Party under this Agreement are personal to that Party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other Party.

ARTICLE 23. NUMBER AND GENDER

The use of any particular gender or the plural or singular number in this Agreement is intended to include the other gender or number as the text may require.

ARTICLE 24. 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.

ARTICLE 25. PARAGRAPH HEADINGS

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.

ARTICLE 26. MAILABILITY AND IMPORTABILITY

All items mailed under this Agreement must conform to the mailability requirements of the USPS as detailed in the IMM 130 and conform to the importation restrictions of the destination countries. The Mailer is solely responsible for the importation status of its products as detailed in IMM 112.

ARTICLE 27. NOTICES

All notices or demands required by this Agreement shall be sufficient if delivered personally or mailed, by Express Mail, to the following individuals:

To the USPS:

Managing Director and Senior Vice President, Global Business
United States Postal Service
475 L'Enfant Plaza SW Room 4016
Washington, DC 20260-4016

To the Mailer:

[redacted]

or via e-mail:

To the United States Postal Service at: icmusps@usps.gov

To the Mailer at: [redacted]

ARTICLE 28. 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.

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 THE UNITED STATES POSTAL SERVICE:

Signature: Frank A. Cebello

Name: Frank A. Cebello

Title: Executive Director, Global Business Management

Date: 7/1/09

ON BEHALF OF [redacted]

Signature: [redacted]

Name: [redacted]

Title: [redacted]

Date: 6/18/2009

Exhibit A ADDITIONAL AND SUPERSEDING TERMS AND CONDITIONS

Annex 1 PRICES FOR EXPRESS MAIL INTERNATIONAL AND PRIORITY MAIL INTERNATIONAL

EXHIBIT A
ADDITIONAL AND SUPERSEDING TERMS AND CONDITIONS

The Parties acknowledge that the following terms and conditions shall apply to this Agreement. Any terms contained in this Exhibit A shall be controlling and supersede any terms found within the Agreement.

1. **ACKNOWLEDGEMENT.** The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals hereinafter ("Conditions Precedent") from one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include, but are not limited to: approvals or, if applicable, non-objection, from USPS management's executive committee, the Board of Governors of the USPS, the Governors of the USPS, the USPS Pricing Steering Committee, the Postal Regulatory Commission, the Antitrust Division of the Department of Justice, the Federal Trade 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 Precedents are fulfilled that are necessary to allow the Postal Service to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS and no benefit shall inure to either Party.

2. **LIMITATION ON LIABILITY AND COSTS.** In the event that the Conditions Precedent are not fulfilled, the USPS shall have no liability, which shall include no obligation to pay costs associated with any action taken by the Mailer prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, the USPS shall not be held liable for any damages including, without limitation, actual; special; indirect; incidental; punitive; consequential; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or for costs incurred by either Party attributable to such non-approval such as attorney's fees.

3. **PRICES.** The prices listed in Annex 1 are contingent upon any and all necessary approvals for corresponding USPS prices by the USPS Governors, the USPS Board of Governors, the USPS Pricing Steering Committee, and/or the United States Postal Regulatory Commission.

Initials United States Postal Service [redacted]

Initials [redacted]

ANNEX 1
EXPRESS MAIL INTERNATIONAL
THE MAILER APPLIES LABELS USING USPS-SUPPLIED SOFTWARE OR FUNCTIONALLY EQUIVALENT SOFTWARE

Weight Not Over (LBS)	[redacted]
0.5	
1	
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M 5 / 6 09

ANNEX 1
EXPRESS MAIL INTERNATIONAL
THE MAILER APPLIES LABELS USING USPS-SUPPLIED SOFTWARE OR FUNCTIONALLY EQUIVALENT SOFTWARE

Weight Not Over (LBS)	[redacted]
36	
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M 5 / 6 09

ANNEX 1
PRIORITY MAIL INTERNATIONAL
THE MAILER APPLIES LABELS USING USPS-SUPPLIED SOFTWARE OR FUNCTIONALLY EQUIVALENT SOFTWARE

Weight Not Over (LBS)	[redacted]
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M 5 / 6 09

ANNEX 1
PRIORITY MAIL INTERNATIONAL
THE MAILER APPLIES LABELS USING USPS-SUPPLIED SOFTWARE OR FUNCTIONALLY EQUIVALENT SOFTWARE

Weight Not Over (LBS)	[redacted]
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Certification of Prices for the Global Expedited Package Services Contract with [redacted]

I, W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Global Expedited Package Services Contract with [redacted]. The prices 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 Global Expedited Package Services Contracts, issued May 6, 2008 (Governors' Decision No. 08-7), which established prices by means of price floor and ceiling formulas.

I hereby certify that the numerical [redacted] values underlying the prices in the [redacted] Contract are the appropriate [redacted] to use in the formulas and represent the best available information. The prices, resulting in a [redacted] coverage of [redacted] percent for the applicable prices, exclusive of pickup on demand and international ancillary services fees, are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the Agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2008, all international competitive mail accounted for approximately [redacted] percent of the total contribution by all competitive products. Contribution from Global Expedited Package Services Contracts should be much smaller. The Agreement with [redacted] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

W. Ashley Lyons