

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

COMPETITIVE PRODUCT PRICES
BILATERAL AGREEMENT BETWEEN UNITED STATES POSTAL
SERVICE AND POSTEN NORGE AS (MC2010-34)
NEGOTIATED SERVICE AGREEMENT

CP2014-35

**UNITED STATES POSTAL SERVICE NOTICE OF FILING
FUNCTIONALLY EQUIVALENT INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENT WITH NORWAY POST**
(March 13, 2014)

In accordance with 39 C.F.R. § 3015.5 and Order No. 546,¹ the United States Postal Service (Postal Service) gives notice that it has entered into a modification of the bilateral agreement for inbound competitive services with Posten Norge AS (Norway Post), which the Postal Regulatory Commission (Commission) previously reviewed in Docket Nos. CP2010-95 and CP2012-60.² The modification (Modification Two) extends the agreement filed in Docket No. CP2010-95 (the Norway Post Agreement) and the modification filed in Docket No. CP2012-60 (Modification One) indefinitely until amendment or termination pursuant to the Norway Post Agreement. Prices and classifications for competitive products not of general applicability for such agreements were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, issued August 9,

¹ PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

² *Id.*

2010 (Governors' Decision No. 10-3).³ In Order Nos. 546 and 1487, the Commission determined that the Norway Post Agreement and Modification One should be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.⁴ Modification One will expire on its own terms on March 31, 2014.⁵ The Commission is familiar with the negotiation cycle and regulatory process associated with this bilateral relationship. The current version of the agreement is substantively similar to the previous agreements reviewed by the Commission in Order Nos. 546 and 1487. The notable differences between the current agreement and the predecessor agreements are described below.

Using the predecessor Norway Post Agreement as the baseline for comparison of agreements for the purpose of determining functional equivalence is consistent with the Postal Service's proposal that was submitted in its Motion for Partial Reconsideration of Order No. 1864 in Docket No. R2013-9, which is hereby incorporated by reference.⁶ As explained above, the predecessor agreement and its modification, Modification One, were found by the Commission to be appropriately classified in this product grouping because they met all of the applicable statutory and regulatory requirements. Accordingly, the Postal Service requests that the Commission

³ A redacted copy of the Governors' Decision No. 10-3 was filed on August 13, 2010, and is filed as Attachment 3 of this Notice. An unredacted copy of this Governors' Decision was filed under seal on the same day with Request of United States Postal Service to Add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors' Decision and Negotiated Service Agreement, Docket Nos. MC2010-34 and CP2010-95, August 13, 2010. That notice may be accessed at the following link: http://prc.gov/Docs/69/69690/MC2010-34_CP2010-95%20Request_Notice.pdf.

⁴ Order No. 546; Order No. 1487, Order Approving Addition of Modified Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (Norway Post), Docket No. CP2012-60 (September 28, 2012).

⁵ Order No. 1487.

⁶ Motion for Partial Reconsideration of Order No. 1864, Docket No. R2013-9, November 6, 2013.

include Modification Two within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.

A copy of the Norway Post Agreement and the supporting financial documentation establishing compliance with 39 U.S.C. § 3633 and 39 CFR § 3015.5 are being filed under seal with the Commission. Attachment 1A is a copy of Modification Two, Attachment 1B is a copy of Modification One, and Attachment 1C is a redacted copy of the Norway Post Agreement. Attachment 2 is the certification required by 39 CFR § 3015.5(c)(2). The redacted version of the Governors' Decision that authorizes inbound competitive agreements with foreign postal operators is included as Attachment 3. The Postal Service's application for non-public treatment of the applicable materials is included with this filing as Attachment 4. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

Identification of the Additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator

The Postal Service believes that, like the predecessor agreement, Modification Two fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 10-3. The competitive services offered to Norway Post in the predecessor agreement included rates for inbound Air Parcels. Modification Two includes the same competitive service. The parties intend for Modification Two to become effective April 1, 2014. The rates included in Modification Two will remain in effect indefinitely until they are amended or terminated pursuant to the Norway Post Agreement.

