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

COMPETITIVE PRODUCT PRICES GLOBAL EXPEDITED PACKAGE SERVICES 3 (MC2010-28) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2016-285

NOTICE OF UNITED STATES POSTAL SERVICE OF FILING A FUNCTIONALLY EQUIVALENT GLOBAL EXPEDITED PACKAGE SERVICES 3 NEGOTIATED SERVICE AGREEMENT AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL
(September 15, 2016)

In accordance with 39 C.F.R. § 3015.5 and Order No. 86,[1] the United States Postal Service (Postal Service) hereby gives notice that it is entering into a Global Expedited Package Services (GEPS) contract. Prices and classifications not of general applicability for GEPS contracts were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts, issued May 6, 2008 (Governors' Decision No. 08-7).[2] Subsequently, GEPS 3 was added to the competitive product list, and the contract filed in Docket No. CP2010-71 serves as the baseline agreement for comparison of potentially functionally equivalent agreements under the GEPS 3 grouping.[3] The Postal Regulatory Commission (Commission) determined that

[1] PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, June 27, 2008.
[2] A redacted copy of the Governors' Decision was filed on July 23, 2008, and is filed as Attachment 3 to this Notice. *See* United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, Docket No. CP 2008-5, July 23, 2008. An unredacted copy of this Governors' Decision was filed earlier under seal. Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, Docket No. CP2008-4, May 20, 2008.
[3] PRC Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, Docket Nos. MC2010-28 and CP2010-71, July 29, 2010, at 7.

individual GEPS contracts may be included as part of the GEPS 3 product if they meet the requirements of 39 U.S.C. § 3633 and if they are functionally equivalent to the previously submitted GEPS contracts.[4]

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.[5] Redacted copies of the contract, certified statement required by 39 C.F.R. § 3015.5(c)(2) for the contract, and Governors' Decision No. 08-7 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 GEPS contract was filed on May 20, 2008.[6] Subsequently, the Commission reviewed many additional GEPS contracts with minor differences which did not affect the contracts' similarity with the cost and market characteristics of previous GEPS contracts.

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. CP2010-71. Accordingly, this contract should be included within the GEPS 3 product.

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[4] *Id*.

[5] The financial workpapers included in this filing use the library reference that was included in the Postal Service's filings in PRC Docket No. CP2016-261. On September 1, 2016, the Postal Service filed, in Docket No. CP2016-261, a Motion for Reconsideration of Order No. 3488 (August 25, 2016) concerning that library reference.

[6] Notice of United States Postal Service of Filing a Global Expedited Package Services Contract, Docket No. CP2008-5, May 20, 2008.

II. Identification of the Additional GEPS 3 Contract

The Postal Service believes that this additional GEPS contract fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 08-7, but as revised and updated in the most recent draft working copy of the MCS available on the Commission's website.[7]

This additional GEPS 3 contract is intended to become effective on October 1, 2016. If the effective date of the agreement is the first of the month, the agreement that is the subject of this docket is set to expire one year after its effective date. If the effective date of the agreement is not the first of the month, the agreement is set to expire on the last day of the month in which the effective date falls in the year subsequent to the effective date.

III. Functional Equivalency of GEPS 3 Contract

This GEPS 3 contract is substantially similar to the contract filed in Docket No. CP2010-71. The contract shares similar cost and market characteristics with that contract. In Governors' Decision No. 08-7, the Governors established a pricing formula and classification that ensure that each GEPS contract 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 GEPS language proposed for the MCS requires that each GEPS contract must cover its attributable costs. The contract at issue here meets the Governors' criteria and thus exhibits similar cost and market characteristics to the previous GEPS contracts.

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[7] *See* PRC, (Draft) Mail Classification Schedule, posted January 15, 2016 (with revisions through August 28, 2016) available at http://www.prc.gov/mail-classification-schedule.

The functional terms of the contract at issue are the same as those of the contract that is the subject of Docket No. CP2010-71, which serves as the baseline agreement for the GEPS 3 product grouping. The benefits of the contract to the 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 Docket No. CP2010-71 and should be added to the competitive product list as a GEPS 3 contract.

In a concrete sense as well, this GEPS contract shares the same cost and market characteristics as the previous GEPS contracts. Customers for GEPS contracts are small- or medium-sized businesses that mail products directly to foreign destinations using Priority Mail Express International, Priority Mail International, or both. 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 GEPS contract are similar, if not the same, as the relevant characteristics of previously filed GEPS contracts.

Like the contract that is the subject of Docket No. CP2010-71, this contract also fits within the parameters outlined by the Governors' Decision establishing the rates for GEPS agreements. There are, however, differences between this contract and the contract that is the subject of Docket No. CP2010-71, which include:

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

- Revision of the second and third WHEREAS paragraphs that appear on the first page of the CP2010-71 agreement;
- All references to “Express Mail International” have been replaced with references to “Priority Mail Express International”;
- All references to Option A Postage Payment through a PC Postage Provider have been deleted, because, as stated in Article 2, postage payment for Qualifying Mail under the agreement is through the use of a permit imprint using USPS-provided Global Shipping Software (GSS);
- Removal of “PC Postage Provider” definition from Article 3;
- A revised Article 4 concerning Qualifying Mail;
- Revisions to Article 5 about the treatment of Non-Qualifying Mail;
- In Article 6 concerning specific preparation requirements, revisions to paragraph (3) and an additional paragraph 4;
- revision of Article 7 paragraph (6) and Article 9 paragraph (3) that concern postage payment through a permit imprint using USPS- provided Global Shipping Software;
- A revision to Article 8 paragraph (1) concerning payment of postage in accordance with the price charts in Annex 1 of the agreement;
- A revision of Article 8 paragraph (3) concerning customs and export requirements;
- In Article 8, an additional paragraph (4) concerning tender, an additional paragraph (6) concerning penalties, and an additional paragraph (7) concerning advance notification;

