

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

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOXES  
CONTRACT 1 (MC2015-31)  
NEGOTIATED SERVICE AGREEMENT

Docket No.  
CP2016-187

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING A  
FUNCTIONALLY EQUIVALENT PRIORITY MAIL INTERNATIONAL REGIONAL  
RATE BOXES 1 NEGOTIATED SERVICE AGREEMENT AND APPLICATION FOR  
NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL**

(May 27, 2016)

In accordance with 39 C.F.R. § 3015.5 and Order No. 2364,<sup>1</sup> the United States Postal Service (Postal Service) hereby gives notice that it is entering into a Priority Mail International Regional Rate Boxes 1 (PMI RRB 1) contract. Prices and classifications not of general applicability for PMI RRB 1 contracts were previously established pursuant to the 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).<sup>2</sup> Subsequently, PMI RRB 1 was added to the competitive product list, and the contract filed in Docket No. CP2015-40 serves as the baseline agreement for comparison of potentially functionally equivalent agreements under the PMI RRB 1

<sup>1</sup> PRC Order No. 2364, Order Adding Priority Mail International Regional Rates Boxes Contract 1 to the Competitive Product List, Docket Nos. MC2015-31 and CP2015-40, February 24, 2015.

<sup>2</sup> A redacted copy of Governors' Decision No. 11-6 was filed under seal and a redacted copy is included as Attachment 2 to Request of the United States Postal Service to Add Priority Mail International Regional Rate Boxes Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, Docket Nos. MC2015-31 and CP2015-40, February 4, 2015.

grouping.<sup>3</sup> The Postal Regulatory Commission (Commission) determined that individual GEPS contracts may be included as part of the PMI RRB 1 product if they meet the requirements of 39 U.S.C. § 3633 and if they are functionally equivalent to the baseline agreement for the PMI RRB 1 product.<sup>4</sup>

The contract and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. A redacted copy of the contract, a certified statement required by 39 C.F.R. § 3015.5(c)(2) for the contract, and Governors' Decision No. 11-6 are filed as Attachments 1, 2, and 3, respectively. Attachment 4 to this Notice is the Postal Service's Application for Non-public Treatment of materials filed under seal in this docket. A full discussion of the required elements of the application appears in Attachment 4.

***I. Background***

The first PMI RRB 1 contract was filed on February 4, 2015.<sup>5</sup>

The Postal Service demonstrates below that the agreement that is included with this filing is functionally equivalent to the contract that is the subject of Docket No. CP2015-40. Accordingly, this contract should be included within the PMI RRB 1 product.

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<sup>3</sup> PRC Order No. 2364, at 6.

<sup>4</sup> *Id.*

<sup>5</sup> Request of the United States Postal Service to Add Priority Mail International Regional Rate Boxes Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, Docket Nos. MC2015-31 and CP2015-40, February 4, 2015, at Attachment 4.

## ***II. Identification of the Additional PMI RRB 1 Contract***

The Postal Service believes that this additional PMI RRB 1 contract fits within the Mail Classification Schedule (MCS) section that concerns PMI RRB.<sup>6</sup>

This additional PMI RRB 1 contract is intended to become effective on June 15, 2016. The agreement that is the subject of this docket is set to expire one year after its Effective Date, or the last day of the month that falls one calendar year from the Effective Date.

## ***III. Functional Equivalency of PMI RRB 1 Contracts***

This PMI RRB 1 contract is substantially similar to the contract filed in Docket No. CP2015-40. The contract shares similar cost and market characteristics with that contract. In Governors' Decision No. 11-6, the Governors established a pricing formula and classification that ensure that each outbound international competitive agreement meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each contract conform to a common description. In addition, the MCS section for Priority Mail International Regional Rate Boxes Contracts requires that each Priority Mail International Regional Rate Boxes contract must cover its attributable costs. The contract at issue here meets the Governors' criteria and the criteria set forth in the MCS, and thus exhibits similar cost and market characteristics to the baseline PMI RRB 1 contract that is the subject of Docket No. CP2015-40.

The functional terms of the contract at issue are the same as those of the contract that is the subject of Docket No. CP2015-40, which serves as the baseline agreement for the PMI RRB 1 product grouping. The benefits of the contract to the

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<sup>6</sup> See PRC, Mail Classification Schedule, posted January 15, 2016 (With revisions through April 10, 2016), available at <http://www.prc.gov/mail-classification-schedule>, at 502-504.

Postal Service are comparable as well. Therefore, the Postal Service submits that the contract is functionally equivalent to the contract that is the subject of CP2015-40 and should be added to the competitive product list as a PMI RRB 1 contract.

In a concrete sense as well, this PMI RRB 1 contract shares the same cost and market characteristics as the baseline PMI RRB 1 contract filed in Docket No. CP2015-40. Customers for Priority Mail International Regional Rate Boxes contracts are small- or medium-sized businesses that seek to mail products directly to foreign destinations using Priority Mail International Regional Rate Boxes. Prices offered under the contracts may differ depending on the volume or postage commitments made by the customers. Prices also may differ depending upon when the agreement is signed, due to the incorporation of updated costing information. These differences, however, do not alter the contracts' functional equivalency. Because the agreement incorporates the same cost attributes and methodology, the relevant characteristics of this PMI RRB 1 contract is similar, if not the same, as the relevant characteristics of the baseline PMI RRB 1 contract.

Like the contract that is the subject of Docket No. CP2015-40, this contract also fits within the parameters outlined by the Governors' Decision establishing the rates for outbound international competitive agreements. There are, however, differences between this contract and the contract that is the subject of Docket No. CP2015-40, which include:

- The name and address of the customer in the title and first paragraph of the agreement;

- The deletion of references to Regional Rate Box C in Article 4 and throughout the agreement;
- A revised minimum commitment in Article 11;
- A revised Article 15 concerning postage updates;
- The identification of the customer's representative to receive notices under the agreement in Article 31 and the identity of the signatory to the agreement; and
- A revised Annex 1.

The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contract. Nothing detracts from the conclusion that this agreement is “functionally equivalent in all pertinent respects”<sup>7</sup> to the contract that is the subject of Docket No. CP2015-40.

