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

COMPETITIVE PRODUCT PRICES GLOBAL EXPEDITED PACKAGE SERVICES 5 (MC2016-15 AND CP2016-20) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2017-50

NOTICE OF THE UNITED STATES POSTAL SERVICE OF FILING MODIFICATION THREE TO GLOBAL EXPEDITED PACKAGE SERVICES 5 NEGOTIATED SERVICE AGREEMENT
(August 16, 2018)

The agreement that is the subject of this docket is scheduled to expire on August 31, 2018.[1]

Attached to this notice is Modification Three, which the customer and the Postal Service have executed. This modification revises Article 11 so that it states that the agreement will expire September 30, 2018.

A redacted version of the modification is filed publicly as Attachment 1, while the unredacted version of the modification is filed under seal. With respect to the nonpublic version of the modification that is filed under seal, the Postal Service hereby includes an Application for Non-Public Treatment as Attachment 2.

Therefore, the Postal Service respectfully requests that the Commission approve a brief extension of the agreement that is the subject of this docket to maintain continuity of pricing and other terms and conditions of the agreement. The Postal

[1] PRC Order No. 4618, Order Approving Modification Two to GEPS 5 Negotiated Service Agreement and Denying as Moot Motion for Temporary Relief, Docket No. CP2017-50, May 24, 2018.

Service requests that the Commission continue to list the agreement that is the subject of this docket in the Mail Classification Schedule through September 30, 2018.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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August 16, 2018

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

This Modification amends the Global Customized Mail Agreement ("Agreement") 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, signed by the Mailer on November 28, 2016, and by the USPS on November 28, 2017, as revised by Modification One signed by the Mailer on February 20, 2018 and by the USPS on February 21, 2018, and as revised by Modification Two signed by the Mailer and by the USPS on May 22, 2018. The Mailer and the USPS may be referred to individually as a "Party" and together as the "Parties."

The purpose of this Modification is to make the following change to the Agreement.

Article 11 Term of the Agreement shall now read as follows:

11. Term of the Agreement. (1) 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. The Agreement shall remain in effect until 11:59 p.m. on September 30, 2018, unless the Agreement is terminated sooner pursuant to Article 12 or Article 13. (2) If the Mailer has met its annualized minimum commitment under Article 10, the USPS may, prior to the expiration of this agreement, provide notice to the Mailer in accordance with Article 31 that this agreement has been extended for up to an additional three (3) months, and the USPS reserves the right to adjust the duration of such extension, depending on the effective date, if any, of a successor agreement with the Mailer.

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

The USPS will notify the Mailer of the Effective Date of this Modification 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.

The Parties acknowledge and understand that all obligations of the USPS under this Modification shall be contingent on the USPS receiving approvals ("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 this Modification might not be approved by such individuals or bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to allow the USPS to provide the products or services contemplated under this Modification, no obligation shall exist for the USPS and no benefit shall inure to either Party. 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 this Modification. 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 any costs incurred by either Party attributable to such non-approval such as attorney's fees.

The Mailer acknowledges that the Modification and supporting documentation will be filed with the Postal Regulatory Commission ("Commission") in a docketed proceeding (CP2017-50). 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 Modification must be filed. The Mailer further understands that any unredacted portion of the Modification or supporting information will be available on the Commission's public website, http://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 in part 3007 of the regulations concerning the Commission in Title 39 of the Code of Federal Regulations.

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

In witness whereof, this Modification is deemed executed on the latter of the two dates accompanying the Parties' signatures.

ON BEHALF OF THE UNITED STATES POSTAL SERVICE:

Signature: Donald W. Ross

Name: Donald W Ross

Title: Director International Sales

Date 8-10-2018

ON BEHALF OF [redacted]

Signature: [redacted]

Name: [redacted]

Title: [redacted]

Date: 8/10/18

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

In accordance with 39 C.F.R. Part 3007, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket concerning a Modification Three to a Global Expedited Package Services 5 (GEPS 5) Negotiated Service Agreement.

Modification Three to the contract that is the subject of this docket is being filed separately in this docket under seal with the Commission. A redacted copy of the modification is filed as Attachment 1.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.201(b) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

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)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).[1] Because the portions of materials filed non-publicly in this docket fall

[1] 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

within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specificied in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.[2]

Concerning this Modification Three to a GEPS 5 contract, the Postal Service believes that persons other than the Postal Service with a proprietary interest contained within the materials are the customer.

As for the customer with whom the contract is made, the Postal Service maintains that customer identifying information is sensitive and should be withheld from public disclosure. Therefore, rather than identifying the customer for this contract, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service

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interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, March 20, 2009, at 11.

[2] Section 3007.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

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.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

In connection with its Notice filed in this docket, the Postal Service included a Modification Three to a contract. The modification was filed under seal, with a redacted copy filed publicly, after notice to the customer. The Postal Service maintains that the redacted portions of the modification should remain confidential.

With regard to the modification filed in this docket, the redactions on page 1 and to the footers of each page, and the signature block 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).

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

If the portions of the modification 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. Revealing customer-identifying information would enable competitors to focus marketing efforts on current postal customers, undermining the

effort and resources that the Postal Service has invested in cultivating business relationships with those customers.

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

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. Another delivery service has an employee monitoring the filing of GEPS 5 contracts 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.

(6) The extent of the protection from public disclosure alleged 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 delivery services markets, 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. This includes all competitors of the relevant customer, whether or not they are currently actual Postal Service customers.

(7) The length of time for which non-public treatment is alleged to be necessary 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 otherwise

provided by the Commission. 39 C.F.R. § 3007.401(a). However, because Postal Service relationships with customers may continue for years or decades, the Postal Service requests that the non-public materials filed in this docket be subject to protection for an indefinite duration.

(8) Any other relevant factors or reasons 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.