- The deletion of Article 9 concerning postage payment through a PC Postage Provider, which resulted in the renumbering of subsequent articles;
- A revised option for tendering the mail in Article 9 paragraph (2);
- The negotiated minimum revenue commitment contained in Article 10, paragraph (1);
- A revision to Article 11 concerning the term of the agreement;
- A revision to Article 12 concerning the enforceability of penalties if the agreement is terminated;
- The Modification of the Agreement article was revised and moved to Article 13, which caused subsequent articles to be renumbered;
- In Article 14, concerning postage updates, the revision of paragraph (1) and removal of paragraph (2);
- The deletion of the article concerning no service guarantee, which caused subsequent articles to be renumbered;
- Minor revisions to Article 16 concerning the entire agreement and survival;
- In Article 18, the addition of a reference to PRC docket numbers concerning the Annual Compliance Report, in which the Postal Service may file confidential information related to this agreement;
- An additional Article 20 concerning Intellectual Property, Co-Branding, and Licensing, which caused subsequent articles to be renumbered;
- A revised Article 21 concerning limitation of liability;
- A revised Article 22 concerning indemnity;

- The Conditions Precedent article was moved to Article 30, which caused some articles to be renumbered;
- A revised Article 28 concerning mailability, exportability, and importability;
- An additional Article 29 concerning Warranties and Representation, which caused some subsequent articles to be renumbered;
- 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;
- The deletion of Articles 33 and 34; 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"[8] to the contract that is the subject of Docket No. CP2010-71.

Conclusion

For the reasons discussed, and as demonstrated by the financial data filed under seal, the Postal Service has established that this GEPS 3 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. CP2010-71. Accordingly, the contract should be added to the GEPS 3 product grouping.

[8] *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.

Respectfully submitted,

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GLOBAL CUSTOMIZED MAIL AGREEMENT BETWEEN THE UNITED STATES POSTAL SERVICE AND [redacted]

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

Introduction. WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the USPS will provide certain products and/or services to the Mailer pursuant to the terms and conditions contained herein; WHEREAS, the Parties 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 Express International and Priority Mail International.

2. Payment Method. The Mailer shall pay postage to the USPS for Qualifying Mail through the use of a permit imprint using USPS-provided Global Shipping Software (GSS) subject to the conditions stated in IMM 152.6 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 on the date of mailing. (2) "DMM" means the *Domestic Mail Manual* as found on the USPS website pe.usps.com on the date of mailing. (3) "Effective Date" means the first date on which the USPS is willing to accept Qualifying Mail. (4) Qualifying Mail" means mail that meets the requirements set forth in Article 4 of this Agreement. (5) "Non-Qualifying Mail" means mail that does not meet the requirements set forth in Article 4 of this Agreement. Priority Mail Express International and Priority Mail International tendered to the USPS at a Business Mail Entry Unit, at a USPS retail window, or at any commercial mail receiving agency are Non-Qualifying Mail.

4. Qualifying Mail. Only mail that meets the requirements set forth in IMM 220 for Priority Mail Express International or meets the requirements set forth in IMM 230 for Priority Mail International, with the exception of: (a) Any Flat Rate item; (b) 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 available at www.gpo.gov/fdsys/pkg/CFR-2013-title15-vol2/pdf/CFR-2013-title15-vol2-part740-appNo-.pdf; (c) 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 (d) 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.

5. Treatment of Non-Qualifying Mail. (1) 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. The USPS may accept Non-Qualifying Mail at the applicable published prices and impose a penalty upon the Mailer. (2) Any mailings by the Mailer of Non-Qualifying Mail processed using Global Shipping Software (GSS) must be paid for through the use of a permit imprint that is different than the permit imprint mentioned in Article 2 of this Agreement.

6. Specific Preparation Requirements. (1) Mailings of Qualifying Mail must be kept separate from any other type of mail the Mailer tenders. (2) International mailings must be separated from domestic mailings. (3) 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. (4) All Qualifying Mail must be paid for, prepared, and processed in accordance with Annex 1 to this Agreement.

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: (a) Priority Mail Express International items refused by an addressee or that are undeliverable, to the Mailer via Priority Mail Express [redacted] (b) Priority Mail International items refused by an addressee or that are undeliverable, to the Mailer in accordance with 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 in accordance with 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 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).

8. Obligations of the Mailer – General. The Mailer hereby agrees: (1) Postage To pay postage for Qualifying Mail in accordance with the price charts in Annex 1 of this Agreement. (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, in accordance with 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 available at www.gpo.gov/fdsys/pkg/CFR-2013-title15-vol2/pdf/CFR-2013-title15-vol2-part740-appNo-.pdf; (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 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. The Mailer hereby agrees: (1) Advance Notification To provide: (a) The Manager, Customized Mail, USPS, via e-mail to 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 to the USPS in accordance with the Annexes to this agreement and any supplementary documents referred to therein and 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 all 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.

10. Minimum Commitment. (1) The Mailer is required to meet an annualized minimum commitment of [redacted] (2) 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] (3) 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] 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.

11. 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 approval of the entities that have oversight responsibilities for the USPS. If the Effective Date of this Agreement is the first of the month, the Agreement shall remain in effect for one calendar year from the Effective Date (for example, if the Effective Date of the Agreement is April 1, the Agreement will expire on March 31 of the subsequent year), unless terminated sooner pursuant to Article 12 or Article 13 of this Agreement. If the Effective Date of this Agreement is not the first of the month, the Agreement shall remain in effect until the last day of the month in which the Effective Date falls in the year subsequent to the Effective Date (for example, if the Effective Date of the Agreement is April 2 or a later day in April, the Agreement will expire on April 30 in the subsequent year), unless terminated sooner pursuant to Article 12 or Article 13 of this Agreement.