### ***Conclusion***

For the reasons discussed, and as demonstrated by the financial data filed under seal, the Postal Service has established that this PMI RRB 1 contract is in compliance with the requirements of 39 U.S.C. § 3633. In addition, the contract is functionally equivalent to the baseline contract that is the subject of Docket No. CP2015-40. Accordingly, the contract should be added to the PMI RRB 1 product grouping.

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<sup>7</sup> See PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9, and CP2008-10, June 27, 2008, at 8 (applying standards for the filing of functionally equivalent contracts).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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GLOBAL CUSTOMIZED MAIL AGREEMENT BETWEEN  
THE UNITED STATES POSTAL SERVICE AND

This Agreement ("Agreement") is between [REDACTED] ("Mailer"), with offices at [REDACTED] and the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the United States Government with offices at 475 L'Enfant Plaza SW, Washington, DC 20260-9998. The Mailer and the USPS may be referred to individually as a "Party" and together as the "Parties."

**Introduction.** WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the USPS will provide certain products and/or services to the Mailer pursuant to the terms and conditions contained herein; WHEREAS, the Parties desire to be bound by the terms of this Agreement; NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

**1. Purpose of the Agreement.** This Agreement shall govern the use the Mailer may make of customized mail service for Priority Mail International Regional Rate Boxes.

**2. Choice of Payment Method.** By initialing one of the following two options, the Mailer hereby selects a postage payment method. This Agreement is not valid unless either Option A or B is selected.

**Option A: Postage Payment through a PC Postage Provider.** The Mailer shall pay postage to the USPS through the intermediary of a USPS-approved PC Postage Provider that the USPS has authorized to offer services to contract rate customers. The Mailer agrees to use only one USPS-approved PC Postage Provider at a time. The Mailer retains the right to change from one PC Postage Provider to another provided that the new PC Postage Provider has been authorized by the USPS to offer services to contract rate customers. Initially, the Mailer chooses [REDACTED] as its USPS-approved PC Postage Provider.

**Option B: Postage Payment through a Permit Imprint using USPS-provided Global Shipping Software (GSS).** The Mailer shall pay postage to the USPS through the use of a permit imprint subject to the conditions stated in IMM 152.4 and DMM 604.5.

**3. Definitions.** As used in this Agreement: (1) "IMM" means the *International Mail Manual* as found on the USPS website [pe.usps.com](http://pe.usps.com) on the date of mailing; (2) "DMM" means the *Domestic Mail Manual* as found on the USPS website [pe.usps.com](http://pe.usps.com) on the date of mailing; (3) "Effective Date" means the first date on which the USPS is willing to accept Qualifying Mail; (4) "PC Postage Provider" means a provider of software-based management of postage accounts, authorized by the USPS to offer services to contract rate customers; (5) "Qualifying Mail" means mail that meets the requirements set forth in Article 4 of this Agreement; (6) "Non-Qualifying Mail" means mail that does not meet the requirements set forth in Article 4 of this Agreement. Priority Mail International Regional Rate Boxes tendered to the USPS at a USPS retail window or at any commercial mail receiving agency are Non-Qualifying Mail. Under Option A above, Priority Mail International Regional Rate Boxes tendered to the USPS at a Business Mail Entry Unit are Non-Qualifying Mail. Regional Rate Boxes that do not bear the marking "FOR DOMESTIC AND INTERNATIONAL USE" are Non-Qualifying Mail.

**4. Qualifying Mail.** (1) Only mail tendered to the USPS in a USPS-provided box bearing one of the following markings:

- Regional Rate Box A, For Domestic And International Use;
- Regional Rate Box B, For Domestic And International Use;

and that is intended for delivery in a country listed in Annex 2 of this Agreement with the exception of: (a) any item destined for any country included in Country Groups E-1 and E-2 under Supplement No. 1 to Title 15, Code of Federal Regulations, Part 740; (b) any item addressed to persons or entities identified on the Office of Foreign Assets Control's (OFAC's) Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, the Bureau of Industry and Security's (BIS's) Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382; and (c) any item tendered on behalf of third parties or entities identified on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382, shall be considered as Qualifying Mail, except as those requirements conflict with the applicable specific preparation requirements set forth in Article 6. Such Qualifying Mail shall be referred to as Priority Mail International Regional Rate Box(es) in this Agreement.

(2) Subject to availability, Regional Rate Boxes bearing the markings set forth in Paragraph 1 of this Article may be ordered from [usps.com](http://usps.com) by choosing from the following: Priority Mail Regional Rate Box - A1, Priority Mail Regional Rate Box - A2, Priority Mail Regional Rate Box - B1, and Priority Mail Regional Rate Box - B2.

(3) Weight limits for Qualifying Mail: Priority Mail Regional Rate Box A1 and A2 maximum weight 10 pounds, and Priority Mail Regional Rate Box B1 and B2 maximum weight 20 pounds. Boxes in excess of the stated

maximum weight limits shall be considered as Non-Qualifying mail and shall be subject to the applicable published price for the actual weight and applicable price group.

**5. Treatment of Non-Qualifying Mail.** Under Option A and under Option B above, the USPS, at its option and without forfeiting any of its rights under this Agreement, may refuse to accept Non-Qualifying Mail or may accept Non-Qualifying Mail at the applicable published prices.

**6. Specific Preparation Requirements.** (1) Under Option A above, mailings processed using software provided by a USPS-approved PC Postage Provider that the USPS has authorized to offer services to contract rate customers, must be accompanied by a PS Form 3152 Confirmation Services Certification, or a PS Form 5630 Shipment Confirmation Acceptance Notice, or an equivalent form produced by the PC Postage Provider's software. (2) Under Option B above: (a) Mailings of Qualifying Mail must be kept separate from any other type of mail the Mailer tenders. (b) International mailings must be separated from domestic mailings. (c) Mailings processed using Global Shipping Software (GSS) must: (i) Be accompanied by a postage manifest; and (ii) Be paid for through the use of a Permit Imprint.

