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

COMPETITIVE PRODUCT PRICES INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3 (MC2011-21) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2011-70

NOTICE OF THE UNITED STATES POSTAL SERVICE FILING OF A FUNCTIONALLY EQUIVALENT INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3 NEGOTIATED SERVICE AGREEMENT
(August 19, 2011)

In accordance with 39 U.S.C. § 3015.5 and Order No. 178,[1] the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional International Business Reply Service (IBRS) contract. Prices and classifications not of general applicability for the IBRS contracts were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for International Business Reply Service (IBRS) Contracts, issued December 24, 2008 (Governors' Decision No. 08-24).[2] Subsequently, the Postal Regulatory Commission (Commission) added International Business Reply Service Competitive Contract 3 to the competitive product list, and included the contract that is the subject of Docket Nos. MC2011-21 and CP2011-59 as

[1] PRC Order No. 178, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, Docket Nos. MC2009-14 and CP2009-20, February 5, 2009, at 11. *See also* PRC Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011.
[2] An unredacted copy of this decision and a record of the Governors' proceedings was filed under seal with the Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008. The notice of filing is available at http://www.prc.gov/Docs/61/61663/MC2009-14%20IBRS%20Request.pdf.

the baseline agreement for consideration of inclusion of functionally equivalent agreements within the International Business Reply Service Competitive Contract 3 product.[3] The Commission also determined that the contract filed in Docket No. CP2011-61 was functionally equivalent to the IBRS 3 baseline contract filed in Docket Nos. MC2011-21 and CP2011-59 and included the contract within the International Business Reply Service Competitive Contract 3 (MC2011-21) product.[4]

The contract that is the subject of this docket 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. Redacted copies of the contract, a certified statement required by 39 C.F.R. § 3015.5(c)(2), and Governors' Decision No. 08-24 are filed as Attachments, 1, 2, and 3, respectively. 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.

I. Background

The first IBRS contract was filed on December 24, 2008.[5] Subsequently, the Commission reviewed additional IBRS contracts with minor differences which did not affect the contracts' similarity with the cost and market characteristics of previous IBRS contracts. The contract included in this filing is with a customer who is entering into its first IBRS agreement.

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[3] PRC Order No. 684, at 6-7.
[4] PRC Order No. 693, Order Approving an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket No. CP2011-61, March 11, 2011, at 4-5, 7.
[5] Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008.

The Postal Service demonstrates in this notice that the instant contract is functionally equivalent to the IBRS 3 baseline contract submitted in Docket Nos. MC2011-21 and CP2011-59 (IBRS 3 baseline contract).[6] Accordingly, this contract should be included within the International Business Reply Service Competitive Contract 3 (MC2011-21) product.

II. Identification of the Additional IBRS Competitive Contract

The Postal Service believes that this additional IBRS contract fits within the Mail Classification Schedule (MCS) language for IBRS contracts, included as Attachment A to Governors' Decision No. 08-24.[7] By its terms, the agreement will expire one year after its effective date unless termination of the agreement occurs earlier.

III. Functional Equivalence of IBRS Competitive Contract

The IBRS Competitive contract under consideration is functionally equivalent to the IBRS 3 baseline contract in that it shares similar cost and market characteristics with previously filed IBRS contracts. In Governors' Decision No. 08-24, the Governors established a pricing formula and classification which ensure that each IBRS contract meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each IBRS contract conform to a common description. In addition, the IBRS language proposed for the MCS requires that each IBRS contract must cover its attributable costs.[8] The contract at issue here meets the Governors'

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[6] *See* PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9, and CP2008-10, June 27, 2008, at 8 (applying standards for the filing of functionally equivalent contracts). In PRC Order No. 684, at 6, the Commission stated, concerning the filing of additional IBRS Contracts, that the Postal Service "shall identify all significant differences between any new IBRS Competitive Contract 3 agreement and the baseline agreement."

[7] *See also* Additional Supplemental Comments of United States Postal Service on Mail Classification Schedule, Docket No. RM2011-8, July 29, 2011, Suppl MCS MarkUp 7 28 2011.pdf, 2515.3, International Business Reply Service (IBRS) Competitive Contracts, at 394-395.

[8] *See id*., at 2515.3.1, at 394.

criteria and thus exhibits cost and market characteristics similar to previous IBRS contracts.