Functional Equivalency of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

As explained above, the Postal Service is using the predecessor Norway Post Agreement as the baseline for the purpose of determining the functional equivalence of Modification Two with other agreements previously filed and included in the product grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators.

Modification Two is functionally equivalent to the Norway Post Agreement and Modification One because it demonstrates similar cost and market characteristics. The inbound service offered through Modification Two, inbound Air Parcels, fits within the proposed MCS language for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1. Therefore, Modification Two, Modification One, and the Norway Post Agreement conform to a common description. The postal services offered under Modification Two share cost characteristics with those offered in the baseline agreement, the Norway Post Agreement, as well. In Modification Two, Modification One, and the Norway Post Agreement, the general terms and conditions of exchange, which are the drivers of the costs, are spelled out through the E-Parcels Group agreement and its sub-agreements. With a few minor adjustments that do not affect the cost characteristics, the financial models used to generate the rates offered for inbound Air Parcels in the three agreements are the same. The adjustments, such as the expression of the costs in different currencies, are inconsequential to the Commission's analysis of functional equivalence. Therefore, it can be said that Modification Two has not only similar, but the same cost characteristics as the baseline agreement, the Norway Post Agreement.

The Postal Service submits that Modification Two is functionally equivalent to the baseline agreement, the Norway Post Agreement, and should be added to the competitive product list within the same product listing. There is, however, a difference between Modification Two and Modification One and the Norway Post Agreement. This difference is described below.

- Modification Two provides for an indefinite term, to continue until amended or terminated, while Modification One has an eighteen month term and the Norway Post Agreement has a two year term.

This difference does not affect either the cost or market characteristics of the postal services being offered or the fundamental nature of the agreements. Nothing detracts from the conclusion that Modification Two is functionally equivalent to Modification One and the Norway Post Agreement.

Conclusion

For the reasons discussed above, and on the basis of the financial data filed under seal, the Postal Service has established that Modification Two is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to other inbound competitive agreements with foreign postal operators. Accordingly, the Postal Service requests that Modification Two be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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**MODIFICATION TWO TO THE
COMMERCIAL CONTRACTUAL AGREEMENT BETWEEN
THE UNITED STATES POSTAL SERVICE (USPS) AND
POSTEN NORGE AS (NORWAY POST)**

This Modification amends the Commercial Contractual Agreement ("Agreement") between Posten Norge AS ("Norway Post") and the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the United States Government, with offices at 475 L'Enfant Plaza SW, Washington, DC 20260, signed by Norway Post on August 15, 2011, and by the USPS on August 16, 2011. Norway Post and the USPS may be referred to individually as a "Party" and together as the "Parties."

The purpose of this Modification is to delete the sentences that read:

The Agreement will remain in effect for one year from the Effective Date, unless amended or extended by mutual written agreement of both parties, subject to the right of either party to exercise its option to withdraw from the E Parcels Group ("EPG") Core Agreement or Sub-Agreement B. The Parties have the option of extending this contract for one additional year by mutual agreement in writing.

and replace them with the following paragraph:

The Agreement will remain in effect from the Effective Date until terminated, subject to the right of either party to exercise its option to withdraw from the E Parcels Group ("EPG") Core Agreement or Sub-Agreement B. Either Party may terminate this Agreement at the end of each calendar quarter without cause upon 90 days advance written notice to the other Party. The right to terminate the Agreement for good cause remains unaffected. In the event of termination of the Agreement pursuant to this paragraph, the Parties will be liable to make final settlement of all amounts owing as of the effective date of the termination.

All other terms and conditions of the Agreement remain in force.

