

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

COMPETITIVE PRODUCT PRICES  
PARCEL SELECT & PARCEL RETURN SERVICE  
PARCEL SELECT & PARCEL RETURN SERVICE CONTRACT 5

Docket No. MC2014-1

COMPETITIVE PRODUCT PRICES  
PARCEL SELECT & PARCEL RETURN SERVICE CONTRACT 5  
(MC2014-1)  
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2014-1

**RESPONSE OF THE UNITED STATES POSTAL SERVICE  
IN OPPOSITION TO MOTION FOR ACCESS TO NON-PUBLIC MATERIALS**  
(November 27, 2013)

The United States Postal Service hereby responds in opposition to the Motion of Mark Jamison Requesting Access to Non-Public Materials (hereinafter "Motion"), filed November 21, 2013. For the reasons discussed below, the Motion should be denied.

Non-Public Materials Sought Are Highly Confidential

The materials being sought are highly confidential and commercially sensitive, as outlined in the Postal Service's Application for Non-Public Treatment initially filed in this docket.<sup>1</sup> The non-public materials at issue consist of negotiated prices and terms in the contract, as well as the financial data and workpapers filed in support of the contract. In the Postal Service's view, these materials are information of a commercial nature, which under good business practice would not be publicly disclosed. This information would

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<sup>1</sup> The Postal Service herein incorporates by reference its arguments, and the identified harms that would come from disclosure of these materials, that are contained in the Postal Service's Application for Non-Public Treatment in this docket.

be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4). Moreover, this information is highly confidential within the broader shipping services market. Disclosure would cause a clear commercial injury to the Postal Service and its contract partner.

Unlike its competitors, the Postal Service is required to provide these commercially sensitive materials to the Commission in order to meet the statutory standards outlined in 39 U.S.C. § 3633. Even the redacted material that is filed publicly with the Commission reveals more information than the Postal Service's competitors typically disclose about their own contracts or other commercially sensitive business arrangements. Without the confidentiality protections provided by the Commission's rules, the Postal Service's competitors could utilize these sensitive materials to gain a competitive advantage in the marketplace, to the detriment of the Postal Service. Other prospective contract partners could use this information to negotiate more favorable prices or terms in future contracts, which would mitigate the increase in contribution the Postal Service would receive from these contracts. The Postal Service considers both of these scenarios to be highly likely to occur, if any of these confidential contract materials were disclosed publicly.

Finally, the disclosure of the requested non-public materials could have a significant negative effect on the Postal Service's competitive contract business as a whole, as well as the Postal Service's ability to compete in the shipping services market. The growth of the Postal Service's shipping services business in recent years is a direct result of the successes the Postal Service has had in entering into contracts with mailers for competitive products, including Priority Mail, Priority Mail Express, Parcel

Select, and Parcel Return Service. Simply put, the Postal Service would not be able to retain all of its current competitive products contracts, or add new contract partners in the future, if mailers were not confident that the contract prices, key terms, and related financial materials would remain confidential in matters before the Commission.

Disclosure of the non-public materials in the instant docket could have far-reaching effects on the Postal Service's shipping services business, and ultimately, its overall financial health.

#### Mr. Jamison's Motion Is Insufficient

Under 39 C.F.R. § 3007.50(a)(1), requests for access to non-public materials must contain "a *detailed* statement providing justification for access, including reference to the materials' relevance to compliance under chapter 36 of title 39 of the U.S. Code." (emphasis added). The Motion contains no such detailed statement and lacks any compelling justification for access to the non-public materials. As an initial matter, the Commission has already completed its review of the contract in this docket, and found the contract to be in compliance with the statute. The Commission will also have an opportunity to examine the contract each year, as part of the Postal Service's annual compliance review (ACR), under 39 U.S.C. § 3653. Section 3653 provides an opportunity for users of the mail to comment during the ACR process, but leaves the ultimate compliance determination up to the Commission.

The Motion includes a reference Section 3653, in an apparent attempt to justify access to the non-public materials, but this is not an adequate reason to allow access in this case. If a vague reference to the ACR process were a sufficient justification,

seemingly any party could request access on the same grounds, for any competitive contract before the Commission. The Motion also implies that access is justified in order to ensure that the Postal Service's public description of the materials aligns with the non-public materials themselves. Surely the Commission's rules intend for the standard for access to such commercially sensitive materials to be much higher.

Additionally, the Motion's brief reference to 39 U.S.C. §§ 403 and 404 does not provide a compelling justification for access to the non-public materials at issue. The Postal Service presumes that the Motion is suggesting that the Sunday delivery portion of the contract may not satisfy the Postal Service's universal service obligation.<sup>2</sup> However, the Motion does not provide a detailed statement explaining why the Postal Service is legally obligated to provide universal service on Sundays, let alone in an individual contract with an individual mailer for rates and services that are "not of general applicability," 39 U.S.C. § 3632(b)(3), and involve products that are competitive within the meaning of 39 U.S.C. § 3633. Nor does the Motion explain how disclosure of these confidential materials would help Mr. Jamison make these arguments in either an annual compliance review proceeding under Section 3653, or a complaint case under Section 3662. Any reasonable interpretation of the Commission's confidentiality rules must require a much more detailed statement justifying access to such highly confidential materials. Simply citing a few statutory provisions, and implying that access to confidential materials may aid in an "independent evaluation" of the contract, cannot be an adequate justification for disclosing these materials.

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<sup>2</sup> Although, the Motion merely states that Mr. Jamison wishes to examine how the contract "may relate" to the universal service obligation and service to rural areas. It is not clear if Mr. Jamison is alleging any statutory violation at all.

### Conclusion

Ultimately, the Commission must balance the potential harm that would come from the disclosure of these commercially sensitive materials, against the stated reasons for disclosure. As detailed above, the materials at issue in this case are highly confidential, both to the Postal Service and its contract partner. Disclosure would not only cause immediate commercial injury to the Postal Service and its contract partner in the short term, but it would also have a significant chilling effect on the Postal Service's ability to compete in the shipping services market with future competitive contracts. The Postal Service submits that the Motion fails to provide a detailed statement as required under 39 C.F.R. § 3007.50, and does not provide any compelling justification for obtaining access to these materials sufficient to outweigh the likely commercial injury to the Postal Service and its contract partner. Therefore, the Motion should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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November 27, 2013