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

COMPETITIVE PRODUCT PRICES GLOBAL EXPEDITED PACKAGE SERVICES 2 (CP2009-50) NEGOTIATED SERVICES AGREEMENT	Docket No. CP2010-37

NOTICE OF UNITED STATES POSTAL SERVICE FILING OF FUNCTIONALLY EQUIVALENT GLOBAL EXPEDITED PACKAGE SERVICES 2 NEGOTIATED SERVICE AGREEMENT AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL
(April 7, 2010)

In accordance with 39 C.F.R. § 3015.5 and Order No. 290,[1] the United States Postal Service (Postal Service) hereby gives notice that the Postal Service is entering into an additional Global Expedited Package Services 2 (GEPS 2) contract. Prices and classifications not of general applicability for GEPS 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) determined that individual GEPS contracts may be included as part of the GEPS 2 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

[1] PRC Order No. 290, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Products List, Docket No. CP2009-50, August 28, 2009.
[2] A redacted copy of the Governors' Decision was filed on July 23, 2008, and is filed as Attachment 3 to this Notice. 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. That notice may be accessed at the following link: http://www.prc.gov/Docs/59/59951/Not_Govs_Decn_GEPS_w_att.pdf.
[3] *See* PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7. Although Order No. 86 explicitly applied to the GEPS 1 agreements, the specific agreement

contract and supporting documents establishing compliance with 39 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.

The first GEPS contract was filed on May 20, 2008.[4] Subsequently, the Commission reviewed many additional GEPS contracts with minor differences not affecting the similarity of the cost and market characteristics. 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 2 product.

Identification of the Additional GEPS 2 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.[5] This agreement is set to expire one year after 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. By its terms, the agreement will expire one year after its effective date unless termination of the agreement occurs earlier.

Application for Non-public Treatment

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that served as the baseline GEPS 1 agreement expired. Thus, the Commission created the GEPS 2 product, which has as its baseline agreement the contract reviewed in Docket No. CP2009-50, which was found to be functionally equivalent to the GEPS 1 product. PRC Order No. 290, at 1 and 3. Therefore, the Postal Service understands that Order No. 86 applies to the GEPS 2 product and any subsequent GEPS products that the Commission determines to be functionally equivalent to it.

[4] Notice of United States Postal Service of Filing A Global Expedited Package Services Contract, Docket No. CP2008-5, May 20, 2008.

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

The Postal Service maintains that the redacted portions of the contract, related financial information, and identifying information related to GEPS 2 customers should remain confidential. Attachment 4 to this Notice is the Postal Service's application for non-public treatment of materials filed under seal in this docket. A full discussion of the required elements of the application appears in Attachment 4.

Functional Equivalency of GEPS 2 Contracts

This GEPS 2 contract is substantially similar to that in Docket No. CP2009-50 in terms of the product being offered under its terms, the market to which it is being offered, and its cost characteristics. Like the baseline contract, this contract also fits within the parameters outlined by the Governors' Decision establishing the rates for GEPS agreements. There are, however, differences between the two contracts that fall into two basic categories: Differences of customer-specific information, which will appear in all GEPS agreements, and differences that reflect additions to the basic text of the agreements that are refinements intended to be incorporated into all subsequent agreements in exactly the same terms.

The differences between this contract and the baseline GEPS 2 agreement are the following:

<u>Customer specific information</u>

- The name and address of the customer in the title and first paragraph of the agreement;
- The negotiated option for tendering the mail in Article 7, paragraph 6;
- The negotiated minimum revenue and/or volume commitment contained in Article 8, paragraph 1;

- The consequences of the Mailer not meeting its minimum commitment as set forth in Article 8, paragraphs 2 and 3;
- And of course, the identification of the customer's representative to receive notices under the agreement in Article 28 and the identity of the signatory to the agreement.

General terms of the contract:

- Confidentiality provisions. Three new provisions were added to the basic GEPS contract template to integrate elements of the Commission's rules on non-public treatment of confidential information as announced in PRC Order No. 225.[6] These are found at Article 6, paragraph 10; Article 7, paragraph 10; and Article 16. As a result of the addition of Article 16, the numbering for the provisions following that article has also changed.
- Pickup service. An obligation of the USPS to provide pickup service for Qualifying Mail according to an applicable local agreement, if any, was added, at Article 6, paragraph 9. Such local agreements are standard and common, enabling local postal managers to make the most efficient use of their resources and to adapt to changes in customers' and Postal Service needs within the well-established boundaries of their authority. While many GEPS customers tender mail in accordance with such agreements, such agreements were not previously referred to in the terms and conditions of the GEPS contracts. The addition of paragraph 6 to Article 14 of the Agreement maintains the *status quo* of the local parties to pickup

[6] PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

service agreements insofar as modifications to those agreements are concerned.