12. Termination of the Agreement. (1) Either Party to this Agreement, in its sole discretion, may terminate the Agreement for any reason, without cost, fault, or penalty, except as provided for below in Paragraph 2 of this Article, regardless of whether either Party is in default, upon a thirty (30) day written notification, unless a time frame longer than thirty (30) days that falls within the term of the Agreement is indicated by the terminating Party. (2) In the event that this Agreement is terminated for any reason before the termination date provided for in Article 11, any penalties arising under Article 8, or any other article of this Agreement, shall be enforceable, and the minimum commitment in Article 10 shall be enforceable but shall be calculated on a pro rata basis to reflect the actual duration of the Agreement.

13. Modification of the Agreement. (1) Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement, with the exception of changes to prices under the terms of Article 14, 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.

14. 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 of this Agreement. (3) Any revision of prices in Annex 1 shall not be retroactive. (4) No price shall increase beyond the non-discounted published price for the affected service.

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

16. Entire Agreement and Survival. 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 Qualifying Mail commencing on the Effective Date of the Agreement, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement. The provisions of Article 7, Paragraph 4; Article 8, Paragraph 5; and Article 18 shall expire ten (10) years from the date of termination or expiration of this Agreement.

17. 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.

18. 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. In addition, the USPS may be required to file information in connection with this Modification (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 the Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which ACR201# 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 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 at http://prc.gov/Docs/63/63467/Order225.pdf.

19. 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.

20. Intellectual Property, Co-Branding and Licensing. The Mailer is allowed the use of the words "Priority Mail Express International®" and "Priority Mail International®" and the acronyms "PMEI™" and "PMI™." 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.

21. 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 Express International Qualifying Mail and Priority Mail International Qualifying Mail mailed under this Agreement are not guaranteed against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay. (5) Unless otherwise specified by notice published in a future issue of the *Postal Bulletin* that a date-certain, postage-refund guarantee will be offered for this particular type of Global Customized Mail Agreement, Priority Mail Express International With Money-Back Guarantee Service Qualifying Mail mailed under this agreement is not guaranteed against delay in delivery, and neither indemnity payments nor postage refunds will be made in the event of delay. (6) The USPS bears no responsibility for the refund of postage for Qualifying Mail in connection with actions taken by Customs authorities.

22. 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.

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

24. Suspensions of Mail Service. In the event that a suspension of Priority Mail Express International service or Priority Mail International 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 Express International or Priority Mail International, as appropriate, to the USPS until service is restored. The annualized minimum commitment for Qualifying Mail set forth in Article 10 shall be recalculated pro rata to reflect the reduction in available service time.

25. 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.

26. 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.

27. 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.

28. 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 notifying the Mailer's Customers of their responsibility 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.

29. 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.

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

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 to the following individuals: (a) 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; (b) To the Mailer [redacted] or via e-mail to the USPS at: icmusps@usps.gov; or to the Mailer at [redacted]

32. 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.

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:	[signature]	Signature:	[redacted]
Name:	DONALD W ROSS	Name:	
Title:	(A) VP GLOBAL	Title:	
Date:	9/6/16	Date:	8. 26. 16

ANNEX 1 PRICES FOR PRIORITY MAIL EXPRESS INTERNATIONAL AND PRIORITY MAIL INTERNATIONAL

ANNEX 1A
PRICES IN UNITED STATES DOLLARS FOR
PRIORITY MAIL EXPRESS INTERNATIONAL AND PRIORITY MAIL INTERNATIONAL
PRESORTED AND TENDERED AT A USPS INTERNATIONAL SERVICE CENTER (ISC)

The postage prices for Priority Mail Express International (PMEI) Qualifying Mail and Priority Mail International (PMI) Qualifying Mail set forth in this Annex 1A are only available for PMEI Qualifying Mail and PMI Qualifying Mail that is presorted and that is:

1. paid for through a separate permit imprint using USPS-provided Global Shipping Software (GSS) that is not used for any other type of mail than Qualifying Mail that meets the requirements set forth in this Agreement and Annex 1A;
2. [redacted]
3. [redacted]
4. tendered to the USPS at any of the following USPS International Service Center locations:

   - JOHN F KENNEDY AIRPORT MAIL CENTER
     US POSTAL SERVICE
     JOHN F KENNEDY INTERNATIONAL AIRPORT BLDG 250
     JAMAICA NY 11430-9998
   - JT WEEKER INTERNATIONAL SERVICE CENTER
     US POSTAL SERVICE
     11600 WEST IRVING PARK ROAD
     CHICAGO IL 60666-9998
   - LOS ANGELES INTERNATIONAL SERVICE CENTER
     US POSTAL SERVICE
     5800 WEST CENTURY BLVD
     LOS ANGELES CA 90009-9998
   - SAN FRANCISCO INTERNATIONAL SERVICE CENTER
     US POSTAL SERVICE
     660 WEST FIELD ROAD
     SAN FRANCISCO CA 94128-3161
   - MIAMI INTERNATIONAL SERVICE CENTER
     US POSTAL SERVICE
     11698 NW 25TH ST
     MIAMI FL 33112-9997

Pickup services, pursuant to Article 7(4) of the Agreement, are not applicable to Qualifying Mail paid for, prepared, or tendered in accordance with this Annex.