**7. Obligations of the USPS.** The USPS hereby agrees: (1) Transportation To arrange with carriers to transport Qualifying Mail to international destinations where the proper authority will effect delivery. (2) Undeliverable Items To return Priority Mail International Regional Flat Rate Box items refused by an addressee or that are undeliverable to the Mailer according to the provisions of IMM 771. (3) Postage To provide prices for Qualifying Mail paid for and tendered as required by this Agreement. (4) Pickup To provide pickup service for Qualifying Mail according to the applicable local agreement, if any, as amended from time to time. (5) Confidentiality To seek non-public treatment of information it determines to be eligible for protection from public disclosure under applicable law and practice when it files the Agreement with the Postal Regulatory Commission, or when it files information (including data) in connection with the Agreement in accordance with other regulatory requirements. (6) Technical Assistance under Option B To provide the Mailer with technical assistance necessary to prepare information linkages, electronic data files, and data exchanges as required for the proper functioning of USPS-provided Global Shipping Software (GSS). (7) Boxes To provide Priority Mail International Regional Rate Boxes through usps.com, subject to availability.

**8. Obligations of the Mailer – General.** The Mailer hereby agrees: (1) Postage To pay postage for Priority Mail International Regional Rate Boxes according to the price chart in Annex 1. (2) Customs and Export Documentation To provide any necessary documentation, including data provided in electronic format, in connection with each mailing, in the form and at the time specified by the USPS, Customs & Border Protection, Transportation Security Administration, the U.S. Census Bureau, a destination country foreign government, or other authority. The Mailer further understands that the failure to provide any such required documentation may result in refusal at acceptance, delay in processing, involuntary seizure by customs authorities, and/or return of mail to the sender. (3) Customs and Export Requirements To comply with any regulation or order promulgated by the USPS, OFAC, the U.S. Department of the Treasury, the U.S. Census Bureau, BIS, the U.S. Department of Commerce, the U.S. Department of State, the U.S. Customs & Border Protection, the U.S. Fish and Wildlife Service, the Transportation Security Administration, a destination country foreign government, or other governmental unit, according to any requirements specified by those authorities. See IMM 5 for additional information. (4) Tender Not to: (a) Tender or attempt to tender any item under this Agreement that is destined for any country included in Country Groups E-1 and E-2 under Supplement No. 1 to Title 15, Code of Federal Regulations, Part 740; (b) Tender or attempt to tender any item addressed to persons or entities identified on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382; (c) Tender or attempt to tender any item on behalf of third parties or entities identified on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382. (5) Confidentiality To treat as confidential and not disclose to third parties, absent express written consent by the USPS, any information related to this Agreement that is treated as non-public by the Postal Regulatory Commission. (6) Penalties To pay any fines or penalties as well as any other expenses, damages, and/or charges, including any applicable duties, taxes, and/or fees that result from an action of any other governmental entity that regulates exports and/or imports in relation to any item tendered under this agreement, or that results from the Mailer's failure to comply with applicable laws and regulations of the origin country, destination country, or any country through which a mailing tendered under this Agreement passes (including failure to provide necessary documentation and/or failure to obtain any required license or permit). (7) Advance Notification To provide the Manager, Customized Mail, USPS, via e-mail to [icmusps@usps.gov](mailto:icmusps@usps.gov) with notification of the Mailer's intent to tender Qualifying Mail under this Agreement that requires a license from OFAC, BIS, or the U.S. Department of State not less than ten (10) days prior to tender of such items.

**9. Additional Obligations of the Mailer Under Option A.** The Mailer, having selected Option A above, hereby agrees: (1) Advance Notification To provide the Manager, Customized Mail, USPS, via e-mail to [icmusps@usps.gov](mailto:icmusps@usps.gov) with notification of the Mailer's intent to change PC Postage Providers and the name of the new PC Postage Provider the Mailer intends to use at least twenty (20) days in advance of the anticipated change from one PC Postage Provider to another. (2) Tender To present the mailings to the USPS using any means of tender the USPS authorizes for items for which postage payment is through a PC Postage Provider, with the exception of the following means of tender: tender at a USPS retail window, or a commercial mail receiving agency. (3) Software To apply address labels and Customs declarations to Qualifying Mail using the software provided by the USPS-approved PC Postage Provider which the Mailer has identified as its selected postage payment intermediary. (4) Postage Due To pay any postage due to the USPS as a result of discrepancies between the actual PC postage applied to the mailings and the postage required under this Agreement.

**10. Additional Obligations of the Mailer Under Option B.** The Mailer, having selected Option B above, hereby agrees: (1) Advance Notification To provide: (a) The Manager, Customized Mail, USPS, via e-mail to [icmusps@usps.gov](mailto:icmusps@usps.gov), with notification of new permit numbers used for Qualifying Mail one week in advance of using the new permit numbers. The message should include the permit number, the city, state, and ZIP Code where the permit is held, the name of the permit owner, and the requested implementation date. (b) The appropriate USPS acceptance site(s) with notice of intent to mail. (2) Tender To present the mailings at a Business Mail Entry Unit (BMEU) approved by the USPS to receive Qualifying Mail in accordance with the scheduling procedures in place at the appropriate acceptance site(s). (3) Address Labels and Customs Declarations. To create address labels and customs declarations for Priority Mail International Regional Rate Boxes Qualifying Mail using USPS-provided Global Shipping Software (GSS). (4) Information Link. To establish the necessary linkages with the USPS so that: (a) The Mailer and the USPS can exchange data transmissions concerning the Mailer's packages; (b) The USPS can, at the Mailer's request, extract information by scanning the Mailer-provided barcode on each package. (5) Data Transmission. To exchange electronic information with the USPS according to the instructions the USPS provides.

**11. Minimum Commitment.** The Mailer is required to meet an annualized minimum commitment of [REDACTED]

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

[REDACTED] (2) The USPS will provide the Mailer with an invoice for any postage due for the failure to meet the minimum commitment stated in Paragraph 1. All amounts due are to be paid within thirty (30) days of the date of the invoice. Any invoice that is not paid within thirty (30) days will incur [REDACTED]

[REDACTED] Any invoicing discrepancies will be resolved subsequent to payment of the invoice. In addition to [REDACTED] the USPS reserves the right to pursue other available remedies.