Norway Post acknowledges that United States law may require the filing of this Modification and supporting documentation with the Postal Regulatory Commission ("Commission") and the U.S. Department of State in a docketed proceeding. Norway Post authorizes the USPS to determine the scope of the information made available publicly in any Commission docketed proceeding in which information related to this Modification or supporting information must be filed. Norway Post understands that any unredacted portion of this Modification or supporting information may be posted on the Commission's public website, <http://www.prc.gov>. In addition, the USPS may be required to file information in connection with this instrument (including revenue, cost or volume data) in other Commission dockets, including Commission docket numbers ACR2014, ACR2015, ACR2016, and others opened in the future. Norway Post has the right, in accordance

5. March 2014
H. Anderson

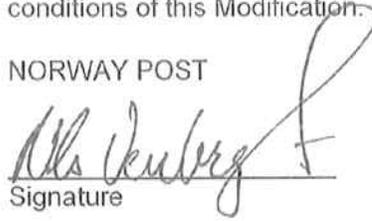
with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 found on the Commission's website, <http://www.prc.gov/Docs/63/63467/Order225.pdf>. At Norway Post's request, USPS will notify Norway Post of the docket number of the Commission's proceeding, if any, used in connection with this Modification.

The Parties may execute this Modification in one or more counterparts (including by facsimile or by electronic means such as .pdf format). It is not required that all Parties be signatories to the same document. All counterpart signed documents are deemed an original and one instrument.

5. March 2014
K. Rulien

The Parties agree to be bound as of the latest date of signature to the terms and conditions of this Modification.

NORWAY POST


Signature

Nils Venberget
Manager International Relations

5. March 2014
(Date)

UNITED STATES POSTAL SERVICE


Signature

Giselle Valera
Managing Director, Global Business and
Vice President

5 March 2014
(Date)

**MODIFICATION ONE TO THE
COMMERCIAL CONTRACTUAL AGREEMENT BETWEEN
THE UNITED STATES POSTAL SERVICE (USPS) AND
POSTEN NORGE AS (NORWAY POST)**

This Modification amends the Commercial Contractual Agreement (“Agreement”) between Posten Norge AS (“Norway Post”) and the United States Postal Service (“USPS”), an independent establishment of the Executive Branch of the United States Government, with offices at 475 L’Enfant Plaza SW, Washington, DC 20260, signed by Norway Post on August 15, 2011, and by the USPS on August 16, 2011. Norway Post and the USPS may be referred to individually as a “Party” and together as the “Parties.”

The purpose of this Modification is to replace the sentence that reads “The Parties have the option of extending this contract for one additional year by mutual agreement in writing” with the following replacement text:

Norway Post and USPS agree to extend this Agreement for an additional eighteen months, from October 1, 2012 to March 31, 2014.

All other terms and conditions of the Agreement shall remain in force.

Norway Post acknowledges that United States law may require that this Modification and supporting documentation be filed with the Postal Regulatory Commission (“Commission”) and the U.S. Department of State in a docketed proceeding. Norway Post authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding in which information related to this Modification must be filed. Norway Post further understands that any unredacted portion of this Modification or supporting information may be posted on the Commission’s public website, <http://www.prc.gov>. In addition, the USPS may be required to file information in connection with this instrument (including revenue, cost or volume data) in other Commission dockets, including Commission docket numbers ACR2013 and ACR2014. Norway Post has the right, in accordance with the Commission’s rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 found on the Commission’s website, <http://www.prc.gov/Docs/63/63467/Order225.pdf>. At Norway Post’s request, USPS will notify Norway Post of the docket number of the Commission proceeding, if any, used in connection with this Modification.

The Parties may execute this Modification in one or more counterparts (including by facsimile or by electronic means such as .pdf format). Not all Parties need be signatories to the same document. All counterpart signed documents shall be deemed an original and one instrument.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Modification.