[redacted]

ANNEX 1A CHART 1
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL EXPRESS INTERNATIONAL PRESORTED AND TENDERED AT A USPS INTERNATIONAL SERVICE CENTER (ISC) FOR COUNTRY GROUPS 1 – 17

Weight Not Over (LBS)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
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ANNEX 1A CHART 2
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL
PRESORTED AND TENDERED AT A USPS INTERNATIONAL SERVICE CENTER (ISC)
FOR COUNTRY GROUP 1

Weight Not Over (LBS)	[redacted]
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ANNEX 1A CHART 3
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL
PRESORTED AND TENDERED AT A USPS INTERNATIONAL SERVICE CENTER (ISC)
FOR COUNTRY GROUPS 2 - 17

Weight Not Over (LBS)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
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ANNEX 1B
PRICES IN UNITED STATES DOLLARS FOR
PRIORITY MAIL EXPRESS INTERNATIONAL AND
PRIORITY MAIL INTERNATIONAL
TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES

Postage prices for Priority Mail Express International Qualifying Mail and Priority Mail International Qualifying Mail tendered to the USPS within one of the following ZIP-Codes defined areas shall be in accordance with the price charts in this Annex 1B.

1. 005, 010-043, 045, 048, 050-089, 100-149, 155, 157-159, 166-212, 214-239, 244, 254, 267-268, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in New York, NY.
2. 321, 327-342, 346-347, 349, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in Miami, FL.
3. 090-098, 430-438, 440-469, 478-509, 514, 520-528, 530-532, 534-535, 537-539, 541-545, 547-549, 600-620, 622-631, 633-639, 650-653, 962-966, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in Chicago, IL.
4. 864, 889-891, 900-908, 910-928, 930-936, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in Los Angeles, CA.
5. 894-895, 897, 937-961, 975, 976, each of these ZIP Codes being within three hundred (300) miles of the USPS International Service Center in San Francisco, CA.

[redacted]

ANNEX 1B – PRICE CHART 1
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL EXPRESS INTERNATIONAL
TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES
FOR COUNTRY GROUPS 1-17

Weight Not Over (LBS)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
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ANNEX 1B – PRICE CHART 2
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES FOR COUNTRY GROUP 1

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ANNEX 1B – PRICE CHART 3
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL
TENDERED WITHIN SPECIFIC 3-DIGIT ZIP CODE PREFIXES
FOR COUNTRY GROUPS 2-17

Weight Not Over (LBS)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
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ANNEX 1C
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL EXPRESS INTERNATIONAL AND PRIORITY MAIL INTERNATIONAL NOT PREPARED AND TENDERED IN ACCORDANCE WITH ANNEX 1A OR ANNEX 1B

Postage prices for Priority Mail Express International Qualifying Mail and Priority Mail International Qualifying Mail that are not prepared and tendered to the USPS in accordance Annex 1A or Annex 1B shall be in accordance with the price charts listed in this Annex 1C.

ANNEX 1C – PRICE CHART 1
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL EXPRESS INTERNATIONAL TENDERED AT LOCATIONS OTHER THAN THOSE SPECIFIED IN ANNEX 1A OR ANNEX 1B
FOR COUNTRY GROUPS 1-17

Weight Not Over (LBS)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
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ANNEX 1C – PRICE CHART 2
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL TENDERED AT LOCATIONS OTHER THAN THOSE SPECIFIED IN ANNEX 1A OR ANNEX 1B FOR COUNTRY GROUP 1

Weight Not Over (LBS)	[redacted]
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ANNEX 1C – PRICE CHART 3
PRICES IN UNITED STATES DOLLARS FOR PRIORITY MAIL INTERNATIONAL
TENDERED AT LOCATIONS OTHER THAN THOSE SPECIFIED IN ANNEX 1A OR ANNEX 1B
FOR COUNTRY GROUPS 2-17

Weight Not Over (LBS)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
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Certification of Prices for the Global Expedited Package Services Contract with [redacted]

I, Steven Phelps, Manager of Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Global Expedited Package Services Contract with [redacted]. The prices contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts, issued May 6, 2008 (Governors' Decision No. 08-7), which established prices by means of price floor and ceiling formulas.

I hereby certify that the numerical cost values underlying the prices in the [redacted] contract are the appropriate costs to use in the formulas and represent the best available information. The prices, resulting in a cost coverage of in excess of the minimum required by the Governors' Decision, exclusive of pickup on demand and international ancillary services fees, are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the Contract should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. International competitive mail accounts for a relatively small percentage of the total contribution by all competitive products. Contribution from Global Expedited Package Services 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 Phelps

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR GLOBAL EXPEDITED PACKAGE SERVICES CONTRACTS (GOVERNORS' DECISION NO. 08-7)

May 6, 2008

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 Global Expedited Package Services Contracts. The types of contracts to which these prices will apply are described in Attachment A, the price floor and price ceiling formulas are specified in Attachment B, and management's analysis of the appropriateness of these formulas is explained in Attachment C. We have reviewed that analysis and have concluded that the prices emerging from application of the formulas and the classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Contracts which fall within the terms specified in Attachment A, and whose prices fall within the price range established by the price floor and price ceiling formulas specified in Attachment B, are hereby authorized.

The PAEA provides that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. We have determined that prices established according to the formulas listed in Attachment B would be appropriate for the services covered by the types of GEPS Contracts classified in Attachment A.[1] Management's analysis of the formulas, included as

[1] The classification for GEPS Contracts is contained in the Mail Classification Schedule language originally proposed by the Postal Service, as modified in Attachment A. *See* United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order

Attachment C, supports our decision to establish prices through such formulas for the specified types of contracts.

We are satisfied that the prices established by the formulas in Attachment B meet the applicable statutory and regulatory requirements. The price floor formula provides greater than 100 percent coverage of the costs attributable to each of these types of agreements. We accept and rely upon the certification in Attachment D that the correct cost inputs for the formulas have been identified. In addition, the price floor formula [redacted] should cover the agreements' attributable costs and provide a contribution toward the Postal Service's institutional costs. The formula should thus prevent a cross-subsidy from market dominant products. As noted in the certification in Attachment D, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 C.F.R. § 3015.5. The notice must include a financial analysis that demonstrates that the agreement covers its attributable costs, based on [redacted] Attachment B. The notice must also include a certification from a Postal Service official that the numerical values chosen for each agreement are appropriate, in that they represent the best available information and that the agreement should not result in a cross-subsidy from market dominant products and should not impair the ability of competitive products, as a whole, to cover an appropriate share of institutional costs.

