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

COMPETITIVE PRODUCT PRICES PARCEL SELECT PARCEL SELECT CONTRACT 5	Docket No. MC2012–34
COMPETITIVE PRODUCT PRICES PARCEL SELECT CONTRACT 5 (MC2012–34) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2012–42

REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD PARCEL SELECT CONTRACT 5 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING (UNDER SEAL) OF UNREDACTED GOVERNORS' DECISION, CONTRACT, AND SUPPORTING DATA
(July 12, 2012)

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service hereby requests that Parcel Select Contract 5 be added to the competitive product list within the Mail Classification Schedule.[1] This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).[2] Attachment A is a redacted version of the Governors' Decision and accompanying analysis.[3] An explanation and justification is provided in the Governors' Decision and analysis, which are being filed in unredacted version under seal.[4] Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification product list with the addition underlined.[5] Attachment D provides a statement of supporting justification for this request, as specified in 39 C.F.R.

[1] 39 C.F.R. § 3020.31(a), (c).
[2] *Id.* § 3020.31(d).
[3] *Id.* § 3020.31(b).
[4] *Id.* § 3015.5(b)
[5] *Id.* § 3020.31(f).

§ 3020.32.[6] Attachment E is the certification of compliance with 39 U.S.C. § (a)(1) and (3).[7] Attachment F provides the Application for Nonpublic Treatment of the materials filed under seal.[8] Those materials are the unredacted contract and the required cost and revenue data.[9]

As explained in the supporting justification, the Postal Service believes that it is appropriate to add this contract to the list of competitive products. The Commission should therefore approve this request as set forth in its rules. As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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July 12, 2012

[6] *Id.* § 3020.31(e).
[7] *Id.* § 3015.5(c)(2).
[8] *Id.* § 3007.21.
[9] *Id.* § 3015.5(c)(1).

ATTACHMENT A TO REQUEST

REDACTED GOVERNORS' DECISION

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 11-6)

March 22, 2011

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 for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments, but nonetheless arise from other sources, such as the Universal Postal Convention.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to present such product description to the Postal Regulatory Commission.

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established all prices that will cover [redacted] costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a quarterly basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant, new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision does not supersede or otherwise modify Governors' Decision Nos. 08-5, 08-6, 08-7, 08-8, 08-10, 08-20, 08-24, 09-5, 09-6, 09-7, 09-14, 09-15, 09-16, 10-1, 10-2, 10-3, 10-6, and 10-7, nor does it affect the validity of prices and classifications established under those Decisions. Management may also continue to present to the Postal Regulatory Commission for its review, as appropriate, rate and classification changes to succeed the minimum and maximum non-published rates in Decision Nos. 10-2 and 10-6.

ORDER

In accordance with the foregoing Decision of the Governors, the prices set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

Louis J. Giuliano
Chairman

Attachment A

Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be [redacted]

The cost coverage for a product equals [redacted]

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

[redacted]

[redacted]

[redacted] Prices established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C.§ 3633(a)(3), which, as implemented by (39 C.F.R.§ 3015.7(c)) requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C.§ 3633(a)(1)).

CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 11-6

I hereby certify that the Governors voted on adopting Governors' Decision No. 11-6, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

Julie S. Moore

Date: 3/22/2011

Julie S. Moore
Secretary of the Board of Governors

ATTACHMENT B TO REQUEST

REDACTED SHIPPING SERVICES CONTRACT

SHIPPING SERVICES CONTRACT
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
[redacted]
REGARDING PARCEL SELECT SERVICE

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

WHEREAS, it is the intention of the Parties to enter into a shipping services contract that will benefit the Postal Service, the postal system as a whole, Customer, and its customers, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006,

NOW, THEREFORE, the Parties agree as follows:

I. Terms

The following terms apply as of the effective date, as defined below:

A. Except to the extent different terms or prices are specified in this contract, applicable provisions of the Domestic Mail Manual and of other postal laws and standards apply to mail tendered under this contract.

B. This contract applies to Customer's Parcel Select DDU pieces ("DDU pieces") that are [redacted] subject to the following limitations: (1) any DDU pieces addressed to any ZIP Code in Attachment A, and (2) any pieces mailed as Parcel Select Lightweight packages, do not qualify for contract pricing under this contract. The ZIP Codes contained in Attachment A may be modified once a year by the Postal Service and will take effect on June 1st of each Contract Year.