NORWAY POST



Signature

Nils Venberget
Manager International Relations



(Date)

UNITED STATES POSTAL SERVICE



Signature

Giselle Valera
Managing Director, Global Business and
Vice President



(Date)

Commercial Contractual Agreement

between

The United States Postal Service (USPS)

and

Posten Norge AS (Norway Post)

Pursuant to Annex B2 of Sub-Agreement B to the Agreement for the Delivery of Day-Certain Cross-Border Parcels ("Sub-Agreement B"), the USPS agrees to pay [REDACTED] United States Dollars for Air Parcel items sent from the USPS to Norway Post for delivery in Norway. Norway Post agrees to pay [REDACTED] United States Dollars for Air Parcel items sent from Norway Post to the USPS for delivery in the United States. All taxes and duties continue to be the sole responsibility of the party to which they are duly assessed and shall not be charged to the other party in any form, unless otherwise agreed in writing between the parties. [REDACTED]

The terms and pricing set forth under this Agreement require the approval from various entities that have oversight responsibilities for the USPS as set out in the following paragraph. Upon execution of this Agreement, the USPS shall seek such approval. This Agreement shall come into effect upon all such approvals having been obtained by USPS and, within 30 days, notification to Norway Post by USPS that all such approvals have been obtained, and the date of notification shall be "the Effective Date," unless an alternative date is proposed in the USPS's notification and agreed to by Norway Post in a return communication, in which case that alternative date shall be the Effective Date. The Agreement will remain in effect for one year from the Effective Date, unless amended or extended by mutual written agreement of both parties, subject to the right of either party to exercise its option to withdraw from the E Parcels Group ("EPG") Core Agreement or Sub-Agreement B. The Parties have the option of extending this contract for one additional year by mutual agreement in writing.

The parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection (collectively, "Conditions Precedent") by one or more internal and external bodies that have oversight responsibilities, including USPS management, the USPS executive committee, the Governors of the USPS, and the U.S. Postal Regulatory Commission. The USPS shall have no obligation to notify Norway Post of the status of the approval process or of potential fulfillment of the approval process. The parties acknowledge that the Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the services or pricing contemplated under



the Agreement, no obligation shall exist for the USPS or Norway Post and no benefit or rights granted through this Agreement shall inure to either party unless and until the Effective Date occurs and upon such occurrence the Conditions Precedent shall have been fulfilled.

In the event that any regulatory or statutory requirements do not permit the maintenance of pricing under this Agreement, the parties will negotiate in good faith to give effect to those requirements. Failing agreement on modifications to the pricing, the parties shall revert to Air Parcel rates established via Universal Postal Union processes and/or International Bureau circulars, excluding any penalties, bonuses, or incentives otherwise available to them as EPG members.

In the event that the Conditions Precedent are not fulfilled or that regulatory or statutory requirements do not permit the maintenance of pricing under this Agreement, the USPS and Norway Post shall have no liability, which shall include no obligation to pay costs associated with any action taken by Norway Post prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement, reversion of pricing, or the failure of any Condition Precedent, neither Party shall be held liable for any damages including, without limitation, the following: actual damages; special damages; indirect damages; incidental damages; punitive damages; consequential damages; or any other damages, including but not limited to damages for loss of business profits; business interruption; any other loss; and/or any cost incurred by either Party attributable to such non-approval such as attorney's fees.

Norway Post acknowledges that United States law may require that this agreement be filed with the U.S. Postal Regulatory Commission (Commission) and the U.S. Department of State in a docketed proceeding, as well as part of regular reporting in Commission dockets ACR 2011, ACR 2012, ACR 2013, etc. Norway Post authorizes the USPS to determine the scope of information that must be made publicly available under the Commission's rules. Norway Post further understands that any unredacted portion of this document may be posted on the Commission's public website, www.prc.gov. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf. Norway Post has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. At Norway Post's request, the U.S. Postal Service will notify Norway Post of the docket number of the Commission proceeding, if any, used in connection with this agreement.

This commercial contractual agreement does not bind the governments of the United States and Norway and is not an international law agreement. The agreement is made in duplicate and may be signed in counterparts.