The functional terms of the contract included in this filing and the functional terms of the IBRS 3 baseline agreement are the same, although other terms that do not directly change the nature of the agreements' basic obligations may vary. The benefits of the instant contract and the IBRS 3 baseline agreement are comparable as well. Therefore, the Postal Service submits that the instant contract is functionally equivalent to the IBRS 3 baseline agreement and should be included within the IBRS Competitive Contract 3 (MC2011-21) product.

In a concrete sense as well, this IBRS contract shares the same cost and market characteristics as the previous IBRS contracts. First, the customers for IBRS Competitive contracts, including the contract under consideration, are businesses that sell lightweight articles to foreign consumers and desire to offer their consumers a way to return those articles to the United States for recycling, refurbishment, repair, or other value-added processing. Prices offered under IBRS 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 to the incorporation of updated costing information. These differences, however, do not alter the contract's functional equivalency with the IBRS 3 baseline agreement. Because this agreement incorporates the same cost attributes and methodology as the IBRS 3 baseline agreement, the relevant characteristics of this agreement and the IBRS 3 baseline agreement are similar, if not the same.

Like the IBRS 3 baseline agreement, the contract included in this filing fits within the parameters outlined by the Governors' Decision establishing the rates for IBRS agreements. There are, however, minor differences between this contract and the IBRS 3 baseline agreement. These differences include the following:

- the name and address of the customer in the title, first paragraph, Article 1, and signature page of the agreement; and
- in Article 28, the name, title, address, and e-mail address of the individual listed as acting on behalf of the customer.

The Postal Service does not consider that the specific differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contract. Nothing detracts from the conclusion that the agreement that is the subject of this docket is "functionally equivalent in all pertinent respects" to the IBRS 3 baseline agreement.

Conclusion

For the reasons discussed, and as demonstrated by the financial data filed under seal, the Postal Service has established that this new IBRS 3 contract is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to the IBRS 3 baseline agreement filed in Docket Nos. MC2011-21 and CP2011-59. Accordingly, this contract should be included within the IBRS Competitive Contract 3 (MC2011-21) product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony F. Alverno
Chief Counsel, Global Business
Corporate and Postal Business Law Section

Christopher C. Meyerson
Attorney

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August 19, 2011

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 [redacted] may make of customized mail service for International Business Reply Service from Canada.

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. "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 382 for International Business Reply Service shall be considered as Qualifying Mail under this Agreement except as those requirements conflict with the applicable specific preparation requirements set forth in Article 4. No item may contain a letter or message directed to a specific person or address and recorded in or on a tangible object, except for invoices or similar letters relating to the item(s) contained in the same envelope.

ARTICLE 4. SPECIFIC PREPARATION REQUIREMENTS

1. The provisions of this Agreement shall apply only to International Business Reply items deposited in Canada for return to the United States.
2. IMM 382.4 shall not apply.
3. IMM 382.5 shall not apply. All items mailed under this Agreement must conform to the following maximum size and weight requirements:
   a. Maximum package dimensions

      Length: 24 inches

      Length, height, and depth combined: 36 inches

   b. Maximum package weight

      No item may weigh more than 4 pounds 6.55 ounces (2,000 grams).

ARTICLE 5. OBLIGATIONS OF THE USPS

The USPS hereby agrees:

1. Transportation. To coordinate with Canada Post Corporation for delivery in the United States of International Business Reply Service items deposited in Canada.
2. 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 6. OBLIGATIONS OF MAILER

The Mailer hereby agrees:

1. Qualified Business Reply Mail (QBRM) Program. To participate in the Qualified Business Reply Mail (QBRM) Program by paying the prescribed accounting fee in accordance with IMM 382.3 and DMM 507.9.
2. Postage. To pay postage for Qualifying Mail at 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.

3. Payment Method. To pay postage either directly to the USPS or through a mailing agent, for all Qualifying Mail by use of an advance deposit account for Business Reply Mail subject to the conditions stated in IMM 382 and DMM 507.9.

4. Confidentiality. To treat as confidential and not disclose to third parties, absent express written consent by the USPS, and information related to this Agreement that is treated as non-public by the Postal Regulatory Commission.

ARTICLE 7. MINIMUM VOLUME COMMITMENT

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

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 up to the maximum sum of [redacted] as liquidated damages if such minimum volume commitment is not met. Such liquidated damages shall be payable within thirty (30) days of receipt of a written demand by the USPS.