C. Minimum Volume Requirement. Customer shall meet a minimum volume requirement in each Year of the contract to qualify for contract prices.

1. The Minimum Volume Requirement for the first Contract Year is [redacted] DDU pieces.
2. [redacted]
3. If the Minimum Volume Requirement is not met each Contract Year, Customer will be require to pay the difference between the contract price and the current published

prices for Parcel Select DDU for the year in which the Minimum Volume Requirement was not met, no later than 60 days after the conclusion of the Contract Year in which the Minimum Volume was not met.

D. Customer will manifest its DDU pieces as specified by the Postal Service, using the Electronic Verification System (eVS).

E. Price Calculation

1. *Contract Years.* "Year(s)" or "Contract Year(s)" refers to the one-year period(s) from August 1 through July 31, unless otherwise specified.
2. *Contract Quarters.* "Quarter(s)" or "Contract Quarter(s)" refers to the periods as follows:

Quarter 1:	August 1 - October 31
Quarter 2:	November 1 - January 31
Quarter 3:	February 1 – April 30
Quarter 4:	May 1 - July 31

3. Beginning on the Effective Date, the following prices apply to Customer's DDU pieces until July 31, 2013, based on the volume of DDU pieces that are shipped by Customer as calculated by the Postal Service, during the first Contract Year.

[redacted]

[redacted]

4. During the first Contract Year, Customer shall pay the prices in Tier 1 of Table 1, until such time as Customer's volume may exceed [redacted] pieces. The Postal Service will monitor Customer's volume at the conclusion of each month, and if Customer's volume exceeds the maximum in any tier, the discounted prices in the new tier will be effective on the first day of the second month after the conclusion of the month in which the volume maximum was exceeded.
5. For subsequent Contract Years, Customer's rolling four-quarter total volume will be calculated at the conclusion of each Contract Quarter, and any changes to the discounted prices will be effective on the first day of the second month of the next Quarter.
6. Pieces that are shipped to ZIP Codes listed in Attachment A are excluded from the volume calculation.
7. August 2012 Exception. For the month of August 2012 and until the system changes are updated, Customer will pay published prices for all DDU pieces. The Postal Service will manually calculate the contract pricing for Customer's DDU pieces, and refund the difference to the Customer by crediting its account in the form of a postage adjustment. The manual calculation and refund will be completed by September 30, 2012 for August 2012 shipments, and by the end of each subsequent month for every month after August 2012, if necessary.

F. Annual Adjustment

1. For subsequent Contract Years, contract prices for Parcel Select DDU pieces under this contract will be the preceding Contract Year's prices plus the most recent (as of the anniversary date) percentage average increase in prices of general applicability, as calculated by the Postal Service, for Parcel Select DDU pieces.
   - Example: if a price cell is $2.00 currently and the published prices increase by 3 percent before the first anniversary of this contract, the price cell will be increased to $2.06 (3 percent) on the anniversary date.
2. In the event there is a contract price increase under Section I.F., Postal Service may elect to charge Customer a price for DDU pieces that is less than the preceding Contract Year's prices, plus the most recent (as of the anniversary date) published percentage increase in those prices for each applicable weight. The applicable DDU price for each applicable weight cell would be reflected in Table 1 for the subsequent Contract Year.
3. The adjusted prices will take effect on August 1st of each Contract Year.
4. The Postal Service shall supply Customer the updated price for each cell shown in Table 1 no later than July 1st of each Contract Year.
5. Contract prices for subsequent contract years will be calculated by the Postal Service and rounded up to the nearest whole cent.

[redacted]

[redacted]

H. Customer will pay any published additional fees or surcharges, if any, associated with Parcel Select DDU as published in the Domestic Mail Manual.

I. Business Reviews. The Postal Service and Customer shall, within thirty (30) days after the conclusion of each Quarter 2 and Quarter 4 of each Contract Year, jointly conduct a business review of Customer's volume of DDU pieces, weight and cube characteristics, time in transit, and other performance expectations under this contract. If either Party is unable to conduct a business review within thirty (30) days after the conclusion of the above referenced contract quarters, it shall notify the other Party in writing of that fact and propose a date as soon as practicable thereafter.

J. Saturday Delivery. In the event that the Postal Service moves to a Five-Day delivery schedule (to exclude Saturdays) during the term of this contract, Customer's DDU pieces under this contract will not be delivered on Saturdays. If the Postal Service and Customer mutually agree on delivery of Saturday pieces, any fee applied for this service will not be calculated into the annual price change provision and will remain separate of this contract.