United States Postal Service



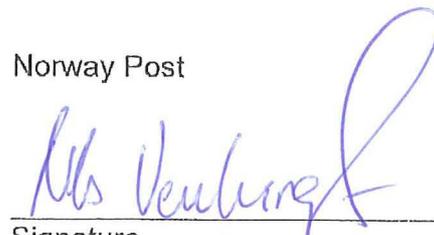
Signature

Giselle Valera
Managing Director, Global Business
and Vice President



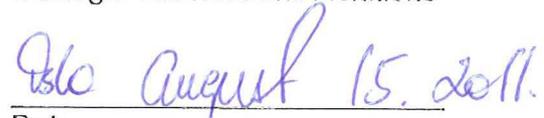
Date

Norway Post



Signature

Nils Venberget
Manager International Relations



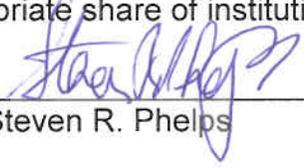
Date



**Certification of Prices for Modification Two to the Commercial Contractual
Agreement between the United States Postal Service (USPS)
and Posten Norge AS (Norway Post)**

I, Steven R. Phelps, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for Modification Two with Norway Post. The prices contained in this agreement were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, issued August 6, 2010 (Governors' Decision No. 10-3).

I hereby certify that the cost coverage for the agreement with Norway Post has been appropriately determined and represents the best available information. The prices are in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The prices demonstrate that the agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2013, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from this agreement should be much smaller. The agreement with Norway Post should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Steven R. Phelps

"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS
(GOVERNORS' DECISION NO. 10-3)**

August 6, 2010

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices by setting price floor and price ceiling formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. The agreements to which these prices will apply are described in Attachment A.¹ The pricing formulas and management's analysis of the appropriateness of these formulas are specified in Attachment B. We have reviewed that analysis and have concluded that the prices and classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Agreements that fall within the terms specified in Attachment A, and whose prices fall within the price ranges established by the price floor and price ceiling formulas specified in Attachment B, are hereby authorized.

The PAEA provides that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. We are satisfied that the prices established according to the formulas listed in Attachment B will enhance the Postal Service's ability to meet the applicable statutory and regulatory requirements. We accept and rely upon the certification in Attachment C that the correct cost inputs for the formulas have been identified. In addition, the price floor formulas should produce prices that allow each product to cover attributable costs and

¹ Because the Postal Service is creating a new grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Administrations, entirely new Mail Classification Schedule language is proposed.

"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"

Governors' Decision No. 10-3

Page 2

provide a contribution toward the Postal Service's institutional costs. The prices should thus prevent cross-subsidies from market dominant products. As noted in the certification in Attachment C, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3).

ORDER

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, 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

Description of Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2614 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2614.1 Description

- a. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators provide prices for acceptance, transportation within the United States, and delivery of any combination of Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and/or Inbound International Expedited Services (Express Mail Service) tendered by foreign postal operators. These constituent services may include other services that the relevant foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in a similar manner within the United States Postal Service's network. Such agreements 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.
- b. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators may set forth general operating terms and conditions, on-time delivery and scanning service performance targets and standards, specifications for mail product categories and formats, processes for indemnity, and shared transportation arrangements that modify the requirements generally applicable to the services covered by each agreement.
- c. Items tendered under Inbound Competitive Multi-Service Agreements with Foreign Postal Operators items are either sealed or not sealed against inspection, according to the general nature of each underlying service.

2614.2 Size and Weight Limitations

Size and weight requirements are the requirements for Inbound Air Parcel Post at UPU Rates, Inbound Surface Parcel Post (at UPU Rates), Inbound Direct Entry, and Inbound International Expedited Services (Express Mail Service), respectively, subject to any applicable country-specific modifications.

2614.3 Optional Features

The Postal Service may offer such optional features as may be mutually agreed with the relevant foreign postal operator.