ORDER

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable GEPS Contracts, and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within the formulas set by this Decision and the certification process specified herein is followed. After an authorized agreement is entered into, the Postal Service shall comply with all applicable statutory and regulatory requirements.

Prices and classification changes established pursuant to this Decision will take effect fifteen days after the date on which the agreement is filed with the Postal Regulatory Commission.

By The Governors:

Alan C. Kessler
Chairman

Attachment A

Description of Applicable Global Expedited Package Services Contracts

2610.2 Global Expedited Package Services (GEPS) Contracts

These are contracts that provide for ~~discounts~~ incentives for Express Mail International (EMI) and/or Priority Mail International (PMI) for all destinations served by Express Mail International and Priority Mail International. Preparation requirements are the same as for all Express Mail International and/or Priority Mail International shipments with the following exceptions: The mailer is required to use USPS-supplied labeling software, or a non-USPS supplied labeling software that has the same functionality as the USPS-supplied labeling software. The software allows for preparation of address labels and Customs declarations and submission of electronic shipment information to the Postal Service, as well as prepayment of Customs duties and taxes and pre-advice for foreign Customs authorities by the Postal Service. The mailer may be required to prepare specific shipments according to country specific requirements. To qualify for a contract, a mailer ~~must tender all of its qualifying mail to the Postal Service and~~ must be capable, on an annualized basis of either tendering at least ~~600~~ 5,000 pieces of ~~non-First-Class Mail International~~ international mail to the Postal Service, or paying at least $100,000 in international ~~$12,000 in non-First-Class Mail International~~ postage to the Postal Service. For a mailer to qualify, the contract must cover its attributable costs.

Size and Weight for Express Mail International:

	Length	Width	Height	Weight[1]
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			
Maximum	36 inches	Length plus girth: 79 inches		

[1] Country-specific restrictions may apply as specified in the International Mail Manual.

Size and Weight for Priority Mail International:

	Length	Width	Height	Weight[1]
Minimum[2]	5.5 inches	None	3.5 inches	None
Maximum	42 inches	Length plus girth: 79 inches Circular parcels: diameter: 64 inches		70

[1] Weight and other exceptional size limits based on shape and destination country restrictions may apply as specified in the International Mail Manual.
[2] Items must be large enough to accommodate postage, address and other required elements on the address side.

Minimum Volume or Revenue Commitment:
Mailers must commit to tender varying minimum volumes or postage of Express Mail International, Priority Mail International or both, on an annualized basis. The mailer is required to meet the minimum volume or weight requirements in effect for manifest mailing as specified by the Postal Service.

Price Categories:
The ~~discount is a fixed discount~~ incentives are based on the volume or revenue commitment above a specified cost floor. Also, separate charges apply if the customer has ~~the Postal Service label the mailpieces~~ labeling, ~~for~~ harmonization ~~and for~~ or return services.

GEPS – Express Mail International

GEPS – Priority Mail International

Optional Features:

Pickup On-Demand

International Ancillary Services

- International Certificate of Mailing (PMI flat-rate envelope only)
- International Insurance
- International Registered Mail (PMI flat-rate envelope only).
- International Restricted Delivery (PMI flat-rate envelope only)
- International Return Receipt

Software-Related Services:

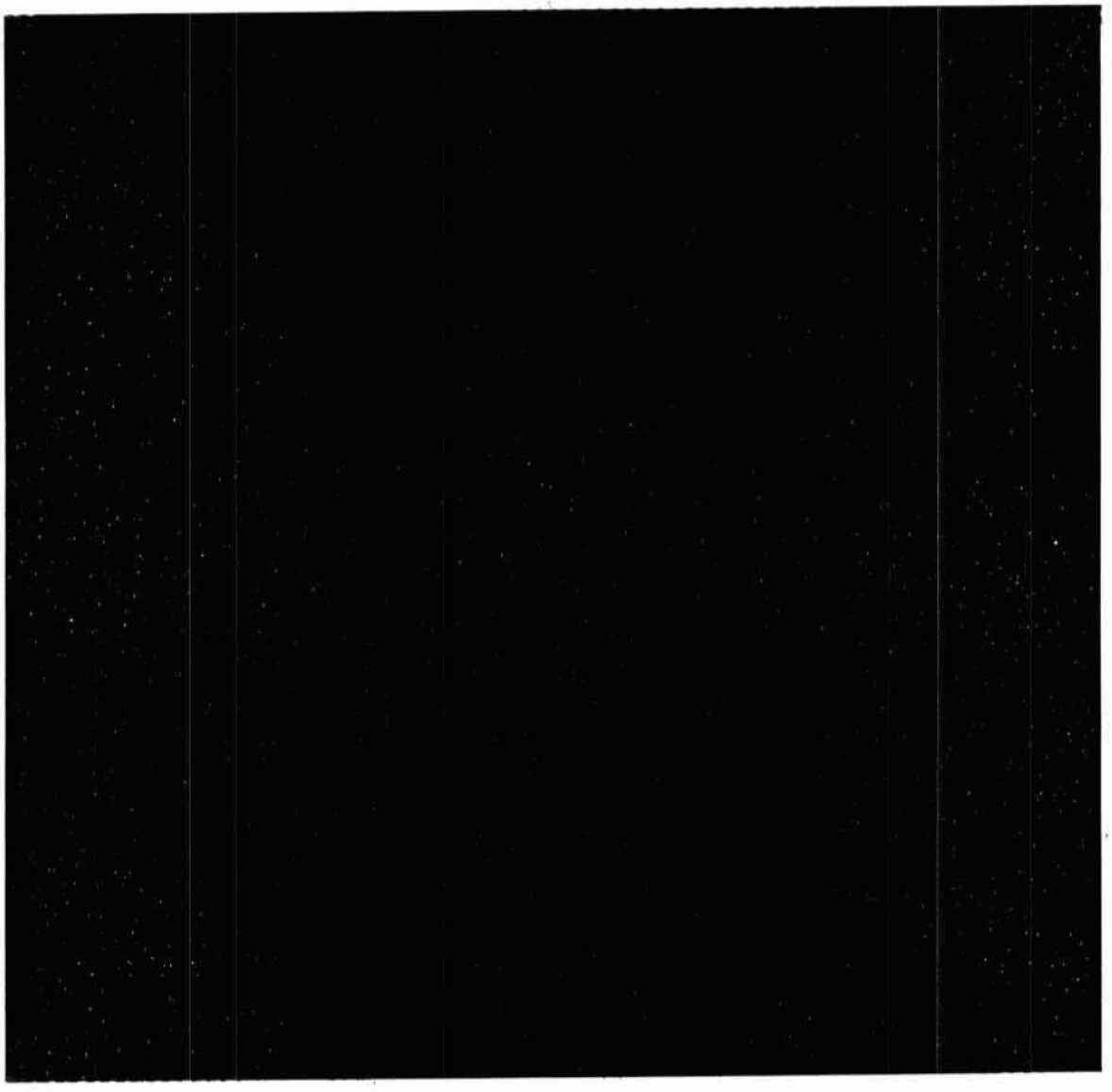
- Labeling: At the mailer's request, the Postal Service will arrange for ~~apply~~ labels and Customs declarations ~~at a postal location~~ to be applied.