- Reference updates. Language has been added to Article 26 to clarify that references within the agreement to IMM or DMM provisions are intended to relate to the substance of those provisions, not to the specific numbered provision, in the event that the numbering should change while the agreement is in effect.

Minor changes

- In Article 2, paragraphs 1 and 2, the top level domain of the website was changed.
- In Article 3, the definition of "Qualifying Mail," excludes Express Mail International Flat-Rate Envelope, 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. These exclusions were listed in Article 1 of the GEPS contract in Docket No. CP2009-50.
- In Article 5, paragraph 4, the phrase "and IMM 221.21 shall not be applicable" has been deleted.
- Article 6, paragraph 6, line 2, was changed so that the Postal Service is only obligated to send, at the Mailer's request, an electronic data file for Express Mail International and Priority Mail International to Singapore.
- In Article 8, paragraph 2 concerning liquidated damages has been deleted.

- The title of Article 15 has been changed to "Entire Agreement and Survival." In addition, the article has been changed so that it states that the Agreement, including all Annexes and any corresponding written local pickup agreement, shall constitute the entire agreement between the Parties. Also, a final sentence has been added, which provides for the expiration of the confidentiality terms.
- In Article 19, Limitation of Liability; Insurance, paragraphs 2, 3 and 4 "rifling" has been replaced by "missing contents". Also, in the last sentence of Article 19, paragraph 2, "IMM 221.3" has been changed to "IMM 222.71."

Because both GEPS agreements incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, for this contract and the baseline GEPS 2 contract. The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts. Nothing detracts from the conclusion that these agreements are "functionally equivalent in all pertinent respects."[7]

Conclusion

For the reasons discussed and as demonstrated by the financial data filed under seal, the Postal Service has established that this new GEPS 2 contract is in compliance

[7] PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket No. CP2008-8, June 27, 2008, at 8.

with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to other GEPS 2 contracts. Accordingly, this contract should be added to the existing GEPS 2 product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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April 7, 2010

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, 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;

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 and Priority Mail International. 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.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. "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, with the exception of the Express Mail International Flat-Rate Envelope, and in IMM 230 for 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, 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 a Permit Imprint.

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 and 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 at [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.

8. Postage. To provide discounted prices for Qualifying Mail paid for and tendered as required by this Agreement.

9. Pickup Service. To provide pickup service for Qualifying Mail according to the applicable local agreement, if any, as amended from time to time.

10. 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.

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, 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 at a Business Mail Entry Unit (BMEU) approved by the USPS to receive Qualifying Mail.

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.

10. 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.

ARTICLE 8. MINIMUM COMMITMENT

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

2. In the event that the Mailer does not meet its minimum commitment as set forth in Paragraph 1 of this Article, the Mailer agrees to pay the USPS [redacted]

3. The USPS will provide the Mailer with an invoice for any postage due for the failure to meet the minimum commitment states in Paragraph 1. All amounts due are to be paid within thirty (30) days of the date of the invoice. Any invoice that is

not paid within thirty (30) days will incur [redacted] Any invoicing discrepancies will be resolved subsequent to payment of the invoice. In addition to [redacted] the USPS reserves the right to pursue other available remedies.

ARTICLE 9. POSTAGE UPDATES

1. In the event that the USPS incurs an increase in costs in excess of [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 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.
6. Any changes to or modification of the local agreement referred to in Article 6, Paragraph 9, are not subject to the provisions of this Article.

ARTICLE 15. ENTIRE AGREEMENT AND SURVIVAL

This Agreement, including all Annexes thereto and any corresponding written local pickup agreement, 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. The provisions of Article 6, Paragraph 10, Article 7, Paragraph 10; and Article 16 shall expire ten (10) years from the date of termination or expiration of this Agreement.