2614.4

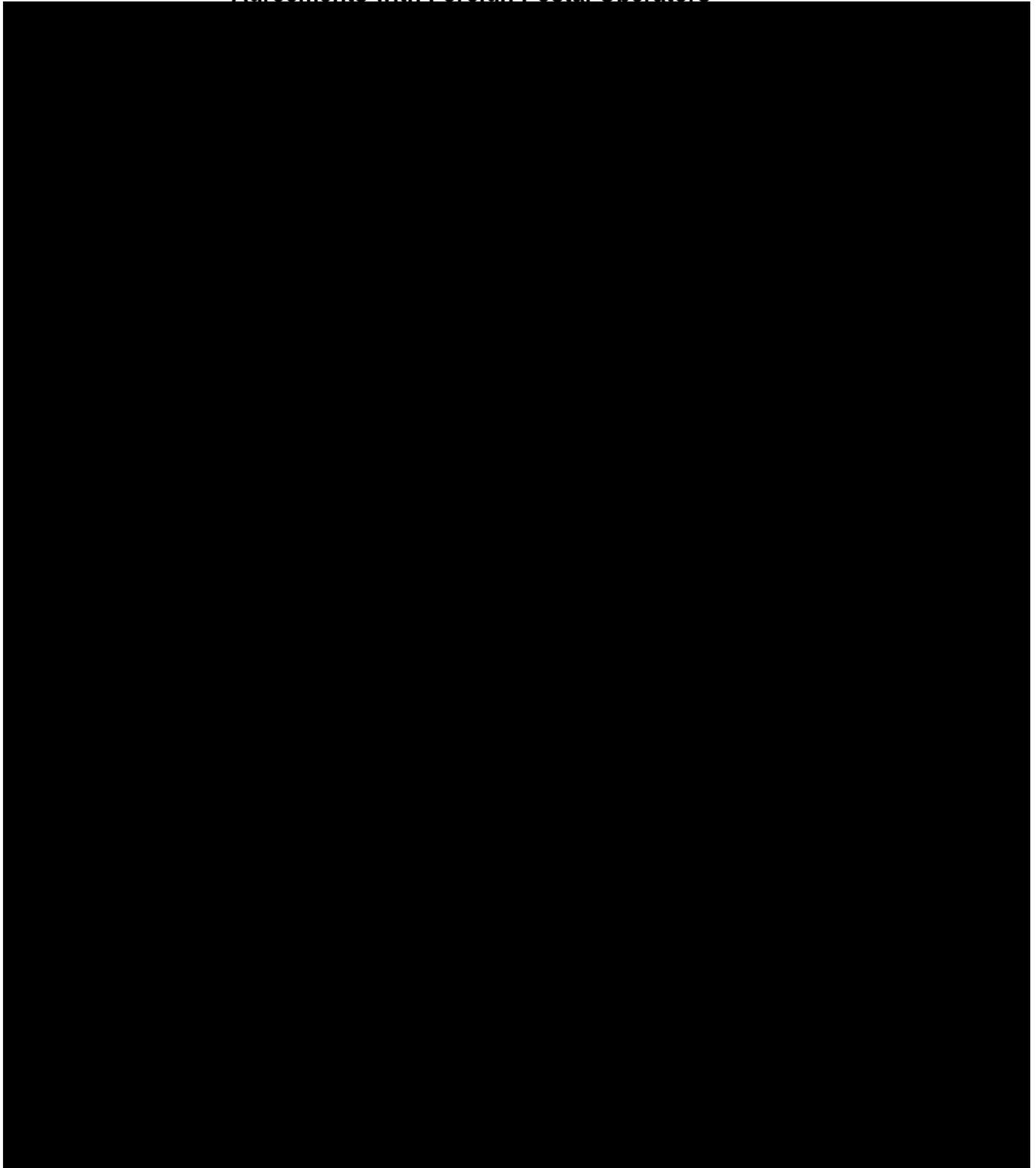
Products Included in Group (Agreements)

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-X, CP2010-X)