- Harmonization: At the mailer's request, the Postal Service ~~facilitates~~ will arrange for classification of merchandise according to country specified Customs regulations to determine applicable duties and taxes.

- Returns: At the mailer's request, the Postal Service will ~~contracts~~ with a returns center appropriate for the particular country. The returns center inspects the goods it receives from the mailer's customers and returns the goods in bulk to the mailer in the United States. The Postal Service invoices the mailer for appropriate charges. The Postal Service may also charge for certain Express Mail International and Priority Mail International undeliverable-as-addressed returns when customs duties have been prepaid.

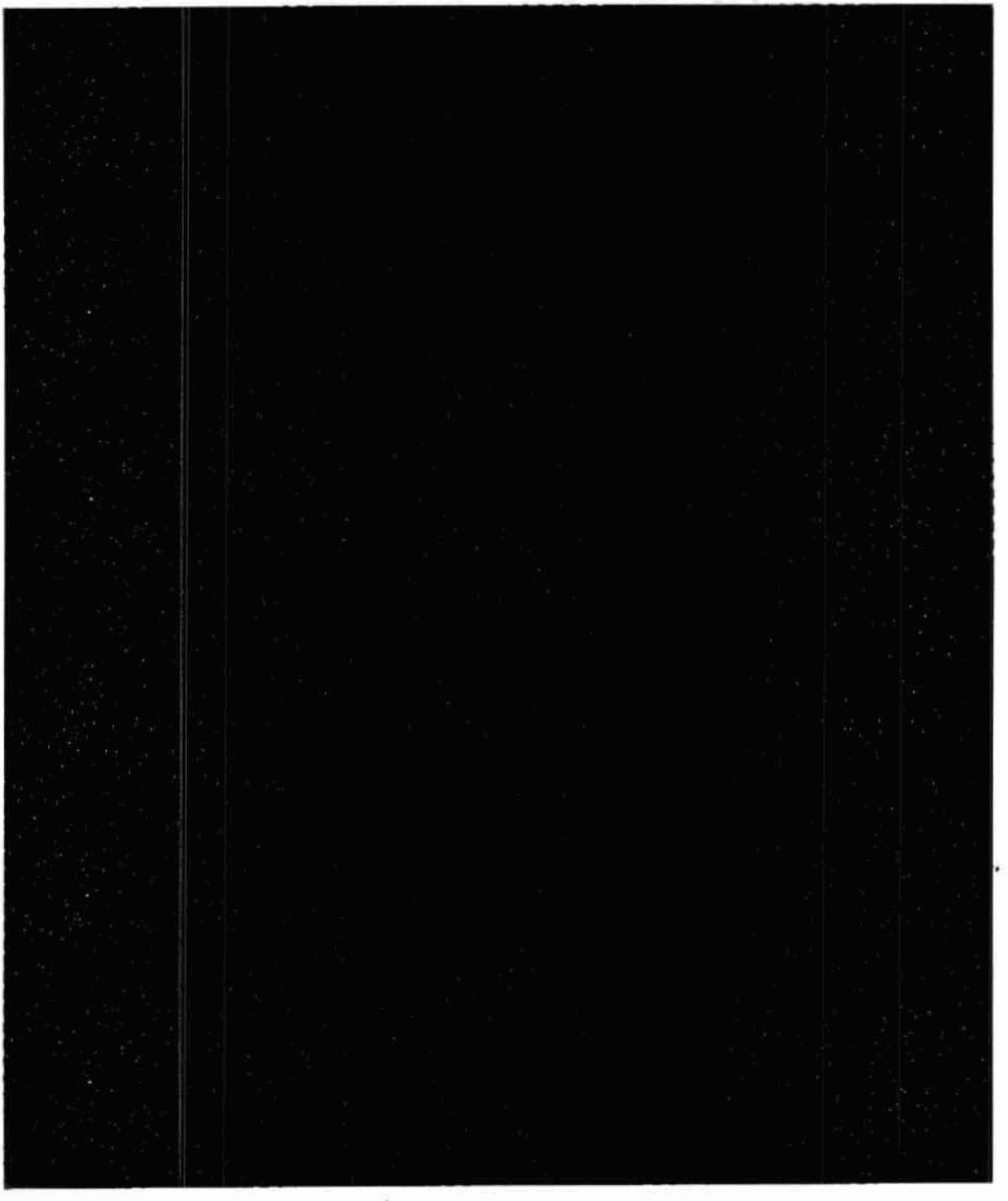
Attachment B

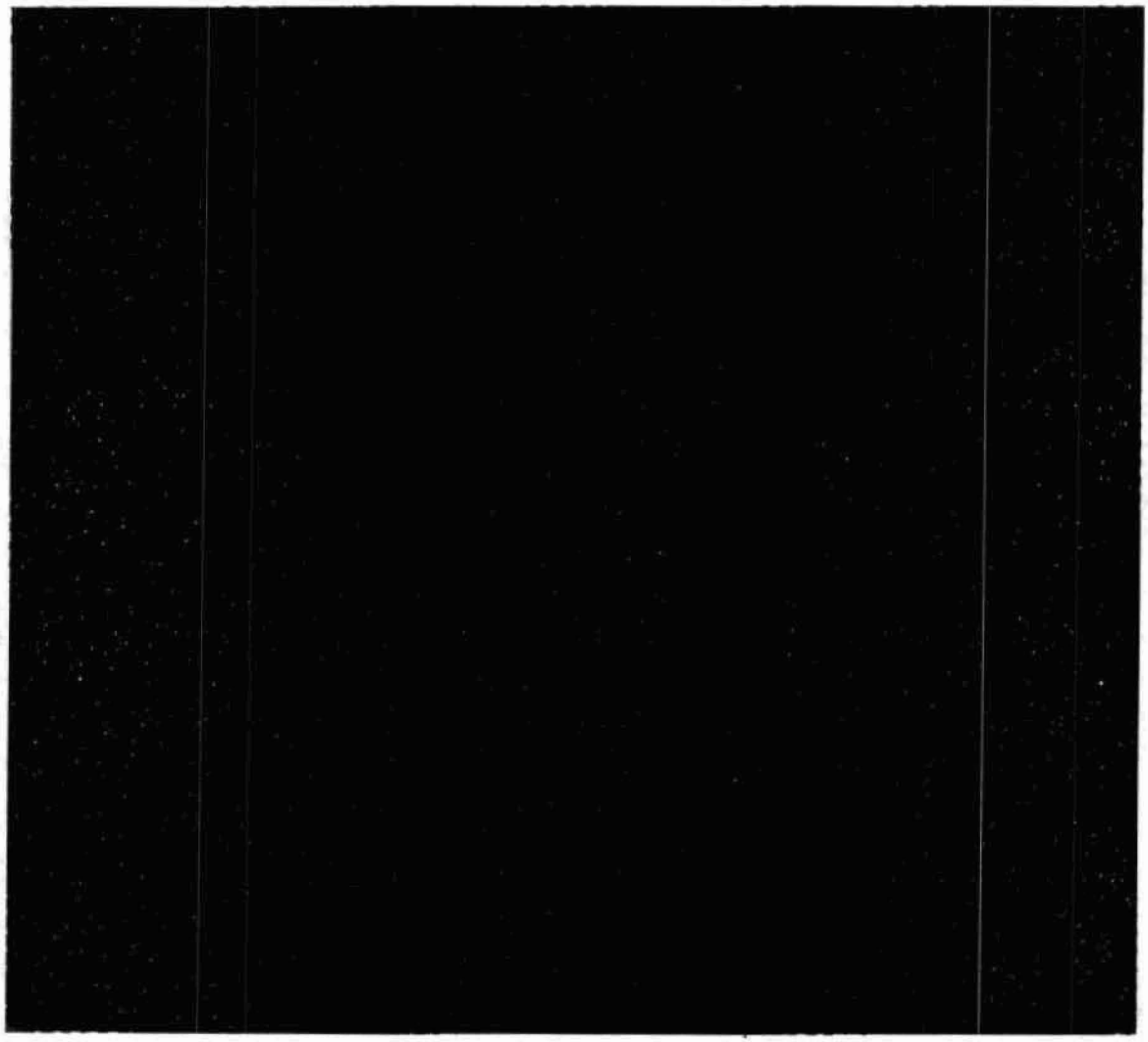
Formulas for Prices Under Applicable Global Expedited Package Services Contracts



Attachment C

Analysis of the Formulas for Prices Under Applicable Global Expedited Package Services Contracts





Attachment D

Certification as to the Formulas for Prices Offered Under Applicable Global Expedited Package Services Contracts

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, United States Postal Service, am familiar with the price floor formula and price ceiling formula for Global Expedited Package Services Contracts which are set forth in Attachment B.

I hereby certify that these formulas adequately represent all necessary [redacted] If the Postal Service were to enter into agreements that set prices above the price floor, the Postal Service would be in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The price floor formula is designed to ensure that each agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from Global Expedited Package Services Contracts should be much smaller. Even if all the agreements for Global Expedited Package Services Contracts are signed at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

W. Ashley Lyons

W. Ashley Lyons

CERTIFICATION OF GOVERNORS' VOTE IN THE GOVERNORS' DECISION NO. 08-7

I hereby certify that the following Governors voted at the May 6, 2008, Board meeting on adopting Governors' Decision No. 08-7:

Mickey D. Barnett
James H. Bilbray
Carolyn Lewis Gallagher
Louis J. Giuliano
Alan C. Kessler
Thurgood Marshall, Jr.
James C. Miller III
Katherine C. Tobin
Ellen C. Williams

The vote was 9-0 in favor.