ARTICLE 8. MODIFICATION OF PRICES

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 price established under this Agreement. [redacted]

2. The prices in Annex 1 are related to the price Canada Post Corporation (CPC) charges the USPS for processing International Business Reply items in Canada. Should the price CPC charges the USPS for processing International Business Reply items change during the term of this Agreement, the USPS shall notify the Mailer and modify the prices established under this Agreement.

3. The USPS will give the Mailer thirty (30) days notice of any change to the price established under this Agreement.

4. Any revision to the price(s) established under this Agreement shall not be retroactive.

ARTICLE 9. NO SERVICE GUARANTEE

Nothing in this Agreement shall be construed as a representation or guarantee by the USPS that Qualifying Mail will be delivered to the appropriate addresses within any particular time.

ARTICLE 10. CUSTOMS DUTIES AND TAXES

Customs duties and taxes for items mailed under this Agreement are the responsibility of the Mailer.

ARTICLE 11. 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 12.
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 12. TERMINATION OF THE AGREEMENT

1. Either Party to this Agreement, in its sole discretion, may terminate the Agreement for any reason, without cost, fault, or penalty, regardless of whether either Party is in default, upon a thirty (30) day written notification, unless a time frame longer than thirty (30) days that falls within the term of the Agreement is indicated by the terminating Party.
2. In the event that this Agreement is terminated for any reason before the termination date provided for in Article 11, the minimum commitment in Article 7 shall be calculated on a *pro rata* basis to reflect the actual duration of the Agreement.

ARTICLE 13. MODIFICATION OF THE AGREEMENT

1. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement, with the exception of changes to prices under the terms of Article 8, 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.

ARTICLE 14. ENTIRE AGREEMENT AND SURVIVAL

1. This Agreement, including all 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. The provisions of Article 5, Paragraph 2; Article 6, Paragraph 4; and Article 15 shall expire ten (10) years from the date of termination or expiration of this Agreement.

2. In the event that either the Mailer or the USPS terminates this Agreement under the terms of Article 12 before the normal expiration date, or in the event that the Mailer and the USPS do not enter into a customized agreement upon the expiration of this current Agreement, Article 27 shall survive termination or expiration of this Agreement. All other Articles of this Agreement shall survive termination or expiration of this Agreement to the sole extent that they bear on the Parties surviving obligations under Article 27.

ARTICLE 15. 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 found 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 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

The USPS shall not be liable for any loss of Qualifying Mail or damage to Qualifying Mail mailed in Canada under the terms of this Agreement.

ARTICLE 19. INDEMNITY

The Mailer shall indemnify and hold 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 agent(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 service from Canada to the United States would prevent delivery of Qualifying Mail to addressees in the United States, 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 7 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. CONDITIONS PRECEDENT

1. The Parties acknowledge and understand that all obligations of the USPS under this Agreement, including the prices listed in Annexes 1 and 2, 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 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 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 26. MAILABILITY AND IMPORTABILITY

All items mailed under this Agreement must conform to the mailability requirements of Canada Post Corporation and conform to the importation restrictions of the United States of America.

ARTICLE 27. CONTINGENCY PRICES

In the event that either the Mailer or the USPS terminates this Agreement under the terms of Article 12 before the normal expiration date, or in the event that the Mailer and the USPS do not enter into a customized agreement upon the expiration of this current Agreement, the Mailer shall pay postage for any Qualifying Mail the USPS receives after the agreed upon termination date or expiration date, as appropriate, at the prices listed in Annex 2. These prices shall have no bearing on the price the USPS shall charge in the event that the Mailer and the USPS do enter into a customized agreement upon the expiration of this current Agreement. In the event that the Mailer and the USPS have not entered into a new customized Agreement within six (6) months of the termination or expiration of this current Agreement, the USPS shall charge the Mailer a price to be determined at its sole discretion for those items received after the six (6) month date. The prices listed in Annex 2 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.

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 1P830
Washington, DC 20260-0830

To the Mailer: [redacted]

or via e-mail:

To the USPS 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 as indicated below.