II. Regulatory Review and Effective Date

This contract is subject to approval by the Postal Service Governors and the Postal Regulatory Commission ("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, and upon approval of the Postal Service Governors, the Postal Service will file a request with the Commission to modify the product list in the Mail Classification Schedule and will give notice of the establishment in this contract of rates and classification "not of general applicability." The Effective Date of this contract shall be the latter date of the following: the day following the date on which the Commission issues all necessary regulatory approval, or August 1, 2012.

III. Expiration Date and Termination

This contract shall expire on July 31, 2015, unless (1) terminated by mutual agreement in writing, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent written contract between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with current or subsequently enacted legislation or orders by the Commission. Either Party may terminate this contract for convenience upon providing three months' written notice.

IV. Appeals

Customer may appeal a Postal Service decision regarding the calculation of discounts, the amount of discounts paid, or other implementation or operational issues under this contract by submitting a written appeal within 30 days of receipt of notification of the determination giving rise to the appeal to the Postage and Classification Service Center ("PCSC") in New York. The decision of the Manager, PCSC, will be administratively final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

V. Confidentiality

Neither Party shall make public that the two Parties have entered into a contract or shall make public the terms of this contract, except to the extent required by law. The Postal Service shall request that the Commission, in executing its functions, not disclose: (1) the identity of Customer as a Party to this contract, (2) the terms of this contract, or (3) data supporting this contract filed by the Postal Service that could identify Customer. The Parties agree that the terms and conditions of the Mutual Non-Disclosure Agreement between Customer and the Postal Service in effect as of the Effective Date of this contract are incorporated herein by reference and shall apply to all Confidential Information (as defined in the MNDA and including but not limited to the pricing terms of this contract and Customer's identity as a Party) disclosed by one Party to another.

VI. Amendments

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

IN WITNESS WHEREOF, the Parties hereto have caused this contract to be duly executed as of the day and year first written above.

UNITED STATES POSTAL SERVICE

By: _____

Printed Name: Marisa Manar

Title: CMSCO

Date: July 8, 2012

[redacted]

ATTACHMENT A: [redacted] ZIP Codes

[redacted]

ATTACHMENT A: [redacted] ZIP Codes

[redacted]

ATTACHMENT A: [redacted] ZIP Codes

[redacted]

ATTACHMENT A: [redacted] ZIP Codes

[redacted]

ATTACHMENT A: [redacted] ZIP Codes

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ATTACHMENT A: [redacted] ZIP Codes

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ATTACHMENT A: [redacted] ZIP Codes

[redacted]

ATTACHMENT A: [redacted] ZIP Codes

[redacted]

ATTACHMENT A: [redacted] ZIP Codes

[redacted]

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

***

NEGOTIATED SERVICE AGREEMENTS

Domestic

***

Parcel Select Contract 5

Statement of Supporting Justification

I, Karen F. Key, Manager, Shipping Products, am sponsoring this request that the Commission add Parcel Select Contract 5 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

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

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

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

Not applicable. The Postal Service is proposing that this Parcel Select contract be added to the competitive products list.

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

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

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

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

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

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

I am advised that merchandise sent by Parcel Select service and this contract are not covered by these provisions. See part (d) above.

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

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

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

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

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

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

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

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

Certification of Prices for Parcel Select Contract 5

I, Joseph D. Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for Parcel Select Contract 5. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 11-6).

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

Joseph D. Moeller

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

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials. The Postal Service further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

(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);

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).[10] Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

[10] In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C.§ 504(g)(3)(A).The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).[11] 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 email 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;

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(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 Elizabeth Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is elizabeth.a.reed@usps.gov and whose telephone number is 202-268-3179.

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

(3) 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;

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

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

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

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

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

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

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

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

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

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

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

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

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

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

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

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

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

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

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

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

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

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

(6) The extent of 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 market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

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. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity, other than customer identifying information. The Postal Service believes that customer-identifying information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. Disclosure of customer identifying information leaves the Postal Service vulnerable to competitive "cherry-picking." Customers may seek to extend or renew their contracts, but the implementation of a new 10-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. Therefore, the Postal Service seeks indefinite non-public treatment of the customer's name, address and other identifying information in the non-public materials.

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

None.