ARTICLE 16. CONFIDENTIALITY

The Mailer 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 Mailer authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding. The Mailer further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, www.prc.gov. In addition, the USPS may file information in connection with this instrument (including revenue, cost, or volume data) in other Commission dockets. The Mailer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the PRC for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 on the Commission's website, www.prc.gov/Docs/63/63467/Order225.pdf. At the request of the Mailer, the USPS will notify the Mailer of the docket number of the Commission proceeding to establish the prices in this instrument once assigned.

ARTICLE 17. FORCE MAJEURE

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

ARTICLE 18. 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 19. 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 missing contents. 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 222.71 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, missing contents, 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, missing contents, 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 20. 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 21. GOVERNING LAW

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

ARTICLE 22. 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 volume commitment for Qualifying Mail set forth in Article 8 shall be recalculated *pro rata* to reflect the reduction in available service time.

ARTICLE 23. 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 24. CONDITIONS PRECEDENT

1. The Parties acknowledge and understand that all obligations of the USPS under this Agreement, including the prices listed in Annex 1, shall be contingent on the USPS receiving approvals hereinafter ("Conditions Precedent") from one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include, but are not limited to: approvals or, if applicable, non-objection, from responsible USPS management officials, the USPS Board of Governors, the USPS Governors, the Postal Regulatory Commission, 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 individuals or bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to allow the Postal Service to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS and no benefit shall inure to either Party.

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

ARTICLE 25. 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 26. 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 and IMM within this Agreement are intended to refer to the substantive information found within the cited section(s) at the time this Agreement is signed by the Parties. Subsequent changes to the citations or the relevant substantive information due to published revisions of the DMM or IMM shall be applicable to this Agreement upon the effective date of such revisions.

ARTICLE 27. 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 28. 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 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 29. 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: 3/22/10

ON BEHALF OF [redacted]

Signature: [redacted]

Name: [redacted]

Title: [redacted]

Date: 3-17-10

Annex 1 PRICES FOR EXPRESS MAIL INTERNATIONAL AND PRIORITY MAIL INTERNATIONAL

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

Weight Not Over (LBS)	[redacted]
0.5	
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ANNEX 1
EXPRESS MAIL INTERNATIONAL
THE MAILER APPLIES LABELS USING USPS-SUPPLIED SOFTWARE OR FUNCTIONALLY EQUIVALENT SOFTWARE

Weight Not Over (LBS)	[redacted]
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nw 02 / 03 10

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

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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, Joseph Moeller, 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 cost values underlying the prices in the [redacted] Contract are the appropriate costs to use in the formulas and represent the best available information. The prices, resulting in a cost coverage of in excess of the minimum required by the Governor's Decision, 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 Contract should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. International competitive mail accounts for a relatively small percentage of the total contribution by all competitive products. Contribution from Global Expedited Package Services Contracts should be even smaller. The Agreement with [redacted] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

Joseph Moeller

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR GLOBAL EXPEDITED PACKAGE SERVICES CONTRACTS (GOVERNORS' DECISION NO. 08-7)

May 6, 2008

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 prices by setting price floor and price ceiling formulas for Global Expedited Package Services Contracts. The types of contracts to which these prices will apply are described in Attachment A, the price floor and price ceiling formulas are specified in Attachment B, and management's analysis of the appropriateness of these formulas is explained in Attachment C. We have reviewed that analysis and have concluded that the prices emerging from application of the formulas and the classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Contracts which fall within the terms specified in Attachment A, and whose prices fall within the price range established by the price floor and price ceiling formulas specified in Attachment B, are hereby authorized.

The PAEA provides 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. We have determined that prices established according to the formulas listed in Attachment B would be appropriate for the services covered by the types of GEPS Contracts classified in Attachment A.[1] Management's analysis of the formulas, included as

[1] The classification for GEPS Contracts is contained in the Mail Classification Schedule language originally proposed by the Postal Service, as modified in Attachment A. *See* United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order

Attachment C, supports our decision to establish prices through such formulas for the specified types of contracts.

We are satisfied that the prices established by the formulas in Attachment B meet the applicable statutory and regulatory requirements. The price floor formula provides greater than 100 percent coverage of the costs attributable to each of these types of agreements. We accept and rely upon the certification in Attachment D that the correct cost inputs for the formulas have been identified. In addition, the price floor formula [redacted] should cover the agreements' attributable costs and provide a contribution toward the Postal Service's institutional costs. The formula should thus prevent a cross-subsidy from market dominant products. As noted in the certification in Attachment D, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement 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 C.F.R. § 3015.5. The notice must include a financial analysis that demonstrates that the agreement covers its attributable costs, based on [redacted] Attachment B. The notice must also include a certification from a Postal Service official that the numerical values chosen for each agreement are appropriate, in that they represent the best available information and that the agreement should not result in a cross-subsidy from market dominant products and should not impair the ability of competitive products, as a whole, to cover an appropriate share of institutional costs.