ON BEHALF OF THE UNITED STATES POSTAL SERVICE:

Signature: Frank A. Cebello

Name: Frank A. Cebello

Title: Executive Director, Global Business Management

Date: 7/27/11

ON BEHALF OF [redacted]

Signature: [redacted]

Name: [redacted]

Title: [redacted]

Date: 7/25/2011

Annex 1 PRICES FOR INTERNATIONAL BUSINESS REPLY MAIL ITEMS

Annex 2 CONTINGENCY PRICES FOR INTERNATIONAL BUSINESS REPLY MAIL ITEMS

ANNEX 1

[redacted]

ANNEX 2

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Certification of Prices for the International Business Reply Service Competitive 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 International Business Reply Service Competitive 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 International Business Reply Service Contracts, issued December 24, 2008 (Governors' Decision No. 08-24), 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 Governors' 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 accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from International Business Reply Service Competitive 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

**CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 08-24**

I hereby certify that the Governors voted on adopting Governors' Decision No. 08-24, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision. The vote was 5 in favor and 1 abstention.

Julie S Moore Date: 12/24/08

Julie S. Moore
Secretary of the Board of Governors

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR INTERNATIONAL BUSINESS REPLY SERVICE (IBRS) CONTRACTS (GOVERNORS' DECISION NO. 08-24)

December 24, 2008

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, United States Code, 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 certain International Business Reply Service (IBRS) contracts for inbound Letter Post content other than items classified as "letters" subject to the Private Express Statutes. The types of contracts to which these prices will apply are described in Attachment A,[1] 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 that fall within the terms specified in Attachment A, and whose prices fall within the price ranges 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 IBRS Contracts

[1] The classification for IBRS 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 No. 43, November 20, 2007. It should be noted that certain of the modifications seek to clarify the requirements for the IBRS service available by customized agreement.

classified in Attachment A. Management's analysis of the formulas, included as 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 formulas provide 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 formulas [redacted] should cover the agreements' attributable costs and provide a contribution toward the Postal Service's institutional costs. The formulas should thus prevent cross-subsidies 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 and any other rules that the Commission deems applicable. 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 IBRS 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 after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

Alan C. Kessler
Chairman

Attachment A

Description of Applicable International Business Reply Service (IBRS) Contracts

2315.3 International Business Reply Service (IBRS) Contracts

2315.3.1 Description

a. International Business Reply Service (IBRS) Contracts provide a price for IBRS for Letter Post items not subject to the Private Express Statutes, with preparation requirements deviating from the standard, published requirements for cards and envelopes.

b. Preparation requirements are specified by the originating country in which the items are mailed.

c. The rates are dependent upon a volume or postage commitment on the part of the customer.

d. A mailer must ~~tender all of its qualifying mail to the Postal Service and~~ be capable, on an annualized basis, of either tendering at least 5,000 pieces of international mail to the Postal Service or paying at least $100,000 in international ~~$2 million in First-Class Mail International~~ postage to the Postal Service.

e. The contract must cover its attributable costs.

2315.3.2 Size and Weight Limitations

The mailer may be required to meet specific size and weight limitations set by the origination country in which the items are mailed and by the Postal Service.

2315.3.3 Minimum Volume or Revenue Requirements

Mailers must commit to tender varying minimum volumes or postage on an annualized basis. There is no minimum volume requirement per mailing.

2315.3.4 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- None

2315.3.5 Products Included in Group (Agreements)

Attachment B

Formulas for Prices Under Applicable International Business Reply Service Contracts

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Attachment C

Analysis of the Formulas for Prices Under Applicable International Business Reply Service Contracts

[redacted]

[redacted]

[redacted]

[redacted]

Attachment D

Certification as to the Formulas for Prices Offered Under Applicable International Business Reply Service 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 International Business Reply Service (IBRS) 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 IBRS Contracts should be much smaller. Even if all the agreements for IBRS 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

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

In accordance with 39 C.F.R. § 3007.21,[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 International Business Reply Service (IBRS) Competitive contract. 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, the 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. Redacted versions of the supporting financial documentation are also filed publicly as separate Excel files.

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)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of

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

a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).[2] Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) 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 an IBRS Competitive contract, the Postal Service believes that the only third parties with a proprietary interest in the materials are the customer with whom the contract is made and Canada Post Corporation. The Postal Service maintains that customer identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer of the contract under consideration, 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 the customer's 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, 475 L'Enfant Plaza SW, Room 2P020, Washington, D.C. 20260-0020, whose email address is james.j.crawford@usps.gov, and whose telephone number is (202) 268-7714.