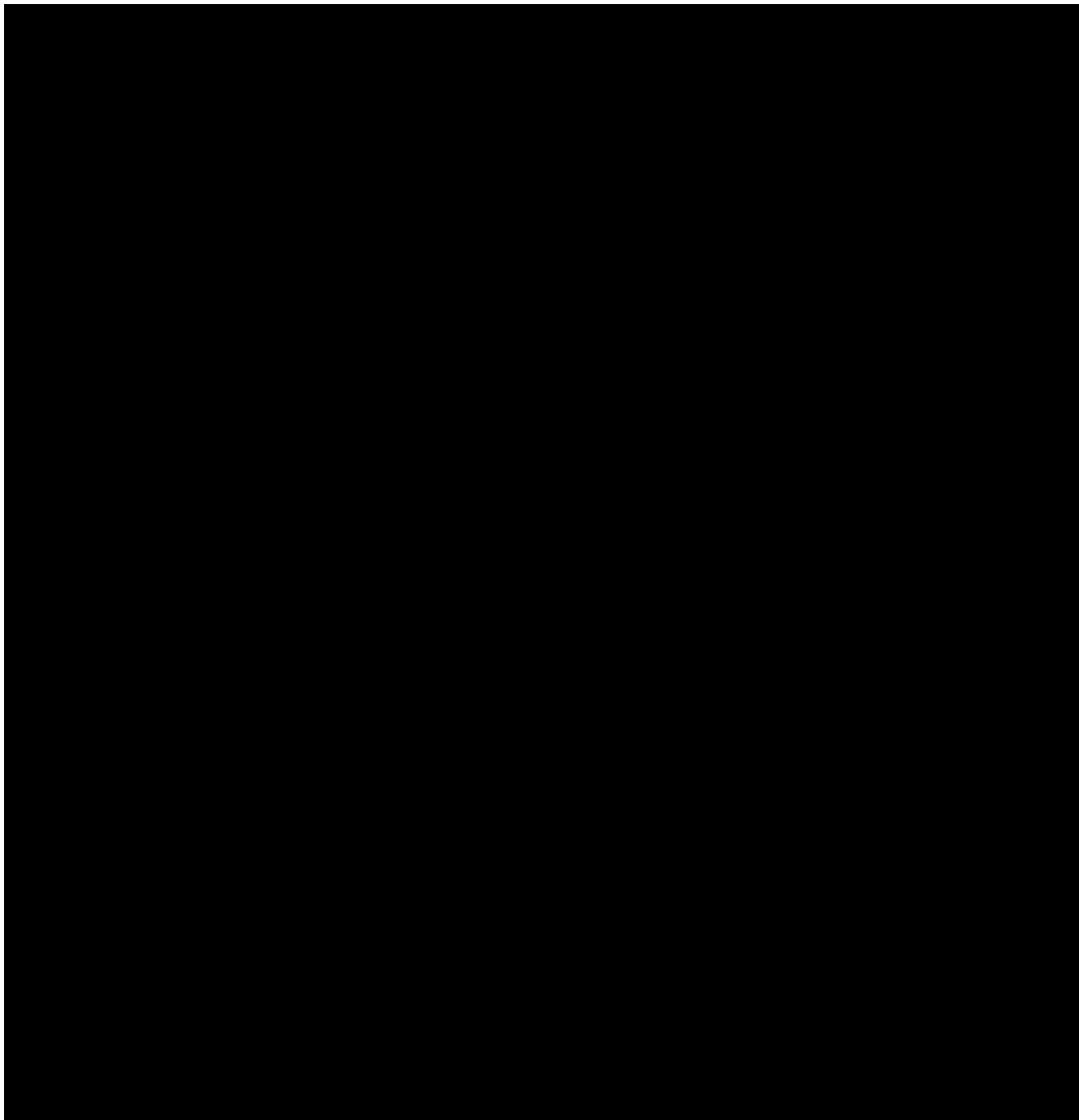
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Attachment B

Formulas for Prices Under Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators



"Restricted and Sensitive Business Information - Do Not Disclose."