ORDER

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable GEPS Contracts, and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within the formulas set by this Decision and the certification process specified herein is followed. After an authorized agreement is entered into, the Postal Service shall comply with all applicable statutory and regulatory requirements.

Prices and classification changes established pursuant to this Decision will take effect fifteen days after the date on which the agreement is filed with the Postal Regulatory Commission.

By The Governors:

Alan C. Kessler
Chairman

Attachment A

Description of Applicable Global Expedited Package Services Contracts

2610.2 Global Expedited Package Services (GEPS) Contracts

These are contracts that provide for ~~discounts~~ incentives for Express Mail International (EMI) and/or Priority Mail International (PMI) for all destinations served by Express Mail International and Priority Mail International. Preparation requirements are the same as for all Express Mail International and/or Priority Mail International shipments with the following exceptions: The mailer is required to use USPS-supplied labeling software, or a non-USPS supplied labeling software that has the same functionality as the USPS-supplied labeling software. The software allows for preparation of address labels and Customs declarations and submission of electronic shipment information to the Postal Service, as well as prepayment of Customs duties and taxes and pre-advice for foreign Customs authorities by the Postal Service. The mailer may be required to prepare specific shipments according to country specific requirements. To qualify for a contract, a mailer ~~must tender all of its qualifying mail to the Postal Service and~~ must be capable, on an annualized basis of either tendering at least ~~600~~ 5,000 pieces of ~~non-First-Class Mail International~~ international mail to the Postal Service, or paying at least $100,000 in international ~~$12,000 in non-First-Class Mail International~~ postage to the Postal Service. For a mailer to qualify, the contract must cover its attributable costs.

Size and Weight for Express Mail International:

	Length	Width	Height	Weight[1]
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			
Maximum	36 inches	Length plus girth: 79 inches		

[1] Country-specific restrictions may apply as specified in the International Mail Manual.

Size and Weight for Priority Mail International:

	Length	Width	Height	Weight[1]
Minimum[2]	5.5 inches	None	3.5 inches	None
Maximum	42 inches	Length plus girth: 79 inches Circular parcels: diameter: 64 inches		70

[1] Weight and other exceptional size limits based on shape and destination country restrictions may apply as specified in the International Mail Manual.
[2] Items must be large enough to accommodate postage, address and other required elements on the address side.

Minimum Volume or Revenue Commitment:
Mailers must commit to tender varying minimum volumes or postage of Express Mail International, Priority Mail International or both, on an annualized basis. The mailer is required to meet the minimum volume or weight requirements in effect for manifest mailing as specified by the Postal Service.

Price Categories:
The ~~discount is a fixed discount~~ incentives are based on the volume or revenue commitment above a specified cost floor. Also, separate charges apply if the customer has ~~the Postal Service label the mailpieces~~ labeling, ~~for~~ harmonization ~~and for~~ or return services.

GEPS – Express Mail International

GEPS – Priority Mail International

Optional Features:

Pickup On-Demand

International Ancillary Services

- International Certificate of Mailing (PMI flat-rate envelope only)
- International Insurance
- International Registered Mail (PMI flat-rate envelope only)
- International Restricted Delivery (PMI flat-rate envelope only)
- International Return Receipt

Software-Related Services:

- Labeling: At the mailer's request, the Postal Service will arrange for ~~apply~~ labels and Customs declarations ~~at a postal location~~ to be applied.

- Harmonization: At the mailer's request, the Postal Service ~~facilitates~~ will arrange for classification of merchandise according to country specified Customs regulations to determine applicable duties and taxes.

- Returns: At the mailer's request, the Postal Service will contracts with a returns center appropriate for the particular country. The returns center inspects the goods it receives from the mailer's customers and returns the goods in bulk to the mailer in the United States. The Postal Service invoices the mailer for appropriate charges. The Postal Service may also charge for certain Express Mail International and Priority Mail International undeliverable-as-addressed returns when customs duties have been prepaid.