Julie S. Moore

Date: 5/14/08

Julie S. Moore
Secretary of the Board of Governors

ATTACHMENT 4

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 Global Expedited Package Services (GEPS) 3 contract that the Postal Service believes is functionally equivalent to previously filed GEPS 3 agreements. 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, certified statement required by 39 C.F.R. § 3015.5(c)(2) for the contract, and related Governors' Decision are filed with the Notice as Attachments 1, 2, and 3, respectively.[1]

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

[1] 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).[2] Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support 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;

Concerning this GEPS 3 contract, the Postal Service believes that the third parties with a proprietary interest in the materials are the customer with whom the contract is made, the PC Postage Provider(s) (if the contract allows for and the customer intends to use a PC Postage Provider), and foreign postal operators.

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

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

concerns directly with the Commission.[3] The Postal Service employee responsible for providing notice to the customer with proprietary interest in the materials filed in this docket is Ms. Amy E. Douvlos, Marketing Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 5427, Washington, DC 20260-4017, whose email address is Amy.E.Douvlos@usps.gov, and whose telephone number is 202-268-3777.

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. [4]

(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

[3] 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.
[4] 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.

materials were filed under seal, with redacted copies filed publicly, after notice to the customer. The Postal Service maintains that the redacted portions of the contract, related financial information, and identifying information concerning the GEPS customer, should remain confidential.

With regard to the GEPS 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.

Other redacted information in the agreement includes negotiated contract terms, such as the minimum revenue commitment agreed to by the customer, various penalties, and the percentage of cost increase which may trigger a consequential price increase.

The redactions made in the Annex of the contract, other than those involving the customer's name, withhold the actual prices that are being offered to the customer in exchange for its commitments and performance of its obligations under the terms of the agreement.

The redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the

actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages, such as words or numbers in text, were replaced with general terms describing the redacted material. For example, where the mailer's name appears in the spreadsheet within a cell, it has been replaced by the word "Mailer."

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;

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

Other redacted information in this Agreement (which is included as Attachment 1 to this notice) includes negotiated contract terms, such as the minimum revenue commitment agreed to by the customers, various penalties and the percentage of cost increase which 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 the offers made by the Postal Service to its customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial workpapers include specific information such as costs, assumptions used in pricing formulas, the formulas themselves, mailer profile information, projections of variables, contingency rates included to account for market fluctuations and the exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required by the mail classification schedule to demonstrate that each negotiated agreement within this group covers its attributable costs. Furthermore, the Postal Service's Governors have required that each contract be

submitted to the Commission with a notice that complies with 39 C.F.R. § 3015.5.[5] Thus, competitors would be able to take advantage of the information to offer lower pricing to the GEPS customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the expedited package services market. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the contract or from the information in the workpapers whether additional margin for net profit exists between the contract being filed and the contribution that GEPS contracts must make. From this information, the customer could attempt to negotiate ever-increasing incentives, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the customer involved in this GEPS filing could use the information in the workpapers in an attempt to renegotiate its own rates by threatening to terminate its current agreement, although the Postal Service considers this risk to be lower in comparison to those previously identified.

Price information in the contract and its financial spreadsheets also consists of sensitive commercial information of the customer. Disclosure of such information could be used by competitors of the customer to assess its 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

[5] Decision of the Governors of the United States Postal Service On The Establishment of Prices and Classifications for Global Expedited Package Services Contracts, May 6, 2008 (Governors' Decision No. 08-7), at 2-3 and Attachment A.

sensitive commercial information related to agreements between the Postal Service and interested third parties. Such information would be extremely valuable to competitors of both the Postal Service and third parties. Using detailed information about such agreements, competitors would be able to better understand the counterparty's underlying costs, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the counterparty could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service. And competitors of foreign postal operators could use the information in the financial spreadsheets to understand their nonpublished pricing to better compete against them.

Information in the financial models may also include sensitive commercial information related to agreements between the Postal Service and PC Postage Providers. Such information would be extremely valuable to competitors of both the Postal Service and the PC Postage Providers. Using detailed information about such an agreement, 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 Providers 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 in a GEPS contract is revealed to the public. Another expedited delivery service has an employee monitoring the filing of GEPS agreements and passing along the information to its sales function. The competitor's sales representatives can then quickly contact the Postal Service's customer and offer the customer lower rates or other incentives to terminate its contract with the USPS in favor of using the competitor's services.

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 expedited package delivery service obtains a copy of the unredacted version 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 meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its GEPS customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for international expedited 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 the business-to-business and business-to-customer expedited delivery services markets for which the GEPS product is designed.

Identified harm: Public disclosure of the rate charts in the Annex 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 it must receive lower rates than those the Postal Service has offered it, or it 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 it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, the Customer uses other providers for destinations other than those for which it extracted lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement, such that it no longer meets its cost coverage requirement. Although the Postal Service could terminate the contract when it first recognized that the mailer's practice and projected profile were at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on the GEPS product overall.

Identified harm: Public disclosure of information in a GEPS contract and its 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 a GEPS 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 mailing costs as a baseline.

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 in the performance report to determine whether a customer met that profile.

Identified harm: Public disclosure of information in the contract and financial workpapers would be used by the competitors of the third party to the detriment of the Postal Service and/or the counterparty to the agreement.

Hypothetical: A firm competing with the interested third party 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 third party's revenue sources and growth opportunities, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other parties in their negotiations with the Postal Service concerning financial arrangements that they may make with the Postal Service in the future.

Identified harm: Public disclosure of information in a GEPS contract involving postage payment through a PC Postage Provider, and of information in related financial workpapers, would be used by the competitors of the PC Postage Provider to the Postal Service and/or the PC Postage Provider's detriment.

Hypothetical: A firm competing with the customer's PC Postage Provider obtains a copy of the unredacted version of a GEPS 6 contract involving postage payment through a PC Postage Provider, 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.

(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 expedited and parcels products (including both private sector integrators and foreign postal administrations), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products should not be provided access to the non-public materials.

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

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

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

None.

Conclusion

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