**12. Term of the Agreement.** The USPS will notify the Mailer of the Effective Date of the Agreement as soon as possible, but no later than thirty (30) days, after receiving the signed Agreement from the Mailer. The Agreement shall remain in effect for one calendar year from the Effective Date or the last day of the month which falls one calendar year from the Effective Date, whichever is later, unless terminated sooner pursuant to Article 13 or Article 14.

**13. Termination of the Agreement.** (1) Either Party to this Agreement, in its sole discretion, may terminate the Agreement for any reason, without cost, fault, or penalty, except as provided for in paragraph 2 below, regardless of whether either Party is in default, upon a thirty (30) day written notification, unless a time frame longer than thirty (30) days that falls within the term of the Agreement is indicated by the terminating Party. (2) In the event that this Agreement is terminated for any reason before the termination date provided for in Article 12, any penalties arising under Article 34 shall be enforceable and the minimum commitment in Article 11 shall be enforceable but shall be calculated on a *pro rata* basis to reflect the actual duration of the Agreement.

**14. Modification of the Agreement.** (1) Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement, with the exception of changes to prices under the terms of Article 15, shall be binding only if placed in writing and signed by each Party. (2) Modifications may be contingent upon any and all necessary approvals by USPS management's executive committee, the Board of Governors of the USPS, the Governors of the USPS, the Postal Regulatory Commission, and/or any other governmental body with oversight responsibility for the USPS. (3) If such approvals are required, the modifications will not become effective until such time as all necessary approvals are obtained. (4) The USPS

will notify the Mailer of the date the modification becomes effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the USPS. (5) The USPS shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process. (6) Any changes to or modification of the local agreement referred to in Article 7, Paragraph 4 are not subject to the provisions of this Article.

**15. Postage Updates.** (1) In the event that the USPS incurs an increase in costs [REDACTED], the USPS shall notify the Mailer and modify the prices established under this Agreement. [REDACTED] (2) The USPS will give the Mailer thirty (30) days' notice of changes to the prices in Annex 1. (3) Any revision of prices in Annex 1 shall not be retroactive.

**16. Customs Duties and Taxes.** Customs duties, taxes, and/or fees for packages mailed under this Agreement are the responsibility of the addressee.

**17. Entire Agreement and Survival.** (1) This Agreement, including all Annexes thereto and any corresponding written local pickup agreement, shall constitute the entire agreement between the Parties regarding customized prices for Priority Mail International Regional Rate Boxes commencing on the Effective Date of the Agreement. (2) The obligations of the Parties with respect to confidentiality, as provided for in Article 7, Paragraph 5; Article 8, Paragraph 5; and Article 19 shall expire ten (10) years from the date of termination or expiration of this Agreement. (3) Any prior understanding or representation of any kind preceding the date of this Agreement regarding Priority Mail International Regional Rate Boxes shall not be binding upon either Party except to the extent incorporated in this Agreement.

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

**19. Confidentiality.** The Mailer acknowledges that this Agreement and supporting documentation will be filed with the Postal Regulatory Commission ("Commission") in a docketed proceeding. The Mailer authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding in which information related to this Agreement must be filed. The Mailer further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, [www.prc.gov](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 the Commission docket number for the Annual Compliance Report (ACR) for the USPS fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which "201#" signifies the USPS fiscal year to which the ACR pertains. The Mailer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the PRC for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 found on the Commission's website: [www.prc.gov/Docs/63/63467/Order225.pdf](http://www.prc.gov/Docs/63/63467/Order225.pdf).

**20. Effect of Partial Invalidity.** The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect.

**21. Intellectual Property, Co-Branding and Licensing.** The Mailer is allowed the use of the words "Priority Mail International™," "Priority Mail International™ Regional Rate Box™" and the acronyms "PMI™" and "PMI RRB." The Parties acknowledge that in the service of marketing the products under this Agreement that such product marketing may be enhanced through the use of co-branding or the use of each Party's trademarks, logos or intellectual property. In such instances, the Parties acknowledge and agree that any use shall be subject to separate written agreements. The Parties acknowledge and agree that neither Party shall use the other Party's trademarks, logos or intellectual property until such time that a license for such use has been executed by the Parties and all laws and regulations required for such license's effectiveness have been perfected, which shall include but not be limited to any recordation requirements.

**22. Limitation of Liability.** (1) The liability of the USPS under this Agreement shall be limited to the refund of postage for Qualifying Mail that is lost or destroyed in bulk after being tendered to the USPS and prior to being received by the delivery authority outside of the United States. The USPS shall not be liable for any actual or consequential damages suffered by the Mailer as a result of late delivery or non-delivery of any Qualifying Mail. (2) The USPS shall not be liable for any loss or expense, including, but not limited to fines and penalties, for the

Mailer's or any other person's failure to comply with any export laws, rules, or regulations. (3) The USPS shall not be liable for any act or omission by any person not employed or contracted by the USPS, including any act or omission of the Mailer, the Mailer's customer, or the recipient of an item tendered under this Agreement. (4) Priority Mail International Regional Rate Box Qualifying Mail items that are tendered to the USPS under the terms of this Agreement include indemnity coverage against loss, missing contents, or damage at no additional charge. Indemnity is limited to the lesser of the actual value of the contents or the maximum indemnity based on the weight of the item. The indemnity amount is determined by the formula in Universal Postal Union (UPU) Parcel Post Regulations Article RC 149.2.1. This information is available in the Parcel Post Manual at [www.upu.int](http://www.upu.int). The formula converted into United States equivalents of pounds and dollars is shown in the IMM. It is updated annually to reflect the current Special Drawing Right (SDR) exchange rate. Indemnity for Priority Mail International items that are tendered to the USPS under the terms of this Agreement does not cover losses due to delays in delivery. Indemnity will be paid in accordance with IMM 230 and IMM 930. Neither indemnity payments nor postage refunds will be made in the event of delay. (5) The USPS bears no responsibility for the refund of postage for Qualifying Mail in connection with actions taken by Customs authorities.

**23. Indemnity.** The Mailer shall indemnify and save harmless the USPS and its officers, directors, agents, and employees from any and all claims, losses, costs, damages, or expenses or liabilities, including but not limited to penalties, fines, liquidated damages, charges, taxes, fees, duties, or other money due ("Claims") growing out of or connected in any other way with the discharge by the Mailer or its agent(s) of any undertaking contained in this Agreement, including Claims that result from the noncompliance of the Mailer with the laws of the United States and other countries.

