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

COMPETITIVE PRODUCT PRICES EXPRESS MAIL EXPRESS MAIL CONTRACT 12	Docket No. MC2012–36
COMPETITIVE PRODUCT PRICES EXPRESS MAIL CONTRACT 12 (MC2012–36) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2012–44

REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD EXPRESS MAIL CONTRACT 12 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING (UNDER SEAL) OF UNREDACTED GOVERNORS' DECISION, CONTRACT, AND SUPPORTING DATA
(August 3, 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 Express Mail Contract 12 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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August 3, 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 EXPRESS MAIL SERVICE

This contract for shipping services is made by and between [redacted] ("Customer"), a limited liability company organized and existing under the laws of the [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, and Customer, 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. Definitions

A. [redacted] consists of mail pieces weighing less than three ounces (including envelope and label) in packaging provided by the Postal Service under this contract (paragraph II.C) and sent by [redacted] or any of its affiliates, using the Postal Service's Express Mail® service under this contract. Affiliate means any entity controlling, controlled by, or under common control with, [redacted]

B. The "Effective Date" of this contract shall be the day following the date on which the Commission issues all necessary regulatory approval.

C. The "Launch Date" shall be agreed upon by the Parties on or after the Effective Date. Counting of [redacted] Mail volume under paragraph II.I shall begin on the Launch Date.

D. The first "Year" shall run from the Launch Date for 12 months. Each subsequent Year shall begin on the anniversary date of the Launch Date.

E. "End of the day" is the time that a Postal Service letter carrier actually completes the delivery route covering the recipient's address in the normal line of travel.

F. "Express Mail Service" is that service defined in Section 410 of the Domestic Mail Manual, as modified by this contract.

II. Terms

The following terms in this Section II shall apply as of the Launch Date:

A. The Postal Service shall provide Express Mail service for the Customer and shall perform all other functions, services, responsibilities and obligations under this contract (collectively "Contract Services"). Prices for Contract Services for Customer Mail are set forth in paragraphs II.G and II.H below.

B. Except to the extent different terms or prices are specified in this contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300_landing.htm) and of other postal laws and standards apply to mail tendered under this Contract.

C. Customer will use customized envelopes not to exceed 9.5" x 12.5" and labels, approved by Customer, provided at no additional cost by the Postal Service.

D. Customer will comply with the manifest procedures applicable to Express Mail service for all pieces for which customized Express Mail pricing is provided under this contract ("Contract Pieces"). Customer will tender Contract Pieces to the Postal Service at Customer's designated facility in [redacted] or as otherwise agreed upon by the Parties.

E. The Postal Service will guarantee delivery of Customer's Contract Pieces by the "end of the day" of the applicable guaranteed delivery day. The applicable guaranteed delivery day for each destination ZIP Code for Customer's Contract Pieces is set forth in the Postal Service's Express Mail Service Report. A current version shall be supplied at any time requested by Customer and the Postal Service will notify Customer of any subsequent changes 30 days prior to the effective date of the change. The applicable guaranteed delivery date shall be contingent upon Customer's tendering the mail piece by the daily cut-off time, as initially agreed by the Parties or as modified subsequently by mutual agreement.

F. The Postal Service shall track each piece of Customer's Contract Pieces and record whether each piece is delivered on time, and shall compute the ratio of total pieces delivered on time divided by total pieces sent. This ratio, expressed as a percentage, shall be the Postal Service's Service Performance Level for Customer's Contract Pieces. The Postal Service shall provide to Customer on a monthly basis a report containing its monthly Service Performance Level and information on individual pieces not delivered on time. If the Service Performance Level falls below [redacted] in any one quarter, the Postal Service will pay refunds only for the number of pieces not

delivered on time that make up the difference between actual performance and a [redacted] Service Performance Level, subject to the limitations in DMM 414.3.0(b). The Postal Service agrees to waive the exclusions under DMM 414.3.0(a).

G. First-Year Contract Prices. The following prices apply to Customer's Contract Pieces from the contract's effective date, as defined in Section II, until the first anniversary of the effective date. Customer will pay the [redacted] Contract Price throughout the First Year, no matter what the actual number of Annual Shipments of Contract Pieces.

[redacted]

H. Second and Third Year Contract Prices. In the Second and Third Years of the Contract, the Customer will pay the appropriate tier price based on the actual First Year volume. At the end of each Year, the Postal Service will calculate the qualifying applicable Contract Price based on the annual volume, from the table above, and provide a rebate to Customer for the difference between these two prices. Such rebate shall be provided to Customer within 90 days of the close of the contract year.