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

Consistent with a contractual commitment to Canada Post Corporation (CPC), and in compliance with 39 C.F.R. § 3007.20(b), the Postal Service has already informed CPC of the nature and scope of this filing and CPC's ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies Ewa Kowalski, Canada Post Corporation, as the appropriate contact on behalf of the CPC. Ms. Kowalski's telephone number is (613) 734-6201, and her email address is ewa.kowalski@canadapost.postescanada.ca. CPC has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Dennis Jarvis, General Manager, International Product Management, Canada Post Corporation. Mr. Jarvis's telephone number is (613) 734-8149, and his email address is dennis.jarvis@canadapost.ca.[3]

(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 agreements should meet the requirements of 39 U.S.C. § 3633(a). 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

[3] In the event of a request for early termination of non-public treatment under 39 C.F.R. § 3007.31, a preliminary determination of non-public status under 39 C.F.R. § 3007.32, or a request for access to nonpublic materials under 39 C.F.R. § 3007.40, the Postal Service notes, on CPC's behalf, that differences in the official observation of national holidays might adversely and unduly affect CPC's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, CPC has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect CPC's interests. A listing of Canada's official holidays can be found at http://www.pch.gc.ca/pgm/ceem-cced/jfa-ha/index-eng.cfm.

identifying information concerning the IBRS Competitive contract customer should remain confidential.

With regard to the IBRS Competitive contract 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 postal patrons 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 Annexes 1 and 2 also protect the customer's identifying information from disclosure.

The redactions made in Annexes 1 and 2 of the contract, other than those involving the customer's name, withhold the actual prices that are being offered to the customer in exchange for its commitment and performance of its obligations under the terms of the agreement. The redactions to Articles 7 and 8 protect information with specific financial impact on the customer, such as the customer's commitment to the Postal Service, the level of liquidated damages, and the timing and manner in which the Postal Service might change prices under the contract.

The redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages, 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."

(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, the Postal Service's competitors would take immediate advantage of the information. The IBRS Competitive contracts include a provision allowing the mailers to terminate their contracts 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 contract includes negotiated contract terms, such as the minimum volume commitment agreed to by the customer, the level of liquidated damages, and the percentage of cost increase that may trigger a consequential price increase. This information is commercially sensitive, and the Postal Service does not believe that the information 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. Thus, competitors would be able to take advantage of the information to offer lower pricing to IBRS Competitive contract customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant 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 workpapers whether additional margin for net profit exists between the contract being filed and the contribution that IBRS Competitive 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 IBRS Competitive contract 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 the customer's underlying costs, and to develop a benchmark for a competitive alternative.

Information in the financial spreadsheets also consists of sensitive commercial information of Canada Post. Disclosure of such information could be used by competitors of Canada Post to develop competitive alternatives to Canada Post's products.

(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 delivery service has an employee monitoring the filing of IBRS Competitive contracts 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 the customer's contract with the Postal Service in favor of using the competitor's services.

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

Hypothetical: Customer A signs an IBRS Competitive contract that is filed with the Postal Regulatory Commission. At the same time, Customer B is considering signing an IBRS Competitive contract and has no real concern about the liquidated damages provision, which calls for Customer B to pay up to $10,000 in liquidated damages if it fails to meet its minimum volume commitment before termination of the agreement. The information about Customer A's liquidated damages is made public. Customer A's agreement calls for a $5,000 maximum payment as liquidated damages. Customer B sees the information. Customer B now insists that it will not agree to be obligated to pay any more than Customer A was obligated to pay, diminishing the Postal Service's bargaining leverage. The same rationale applies to commitment levels and price adjustment terms.

Identified harm: Public disclosure of the rate charts in Annexes 1 and 2 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 Customer B must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its international return service delivery needs.

Alternatively, Customer B attempts to extract lower rates only for those destinations for which Customer B 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 the Postal Service believes will still satisfy total cost coverage for the agreement. Then, the customer uses other providers for destinations other than those for which the customer 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 the Postal Service 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 IBRS Competitive Contract product overall.

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

Hypothetical: A competing delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competing delivery service analyzes the workpapers to determine what the Postal

Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. The competing delivery service then sets its own rates for products similar to what the Postal Service offers its IBRS Competitive contract customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for international return 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 customer-to-business international returns services markets for which the IBRS Competitive contract product is designed.

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 workpapers from the Postal Regulatory Commission's website. The competitor analyzes the prices and the workpapers 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 market strength in foreign markets, and (ii) develop lower-cost alternatives using the customer's mailing costs as a baseline.

Identified harm: Public disclosure of information in the contracts would be used by Canada Post's competitors to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the contract and workpapers to assess Canada Post's prices. The competitor uses that information to target its competitive offerings accordingly.

(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 returns services (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.