**24. Governing Law.** This Agreement shall be governed by, construed under, and enforced in accordance with United States federal law.

**25. Suspensions of Mail Service.** In the event that a suspension of Priority Mail International Regional Rate Box service from the United States to a country would prevent delivery of Qualifying Mail to addressees in that country, the Mailer shall not tender Priority Mail International Regional Rate Boxes to the USPS until service is restored. The annualized minimum commitment for Qualifying Mail set forth in Article 11 shall be recalculated *pro rata* to reflect the reduction in available service time.

**26. Assignment.** The rights of each Party under this Agreement are personal to that Party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other Party.

**27. No Waiver.** The failure of either Party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if such forbearance or waiver had not occurred.

**28. Paragraph Headings And Reference Citations.** The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement. All citations to provisions in the DMM, IMM, or Code of Federal Regulations within this Agreement are intended to refer to the substantive information found within the cited section(s) at the time this Agreement was drafted. Subsequent changes to the citations or the relevant substantive information due to published revisions of the DMM, IMM, or Code of Federal Regulations shall be applicable to this Agreement upon the effective date of such revisions.

**29. Mailability, Exportability, and Importability.** (1) All items mailed under this Agreement must conform to the mailability requirements of the USPS as detailed in the IMM 130 and USPS Publication 52; all applicable United States laws and regulations, including export control and customs laws and regulations; and all applicable importation restrictions of the destination countries. For each item mailed under this Agreement, the Mailer is responsible for determining export and import requirements, obtaining any required licenses and permits, and ensuring that the recipient of the item is authorized by the laws of the United States as well as destination countries to receive the item, and for the exportation and importation status of the products mailed under this Agreement as detailed in IMM 112. (2) The Mailer is responsible for ensuring that no item mailed under this Agreement includes non-mailable dangerous goods. Internationally mailable dangerous goods include only certain biological substances, certain radioactive materials, and small lithium batteries packaged in the devices they are meant to operate, as described in greater detail in IMM 135. Hazardous materials listed within the Department of Transportation's regulations, including at 49 C.F.R. § 172.101, are known as dangerous goods that are prohibited from all international mail, as set forth in Exhibit 331 of USPS Publication 52. These substances and items are in addition to any prohibitions or restrictions on imports that may be found

in the Individual Country Listings in the IMM. Penalties for knowingly mailing dangerous goods may include civil penalties pursuant to 39 U.S.C. § 3018 and criminal charges pursuant to 18 U.S.C. § 1716.

**30. Warranties and Representations.** The Mailer warrants and represents that the Mailer is not subject to, and is not related to an entity that is subject to, a temporary or other denial of export privileges by BIS and that the Mailer is not listed on OFAC's Specially Designated Nationals List, OFAC's Foreign Sanctions Evaders List, BIS's Denied Persons List, or BIS's Entity List, or subject to active sanctions by the U.S. Department of State pursuant to Executive Order No. 13382.

**31. Notices.** All notices or demands to the Parties required by this Agreement shall be sufficient if delivered personally or mailed via Priority Mail Express Mail, to the USPS: Managing Director, Global Business and Vice President, United States Postal Service, 475 L'Enfant Plaza SW Room 5012, Washington, DC 20260-4016; or to the Mailer [REDACTED] 12571-1737. Or via e-mail to the USPS at: [icmusps@usps.gov](mailto:icmusps@usps.gov); or to the Mailer at: [REDACTED]

**32. Conditions Precedent.** (1) The Parties acknowledge and understand that all obligations of the USPS under this Agreement, including the prices listed in the Annexes, shall be contingent upon the USPS receiving approvals hereinafter ("Conditions Precedent") from one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include, but are not limited to, approvals or, if applicable, non-objection, from responsible USPS management officials, the USPS Board of Governors, the USPS Governors, the Postal Regulatory Commission, and/or any other governmental body with oversight responsibility for the USPS. 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 allow the Postal Service to provide the products or services contemplated under the Agreement, no obligation shall exist for and no benefit shall inure to either Party. (2) In the event that the Conditions Precedent are not fulfilled, the USPS shall have no liability, which shall include no obligation to pay costs associated with any action taken by the Mailer prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, the USPS shall not be held liable for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential, or any other damages, which shall include but not be limited to damages for loss of business profits, business interruption, any other loss, and/or for costs incurred by either Party attributable to such non-approval, such as attorney's fees.

**33. Counterparts.** The Parties may execute this Agreement in one or more counterparts (including by facsimile or by electronic means such as pdf format), not all Parties need be signatories to the same documents, and all counterparty-signed documents shall be deemed an original and one instrument.

**34. Fraud.** Under Option A above, the Mailer understands that providing false information with the intent to access discounted rates through the use of a PC Postage Provider may subject the Mailer to criminal and/or civil penalties, including fines and imprisonment.

In witness whereof, each Party to this Agreement has caused it to be executed on the latter of the two dates accompanying the Parties' signatures.

ON BEHALF OF USPS:	ON BEHALF OF [REDACTED]
Signature: <u><i>Frank A. Cebello</i></u>	Signature: [REDACTED]
Name: <u>Frank A. Cebello</u>	Name: [REDACTED]
Title: <u>Director, International Sales</u>	Title: [REDACTED]
Date: <u>5/18/16</u>	Date: <u>May 9<sup>th</sup> 2016</u>

- Annex 1: PRICES FOR PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOXES
- Annex 2: PRICE GROUPS FOR PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOXES

## ANNEX 1 PRICES FOR PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOXES

	Country Price Group <sup>1</sup>							
Boxes <sup>1</sup>	1	2	3	4	5	6	7	8
A <sup>2</sup>								
B <sup>3</sup>								

1. Packaging only available only at USPS.com.
2. Maximum weight 10 lbs.
3. Maximum weight 20 lbs.

**ANNEX 2  
PRICE GROUPS FOR  
PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOXES**

**(Priority Mail International Regional Rate Box Service may not be available or authorized to all countries listed in this Annex)**