In addition, for each piece for which Customer does not waive signature, Customer will pay an additional signature charge of [redacted] per piece. All pieces sent under this Contract, whether signature is waived or not, shall be counted toward the total annual volume. There shall be no premium for delivery on Sundays and holidays.

I. Annual Adjustment. For subsequent years of the contract, the price will be adjusted annually on the anniversary of the effective date by the increase in the Consumer Price Index – All Urban Consumers (Current Series), as calculated by the Postal Regulatory Commission for the twelve full months preceding the anniversary of the effective date, as it appears on the PRC website at www.prc.gov, or [redacted] whichever is less, and rounded up to the next whole cent. In the event the Consumer Price Index – All Urban Consumers (Current Series) is negative, then there will be no price change. Customized prices for the subsequent years will be calculated by the Postal Service and rounded up to the nearest whole cent.

III. Regulatory Review and Effective Date

This contract is subject to approval by Postal Service senior management and/or the Governors of the Postal Service Governors as well as by the Postal Regulatory Commission

("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, the Postal Service will make required filings with the Commission.

IV. Expiration Date

This contract shall expire three years from the effective date, unless (1) Customer exercises its right to terminate this contract upon its convenience as described below, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent contract between the Parties, (4) ordered by the Commission or a court, except that if a regulatory agency or court finds that the contract prices are not in accordance with applicable postal laws, the Postal Service shall offer to amend the contract prices to the minimum extent necessary to satisfy the deficiency, or (5) required to comply with subsequently enacted legislation.

Customer may terminate this Contract with our without cause and without penalty upon sixty (60) days written notice to the Postal Service. Such notice shall be sent by Express Mail service to the signatory below at the address in the preamble. Such notice shall be effective upon receipt.

V. Appeals

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage 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: Manager, Pricing and Classification Service Center, 90 Church St. Ste. 3100, New York, NY 10007-2951 ((212) 330-5300 / Fax: (212) 330-5320). The decision of the PCSC Manager will be administratively final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

VI. Confidentiality

A. Customer acknowledges that as part of securing approval of this contract, the contract and supporting documentation will be filed with the Postal Regulatory Commission in a docketed proceeding. The Postal Service shall request from the Commission non-public treatment of information that the Postal Service deems to be eligible for protection from public disclosure when it files such material with the Commission, including Customer's identity, the terms of this contract, and supporting data relating to postal costs, prices, and Customer's shipping profile. The Postal Service will redact such information from its public filing. Customer authorizes the Postal Service to determine the scope of information that must be made publicly available in the Commission's docketed proceeding. Customer further understands that any unredacted portion of this contract or supporting information will be available on the Commission's public website, www.prc.gov. At the request of Customer, the Postal Service will notify Customer of the docket number of the Commission proceeding once assigned. Customer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. Customer agrees to treat as confidential and not

disclose to third parties absent express written consent by the Postal Service any information related to this contract that is determined by the Commission to be non-public.

B. Terms of the Contract. Neither party shall make public the terms of this contract, except to the extent required by law. The Postal Service shall request that the Commission not disclose the terms of this contract or supporting data in executing its functions. This request shall include keeping confidential the identification of Customer as the contracting party.

C. Confidential Information.

i. Definition. "Confidential Information" shall mean all information, in any form, furnished or made available directly or indirectly by one Party to the other that is marked confidential, restricted, or with a similar designation. In the case of Customer, Confidential Information also shall include, whether or not designated "Confidential Information," (a) Customer data, systems, software or any information given to the Postal Service by Customer and its Affiliates and contractors in furtherance of the Postal Service's performance obligations hereunder; (b) Customer customer data; (c) any intellectual property of Customer; (d) all information concerning the operations, affairs and businesses of [redacted] the financial affairs of [redacted] and the relations of Customer, the financial affairs of Customer, and the relations of [redacted] with its customers, employees and service providers, customer lists, customer information, account information; (e) and other information or data stored on magnetic media or otherwise or communicated orally, and obtained, received, transmitted, processed, stored, archived or maintained by the Postal Service under the contract.

ii. In the event that either Party is furnished with Confidential Information of the other Party, neither Party shall: (a) use such Confidential Information for any purpose other than performing Contract Services or otherwise executing the terms of this Contract; (b) sell, assign, lease or otherwise dispose of such Confidential Information to third parties; or (c) commercially exploit such Confidential Information.