Attachment B

Formulas for Prices Under Applicable Global Expedited Package Services Contracts

[redacted]

Attachment C

Analysis of the Formulas for Prices Under Applicable Global Expedited Package Services Contracts

[redacted]

[redacted]

Attachment D

Certification as to the Formulas for Prices Offered Under Applicable Global Expedited Package Services Contracts

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, United States Postal Service, am familiar with the price floor formula and price ceiling formula for Global Expedited Package Services Contracts which are set forth in Attachment B.

I hereby certify that these formulas adequately represent all necessary [redacted] If the Postal Service were to enter into agreements that set prices above the price floor, the Postal Service would be in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The price floor formula is designed to ensure that each agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from Global Expedited Package Services Contracts should be much smaller. Even if all the agreements for Global Expedited Package Services Contracts are signed at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

W. Ashley Lyons

W. Ashley Lyons

CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 08-7

I hereby certify that the following Governors voted at the May 6, 2008, Board meeting on adopting Governors' Decision No. 08-7:

Mickey D. Barnett
James H. Bilbray
Carolyn Lewis Gallagher
Louis J. Giuliano
Alan C. Kessler
Thurgood Marshall, Jr.
James C. Miller III
Katherine C. Tobin
Ellen C. Williams

The vote was 9-0 in favor.

Julie S. Moore

Date: 5/14/08

Julie S. Moore
Secretary of the Board of Governors

ATTACHMENT 4

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

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,[1] the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to an additional Global Expedited Package Services 2 (GEPS) contract which the Postal Service believes is functionally equivalent to previously filed GEPS agreements. The contract and supporting documents establishing compliance with 39 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, certified statement required by 39 C.F.R. § 3015.5(c)(2), and related Governors' Decision are filed with the Notice as Attachments 1, 2 and 3, respectively.[2]

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). The

[1] PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

[2] The Postal Service informed the customer prior to filing its notice that it would be seeking non-public treatment of the redacted portions of the contract. The Postal Service also informed the customer that it could file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3007.22.

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).[3] 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) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of GEPS contracts, the Postal Service believes that the third party with a proprietary interest in the materials is the customer with whom the contract is made.[4] The Postal Service maintains that customer identifying information should be

[3] 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.

[4] However, other postal operators can be considered to have a proprietary interest in some rate information in the financial workpapers included with this filing. The Postal Service maintains that such information should be withheld from public disclosure. In view of the practical difficulties, the Postal Service has not undertaken to inform all affected postal operators about the nature and scope of this filing and about the ability to address any confidentiality concerns directly with the Commission as provided in 39 C.F.R. § 3007.20(b). Due to language and cultural differences as well as the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators. The Postal Service identifies as an appropriate contact person Brian Hutchins, Manager, International Postal Relations. Mr. Hutchins' phone number is (703) 292-3591, and his email address is brian.hutchins@usps.gov. The Postal Service acknowledges that 39 C.F.R. § 3007.21 (c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing in the absence of actual notice might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver that would allow it to forgo providing a notice to each postal operator, and to designate a Postal Service employee as the contact person under these circumstances, since it is impractical to communicate with dozens of operators in multiple languages about this matter.

withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Mr. James J. Crawford, Business Development Specialist, Global Business, United States Postal Service, 1735 North Lynn Street, Room 2030, Arlington, VA 22209-2030, whose email address is james.j.crawford@usps.gov, and whose telephone number is 703-292-3614.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its Notice filed in this docket, the Postal Service included a contract, financial work papers, and a statement certifying that the agreement should meet the requirements of 39 U.S.C. § 3633(a)(1), (2), and (3). These materials were filed under seal, with redacted copies filed publicly, after notice to the customer. The Postal Service maintains that the redacted portions of the contract, related financial information, and identifying information related to GEPS customers, should remain confidential.

With regard to the GEPS agreement filed in this docket, the redactions on page 1, and to the footers of each page, Article 28, and the signature block of the contract constitute the name or address of a postal patron whose identifying information may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39

U.S.C. § 410(c)(2). The redacted portions of the footers of Annex 1 also protect the customer's identifying information from disclosure.

Other redacted information in the agreement includes negotiated contract terms, such as the minimum volume and/or revenue commitment agreed to by the customer, various penalties, and the percentage of cost increase which may trigger a consequential price increase.