Attachment C

Certification of Prices for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the price formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, which are set forth in Attachment B. I hereby certify that these formulas adequately represent all necessary cost elements. If the Postal Service were to enter into agreements and offer services that set prices above the price floors, the Postal Service would be in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The price floor formulas are designed to ensure that each agreement and service should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2009, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from Inbound Competitive Multi-Service Agreements with Foreign Postal Operators should be much smaller. Even if all such agreements are signed with prices at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Joseph Moeller

**CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 10-3**

I hereby certify that the Governors voted on adopting Governors' Decision No. 10-3, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.



Julie S. Moore
Secretary of the Board of Governors

Date: 8-9-2010

ATTACHMENT 4

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

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to the modification to the bilateral agreement between Norway Post and the United States Postal Service filed in this proceeding. The agreement and supporting documents establishing compliance are being filed separately under seal with the Commission. A redacted copy of the agreement affected by the modification is filed with the Notice as Attachment 3C. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

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

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

The materials designated as non-public consist of information of a commercial nature that would not be disclosed publicly under good business practice. In the Postal Service's view, 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) and (4).¹ Because the portions of the materials that are subject to this

¹ 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

application fall within the scope of information not required for public disclosure, the Postal Service requests that the Commission grant its application for non-public treatment.

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

In the case of the redacted agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the contract is made. Through text in the agreement, the Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and the operator's ability to address its confidentiality concerns directly with the Commission. Due to the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices. The Postal Service identifies as an appropriate contact person Ms. Haley Eubanks, International Postal Affairs, United States Postal Service. Ms. Eubanks' phone number is (202) 268-4315, and her email address is haley.n.eubanks@usps.gov.²

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.

² The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

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

In connection with its Notice filed in this docket, the Postal Service included an agreement and financial workpapers associated with that agreement. These materials were filed under seal, with redacted copies filed publicly, after notice to the affected postal operator. The Postal Service maintains that the redacted portions of the agreement and related financial information should remain confidential.

With regard to the agreement filed in this docket, the redactions withhold the actual prices being offered between the parties under the agreement. The redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b).

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

If the portions of the agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Foreign postal operators could use the information to their advantage in negotiating the terms of their own agreements

with the Postal Service. Competitors could also use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. This latter concern applies to the extent that the prices in the filed agreement cover certain competitive services, which are included in the agreement filed under seal, and market dominant services for which competition exists. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial workpapers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing, in light of statutory, regulatory, or policy constraints. Thus, competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential foreign postal operators or customers could also deduce from the rates provided in the agreement or from the information in the workpapers whether additional margin for net contribution exists under agreement's prices. The settlement charges between the Postal Service and the foreign postal operator constitute costs underlying the postal services offered to each postal operator's customers, and disclosure of this cost basis would upset the balance of Postal Service negotiations with foreign posts or contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs.

From this information, each foreign postal operator or customer could also attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in the agreement at issue in this docket could use the information in the workpapers in an attempt to renegotiate the rates in its instrument by threatening to terminate its current agreement.

Price information in the agreement and financial spreadsheets also consists of sensitive commercial information of the foreign postal operator. Disclosure of such information could be used by competitors of the foreign postal operator to assess the foreign postal operator's underlying costs, and thereby develop a benchmark for the development of a competitive alternative. The foreign postal operator would also be exposed to the same risks as the Postal Service in customer negotiations based on the revelation of their supplier costs.

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

Harm: Public disclosure of the prices in the Agreement, as well as any negotiated terms, would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin below the rates provided to either operator. The other postal operator, which was offered rates comparable to those published in the agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered.

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

Hypothetical: A competing delivery service obtains unredacted versions of the financial workpapers from the Postal Regulatory Commission's website. It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to comply with business or legal considerations regarding cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal

Service out of one or more relevant international delivery markets. Even if the competing providers do not manage wholly to freeze out the Postal Service, they will significantly cut into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial workpapers would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess the foreign postal operator's underlying costs for the corresponding products. The competitor uses that information as a baseline to negotiate with U.S. companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes the counter-party to the agreement with respect to all materials filed under seal except for the text of the postal operator's agreement, to which that counter-party already has access.

(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.

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

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.