D. Obligations

i. Each Party shall use at least the same degree of care as it employs to avoid unauthorized disclosure of its own information, but in any event no less than commercially reasonable efforts, to prevent disclosing to unauthorized parties the Confidential Information of the other Party.

ii. As requested by Customer during the Term, upon expiration or any termination of the Agreement or completion of Supplier's obligations under the contract, the Postal Service shall return or destroy, as Customer may direct, all material in any medium that contains, refers to, or relates to Customer Confidential

Information, and retain no copies thereof, except as otherwise required by law or regulation.

iii. The Parties' obligations respecting Confidential Information shall survive expiration or termination of the contract.

E. Exclusions.

A Party shall not be considered to have breached its obligations by disclosing Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body provided that, promptly upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party of the request prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

VII. Amendments

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

VIII. Binding Nature and Assignment

This contract shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may, or shall have the power to, assign its rights under the contract or, delegate its obligations hereunder, without the prior consent of the other; such consent not to be unreasonably withheld, except that Customer may assign its rights and responsibilities under this contract without the Postal Service's consent, to any of Customer's affiliates or to any entity acquired by or merged with [redacted] at any time before the expiration or termination of this contract. Customer shall provide notice to the Postal Service of any acquisition or merger with another company within ninety (90) days of the completion of such merger or acquisition .

IX. Waiver

Any waiver by a party shall not constitute a waiver for any future occurrence. No waiver shall be valid unless set forth in a writing executed by the party waiving such provision.

X. Entire Agreement.

This contract constitutes the entire agreement between the Parties with respect to the subject matter contained in the contract and supersedes all prior correspondence, discussions, agreements, and understandings entered into between the Parties, whether written or oral, with respect to such subject matter.

XI. Compliance with Laws.

Each Party shall perform its obligations in a manner that complies with all applicable laws for which such Party is responsible hereunder or which otherwise relate to the provision of Contract Services (in the case of the Postal Services) or use of the Contract Services (in the case of Customer). The Postal Service represents that it has reviewed the requirements for regulatory approval of this contract and, to the best of its knowledge, the contract complies with all applicable regulations and laws. Customer assumes no obligations with respect to the Postal Service's regulatory compliance responsibilities under Title 39 if the United State Code, or any other applicable statute or regulation.

XII. Relationship of Parties

The Postal Service's relationship to Customer in the performance of the Contract Services is that of an independent contractor, and the Postal Service has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by the Postal Service under the contract. No joint venture is intended to be created hereby. Neither Party has any authority to represent the other Party as to any matters, except as expressly authorized in the contract. None of the Postal Service's personnel shall be deemed employees of Customer and the Postal Service shall be responsible for reporting and payment of all wages, unemployment, social security and other payroll taxes. Neither Party has and shall not be deemed to have actual, potential, or any other control over the other Party or its employees.

XIII. Non-Exclusivity

This Agreement is non-exclusive and shall not be deemed to be a requirements contract. Customer shall be free without obligation to the Postal Service to perform itself, or acquire from third parties, services similar or identical to the Contract Services provided hereunder

XIV. Indemnification

In recognition of the fact that the Postal Service is a governmental entity subject to unique laws and regulations, the Postal Service agrees to indemnify, defend, and hold harmless Customer from any and all claims and/or liability (and any costs relating thereto) against Customer and its affiliates and each of their respective directors, officers, agents and employees (the "Indemnified Parties") that may be asserted by third parties, whether private or public entities, relating to this contract and arising from the Postal Service's compliance or non-compliance with any laws or regulations applicable only to the Postal Service, including, but not limited to, Title 39 of the United State Code. The Postal Service agrees to make best efforts to have the Indemnified Parties excluded from any such proceeding or litigation.

IN WITNESS WHEREOF, the Parties hereto have caused this contract to be duly executed as of the later date below:

UNITED STATES POSTAL SERVICE

Signed by: _____

Printed Name: NAG USA MANAGER

Title: CMSO.

Date: 7-5-12

[redacted]

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

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NEGOTIATED SERVICE AGREEMENTS

Domestic

***

Express Mail Contract 12

Statement of Supporting Justification

I, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, am sponsoring this request that the Commission add Express Mail Contract 12 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 Express Mail 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 Express Mail service to the customer. Express Mail 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 Express Mail 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 Express Mail 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 Express Mail, 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 Express Mail Contract 12

I, Joseph D. Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for Express Mail Contract 12. 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 Express Mail, 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.