The redactions made in Annex 1 of the contract, other than those involving the customer's name, withhold the actual prices that are being offered to this customer in exchange for its commitment and performance of its obligations under the terms of the agreement.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the work papers 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, such as words or numbers in text, were replaced with general terms describing the redacted material. For example, where the mailer's name appears in the spreadsheet within a cell, it has been replaced by the word "Mailer." Likewise, where an actual number appears as a percentage discount as a column header, in the public filing the number is replaced by the word "Discount" and followed by the percentage symbol (e.g., Discount%).

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the contract that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. First, revealing customer identifying information would enable competitors to focus marketing efforts on current postal customers which have been cultivated through the efforts and resources of the Postal Service. The Postal Service considers that it is highly probable that if this information were made public, its competitors would take immediate advantage of it. The GEPS agreements include a provision allowing the mailer to terminate the contract without cause by providing at least 30 days' notice. Therefore, there is a substantial likelihood of losing the customers to a competitor that targets them with lower pricing.

Other redacted information in the Agreement, which is Attachment 1 to the Notice, includes negotiated contract terms, such as the minimum volume and/or revenue commitment agreed to by the customer, various penalties and the percentage of cost increase which may trigger a consequential price increase. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to assess the offers made by the Postal Service to its customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial workpapers include specific information such as costs, assumptions used in pricing formulas, the formulas themselves, mailer profile information, projections of variables, contingency rates included to account for market fluctuations and the exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required by the mail classification schedule to demonstrate that each negotiated agreement within this group covers its attributable costs. Furthermore, the Postal Service's Governors have required that each contract be submitted to the Commission with a notice that complies with 39 C.F.R. § 3015.5.[5] Thus, competitors would be able to take advantage of the information to offer lower pricing to the GEPS customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the expedited package services market. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the contract or from the information in the work papers whether additional margin for net profit exists between the contract being filed and the contribution that GEPS contracts must make. From this information, each customer could attempt to negotiate ever-increasing incentives, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the customer involved in this GEPS filing

[5] Decision of the Governors of the United States Postal Service On The Establishment of Prices and Classifications for Global Expedited Package Services Contracts, May 6, 2008, (Governors' Decision No. 08-7) at 2-3 and Attachment A.

could use the information in the workpapers in an attempt to renegotiate its own rates by threatening to terminate its current agreement, although the Postal Service considers this risk to be lower in comparison to those previously identified.

Price information in the contract and financial spreadsheets also consists of sensitive commercial information of the customer. Disclosure of such information could be used by competitors of the customer to assess its underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

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

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

Hypothetical: The identity of the customer in this contract is revealed to the public. Another expedited delivery service has an employee monitoring the filing of GEPS agreements and passing along the information to its sales function. The competitor's sales representatives can then quickly contact the Postal Service's customer and offer the customer lower rates or other incentives to terminate its contract with the USPS in favor of using the competitor's services.

Identified harm: Public disclosure of information in the financial work papers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing expedited package delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. It analyzes the work papers to determine what the Postal

Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its GEPS customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for international expedited delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of the business-to-business and business-to-customer expedited delivery services markets for which the GEPS product is designed.

Identified harm: Public disclosure of the rate charts in Annex 1 would provide potential customers extraordinary negotiating power to extract lower rates.

Hypothetical: Customer A's negotiated rates are disclosed publicly on the Postal Regulatory Commission's website. Customer B sees the rates and determines that there may be some additional profit margin between the rates 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. Customer B, which was offered rates identical to those published in Customer A's agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its expedited package service delivery needs.

Alternatively, Customer B attempts to extract 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, the Customer uses other providers for destinations other than those for which it extracted lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement, such that it no longer meets its cost coverage requirement. Although the Postal Service could terminate the contract when it first recognized that the mailer's practice and projected profile were 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 the GEPS product overall.

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

Hypothetical: A firm competing with the customer obtains a copy of the unredacted version of the contract and financial work papers from the Postal Regulatory Commission's website. The competitor analyzes the prices and the work papers to assess the customer's underlying costs, volumes, and volume distribution for the corresponding delivery products. The competitor uses that information to (i) conduct market intelligence on the customer's business practices, and (ii) develop lower-cost alternatives using the customer's mailing costs as a baseline.

(6) The extent of protection from public disclosure deemed 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 international expedited and parcels products (including both private sector integrators and foreign postal administrations), 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 deemed necessary for the non-public materials to be protected from public disclosure 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 the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant 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.