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 1**

Canada

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 2**

Argentina  
Brazil  
Chile  
Colombia  
Dominican Republic

Ecuador  
Guatemala  
Guyana  
Mexico  
Paraguay

Peru  
Uruguay  
Venezuela

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 3**

China  
Hong Kong  
Indonesia

Japan  
Korea, Republic of (South)  
Mongolia  
Philippines

Singapore  
Thailand  
Vietnam

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 4**

Austria  
Belgium  
Denmark  
Finland  
France (includes Corsica  
and Monaco)  
Germany

Great Britain and  
Northern Ireland  
Ireland (Eire)  
Italy  
Luxembourg  
Netherlands  
Norway

Portugal  
Slovak Republic (Slovakia)  
Slovenia  
Spain  
Sweden  
Switzerland

**ANNEX 2  
PRICE GROUPS FOR  
PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOXES**

**(Priority Mail International Regional Rate Box Service may not be available or authorized to all countries listed in this Annex)**

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 5**

India

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 6**

Australia

New Zealand

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 7**

Egypt  
Iraq  
Israel

Jordan  
Saudi Arabia  
Turkey

United Arab Emirates  
Yemen

**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 8**

Afghanistan  
Albania  
Algeria  
Andorra  
Angola  
Anguilla  
Antigua and Barbuda  
Armenia  
Aruba  
Azerbaijan  
Bahamas  
Bahrain  
Bangladesh  
Barbados  
Belarus  
Belize  
Benin  
Bermuda  
Bhutan  
Bosnia-Herzegovina  
Botswana  
British Virgin Islands  
Brunei Darussalam  
Bulgaria  
Burkina Faso  
Burma  
Burundi  
Cambodia

Cameroon  
Cape Verde  
Cayman Islands  
Central African Republic  
Chad  
Comoros  
Congo, Democratic  
Republic of the  
Congo, Republic of the  
Costa Rica  
Cote d'Ivoire  
Croatia  
Curacao  
Cyprus  
Czech Republic  
Djibouti  
Dominica  
El Salvador  
Equatorial Guinea  
Eritrea  
Estonia  
Ethiopia  
Faroe Islands  
Fiji  
French Guiana  
French Polynesia  
Gabon  
Gambia

Georgia, Republic of

**ANNEX 2  
PRICE GROUPS FOR  
PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOXES**

**(Priority Mail International Regional Rate Box Service may not be available or authorized to all countries listed in this Annex)**

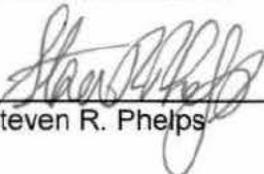
**PRIORITY MAIL INTERNATIONAL REGIONAL RATE BOX  
PRICE GROUP 8 CONTINUED**

Ghana	Mauritania	Seychelles
Gibraltar	Mauritius	Sierra Leone
Greece	Moldova	Sint Maarten
Greenland	Montenegro	Solomon Islands
Grenada	Montserrat	South Africa
Guadeloupe	Morocco	Sri Lanka
Guinea	Mozambique	Suriname
Guinea-Bissau	Namibia	Swaziland
Haiti	Nauru	Taiwan
Honduras	Nepal	Tajikistan
Hungary	New Caledonia	Tanzania
Iceland	Nicaragua	Timor-Leste, Democratic Republic of
Jamaica	Niger	Togo
Kazakhstan	Nigeria	Tonga
Kenya	Oman	Trinidad and Tobago
Kiribati	Pakistan	Tristan da Cunha
Kosovo, Republic of	Panama	Tunisia
Kuwait	Papua New Guinea	Turkmenistan
Kyrgyzstan	Pitcairn Island	Turks and Caicos Islands
Laos	Poland	Tuvalu
Latvia	Qatar	Uganda
Lebanon	Reunion	Ukraine
Lesotho	Romania	Uzbekistan
Liberia	Russia	Vanuatu
Libya	Rwanda	Vatican City
Liechtenstein	Saint Christopher and Nevis	Wallis and Futuna Islands
Lithuania	Saint Helena	Western Samoa
Macao	Saint Lucia	Zambia
Macedonia, Republic of	Saint Pierre and Miquelon	Zimbabwe
Madagascar	Saint Vincent and the Grenadines	
Malawi	San Marino	
Malaysia	Sao Tome and Principe	
Maldives	Senegal	
Mali	Serbia, Republic of	
Malta		
Martinique		

**Certification of Prices for the  
Priority Mail International Regional Rate Boxes Contract with**

I, Steven Phelps, Manager of Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Priority Mail International Regional Rates Boxes Contract with [REDACTED]. The prices contained in this Contract were established in accordance with the 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, issued March 22, 2011 (Governors' Decision No. 11-6), which established prices by means of price floor formulas.

I hereby certify that the numerical cost values underlying the prices in the [REDACTED] contract are the appropriate costs to use in the formulas and represent the best available information. The prices, resulting in a cost coverage of in excess of the minimum required by the Governors' Decision, exclusive of pickup on demand and international ancillary services fees, are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the Contract should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. International competitive mail accounts for a relatively small percentage of the total contribution by all competitive products. Contribution from Priority Mail International Regional Rate Boxes Contracts should be even smaller. The Agreement with [REDACTED] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

  
\_\_\_\_\_  
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 DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 11-6)**

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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.

**RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE**

**Governors' Decision No. 11-6**

**Page 2**

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] [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.

**RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE**

**Governors' Decision No. 11-6**

**Page 3**

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

RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE

## 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]

[REDACTED]

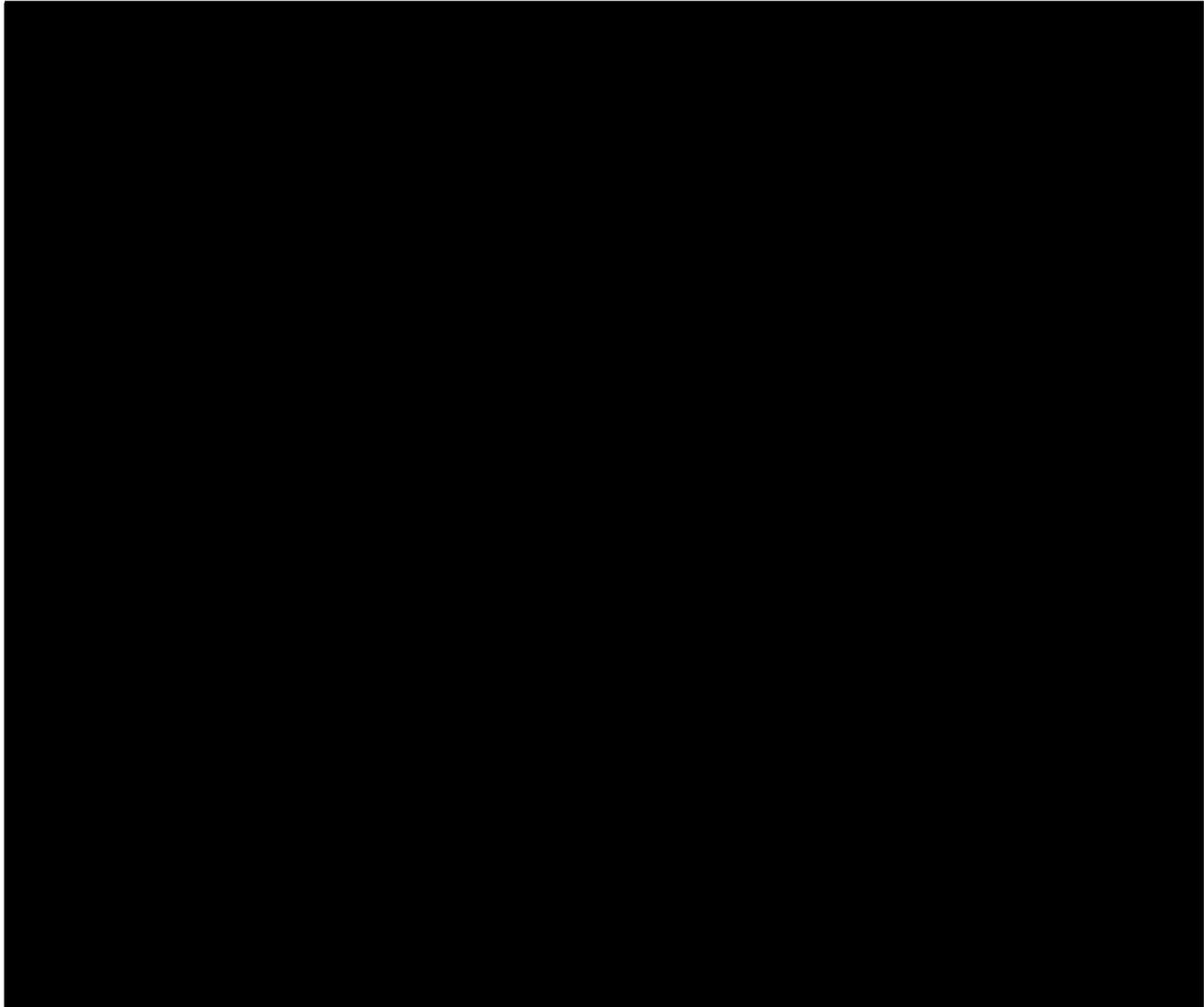
The cost coverage for a product equals [REDACTED]

[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]

**RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE**



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  
Secretary of the Board of Governors

Date: 3/22/2011

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

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to an additional Priority Mail International Regional Rates Boxes 1 (PMI RRB 1) contract that the Postal Service believes is functionally equivalent to the baseline PMI RRB 1 agreement. The contract and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. In addition, a redacted copy of the contract, a certified statement required by 39 C.F.R. § 3015.5(c)(2) for the contract, and the related Governors' Decision are filed with the Notice as Attachments 1, 2, and 3, respectively.<sup>1</sup>

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

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

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

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<sup>1</sup> The Postal Service informed the customer for the contract prior to filing a notice that the Postal Service would be seeking non-public treatment of the redacted portions of the contract. The Postal Service also informed the customer for the contract that it could file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3007.22.

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).<sup>2</sup> 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 the Postal Service's determination that these materials are exempt from public disclosure and grant the Postal Service's application for their non-public treatment.

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

In the case of a PMI-RRB contract, the Postal Service believes that the parties with a proprietary interest in the materials would be the counterparty to the contract and the PC Postage Provider(s) if the customer intends to use a PC Postage Provider. The Postal Service maintains that customer identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer for the contract that is the subject of this docket, the Postal Service gives notice that it has already informed the customer, and the PC Postage Provider (if applicable), that have a proprietary interest in the materials for the contract that is the subject of this docket of the nature and scope of this filing and their ability to address their confidentiality concerns directly with the Commission.<sup>3</sup>

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<sup>2</sup> 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.

<sup>3</sup> The Postal Service has provided a blanket notice to PC Postage Providers in light of the fact that these filings are fairly routine. To the extent required, the Postal Service seeks a waiver from having to provide each PC Postage Provider notice of this docket.

The Postal Service employee responsible for providing notice to any third parties with proprietary interest in the materials filed in this docket, if any, is Ms. Kathy L. Lynch, Sales Support Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 5425, Washington, DC 20260-4017, whose email address is [kathy.l.lynch@usps.gov](mailto:kathy.l.lynch@usps.gov), and whose telephone number is 202-268-6662.

As for foreign postal operators, the Postal Service recently provided notice to all foreign postal operators within the Universal Postal Union network through an International Bureau Circular issued on January 18, 2016, that the Postal Service will be regularly submitting certain business information to the Commission. Some UPU-designated foreign postal operators may have a proprietary interest in such information. The circular includes information on how third parties may address any confidentiality concerns with the Commission. In addition, contact information for all UPU Designated Operators is available at the following link, which is incorporated by reference into the instant application: [http://pls.upu.int/pls/ap/addr\\_public.display\\_addr?p\\_language=AN](http://pls.upu.int/pls/ap/addr_public.display_addr?p_language=AN).<sup>4</sup>

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

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

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<sup>4</sup> To the extent required, the Postal Service seeks a waiver from having to provide each foreign postal operator notice of this docket. It is impractical to communicate with dozens of operators in multiple languages about this matter. Moreover, the volume of contracts would overwhelm both the Postal Service and the applicable foreign postal operators with boilerplate notices.

related financial information, and identifying information concerning the PMI RRB customer, should remain confidential.

With regard to the PMI RRB agreement filed in this docket, the redactions on page 1, to the footers of each page, to the Articles that include the name and address of the customer to which notices or demand should be sent, and to the signature block of the contract constitute the name or address of a postal patron whose identifying information may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c)(2). The redacted portions of the footers of the Annex also protect the customer's identifying information from disclosure.

The redactions to Articles 2, 11, and 15 protect information with specific impact on the customer, including the customer's postage payment selection, commitment to the Postal Service, penalties in the event that customer does not achieve its postage commitment, the timing and manner in which the Postal Service might change prices under the contract. In addition, the prices in Annex 1 of the agreement are redacted.

The redactions applied to the Governors' Decision and financial workpapers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, business information of the PC Postage Provider that the customer intends to use (if applicable), and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages, such as words or numbers in text, were replaced with general terms describing the redacted material.

To the extent that the Postal Service files data in future filings that will show the actual revenue and cost coverage of the customer's completed contract, the Postal Service will redact in its public filing all of the values included that are commercially sensitive information and will also protect any customer identifying information from disclosure.

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

Governors' Decision No. 11-6 and its Attachment A, as well as the accompanying financial models, include the Postal Service's desired cost-coverage for PMI RRB agreements, specific rate information and a detailed description of the methodology used to establish the rates, which are highly confidential in the business world.

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

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

The Governors' Decision and financial workpapers filed with this notice include specific information such as costs, assumptions used in pricing formulas, the formulas themselves, mailer profile information, projections of variables, contingency rates included to account for market fluctuations and the exchange risks. Similar information may be included in the cost, volume and revenue data associated with the PMI RRB agreement that the Commission may require the Postal Service to file after the expiration of this agreement. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required by the Mail Classification Schedule to demonstrate that each negotiated agreement within this group covers its

attributable costs. Competitors could take advantage of the information to offer lower pricing to PMI RRB competitive contract customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant market. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the contract, from the information in the workpapers, or from the cost, volume and revenue data that the Commission may require the Postal Service to file after the agreement's expiration, whether additional margin for net profit exists between the contract and the contribution that PMI RRB competitive contracts must make. From this information, each customer could attempt to negotiate ever-increasing incentives, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even customers involved in this PMI RRB competitive contract could use the information in the workpapers, or the cost, volume and revenue data associated with the expired agreement, in an attempt to renegotiate its own rates, threatening to terminate its current agreement, although the Postal Service considers this to be less likely than the risks previously identified.

Price information in the contract, the financial spreadsheets, and any cost, volume and revenue data concerning the contract filed after the agreement's expiration consists of sensitive commercial information of the customer. Disclosure of such information could be used by competitors of the customer to assess the customer's

underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

Information in the financial spreadsheets and any cost, volume and revenue data concerning this agreement filed after the expiration of this contract also consists of sensitive commercial information related to agreements between the Postal Service and the PC Postage Provider selected by the customer (if applicable). Such information would be extremely valuable to competitors of both the Postal Service and the PC Postage Provider. Using detailed information about such agreements, competitors would be able to better understand the costs of the postage programs used, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the PC Postage Provider could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service.

**(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 that signed a PMI RRB contract is revealed to the public. Another delivery service has an employee monitoring the filing of PMI RRB competitive contracts and passing along the information to its sales function. The competitor's sales representatives could quickly contact the Postal Service's customer and offer the customer lower rates or other incentives to terminate its contract with the Postal Service in favor of using the competitor's services.

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

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

Identified harm: Public disclosure of the pricing included in the agreement would provide potential customers extraordinary negotiating power to extract lower rates.

Hypothetical: Customer A's negotiated rates are disclosed publicly on the Postal Regulatory Commission's website. Customer B sees the rates and determines that there may be some additional profit margin between the rates provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Customer B, which was offered rates identical to those published in Customer A's agreement, then uses the publicly available rate information to insist that Customer B must receive lower rates than those

the Postal Service has offered it, or Customer B will not use the Postal Service for its expedited package service delivery needs.

Alternatively, Customer B attempts to extract lower rates only for those destinations for which Customer B believes that the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which the Postal Service believes will still satisfy total cost coverage for the agreement. Then, the customer uses other providers for destinations that are different than those for which the customer extracted lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement, such that the Postal Service no longer meets its cost coverage requirement. Although the Postal Service could terminate the contract when the Postal Service first recognizes that the customer'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 the PMI RRB Contracts competitive product overall.

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

Hypothetical: A competing delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competing delivery service analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to meet the Postal Service's minimum statutory obligations for cost coverage and contribution to institutional costs.

The competing delivery service then sets its own rates for products similar to what the Postal Service offers its PMI RRB competitive contract customers under that threshold and markets its ability to guarantee to beat the Postal Service on price. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of the business-to-business and customer-to-business services markets for which the PMI RRB competitive contract product is designed.

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

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

Identified harm: Public disclosure of information in the contract and financial workpapers would be used by the competitors of the PC Postage Provider to the Postal Service and/or each PC Postage Provider's detriment.

Hypothetical: A firm competing with the customer's selected PC Postage Provider obtains a copy of the unredacted version of the contract and financial workpapers from the Commission's website. The firm uses the information to assess the PC Postage Provider's revenue sources and growth opportunities, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other PC Postage Providers in their negotiations with the Postal Service concerning financial arrangements that PC Postage Providers make with the Postal Service in the future.

Identified harm: Public disclosure of any cost, volume and revenue data concerning this agreement that the Commission may require the Postal Service to file after the contract's expiration would give competitors a marketing advantage.

Hypothetical: A competitor could use any cost, volume and revenue data associated with this agreement, which the Commission may require the Postal Service to file in this docket after this agreement's expiration, to "qualify" potential customers. The competitor might focus its marketing efforts only on customers that have a certain mailing profile, and use information filed after the contract's expiration to determine whether a customer met that profile.

**(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 parcel and expedited services, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of

the Postal Service for this or similar products should not be provided access to the non-public materials.

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

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

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

None.

***Conclusion***

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