

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

COMPETITIVE PRODUCT PRICES
GLOBAL EXPEDITED PACKAGE SERVICES 1 (CP2008-4)
NEGOTIATED SERVICES AGREEMENT

Docket No.
CP2008-13

**NOTICE OF UNITED STATES POSTAL SERVICE RESPONSE TO ORDER NO. 272
AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED
UNDER SEAL**

(September 29, 2009)

On August 5, 2009, the Postal Regulatory Commission (Commission) issued Order No. 272, adding the specific agreement that is the subject of Docket Number CP2009-52 to the Global Expedited Package Services 2 product established in Docket No. CP2009-50.¹ That agreement replaced a prior agreement with the same customer which expired one year from its effective date under the terms of the agreement. In Order 272, the Commission directed that the Postal Service provide cost, volume and revenue data associated with the expired agreement within 30 days of the effective date of the new one. The new agreement became effective on September 1, 2009. The Postal Service files this response to the Commission's Order in accordance with 39 C.F.R. § 3007.20 and asks, for the reasons set forth in the attached Application, that the Commission treat the reported information as non-public.

¹ PRC Order No. 272, Order Concerning Additional Global Expedited Package Services 2 Negotiated Service Agreement, Docket No. CP2009-52, August 5, 2009, at 8.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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ATTACHMENT 1

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

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of a report of cost, volume and revenue data required by the Commission in Order 272.² The report is being filed separately under seal with the Commission, although a redacted copy as required by 39 C.F.R. § 3007.10(b) is filed with the Notice as Attachment 2.³

The Postal Service carries its burden of persuasion that portions of the materials should be withheld from the public; therefore, the Commission should grant this application for non-public treatment of the redacted information. The Postal Service furnishes the justification required for this application by 39 CFR 3007.21(c) below.

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

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4). In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No.RM2008-1, June 19, 2009.

² The requested report relates to the agreement that was in effect with the same customer at the time the Postal Service sought to add this agreement to the competitive products list. The prior agreement was reviewed by the Commission in PRC Docket Number CP2008-13 and expired on August 31, 2009.

³ The Postal Service informed the customer prior to filing its notice that it would be seeking non-public treatment of this report and that it could address its confidentiality concerns directly with the Commission in accordance with 39 C.F.R. § 3077.22.

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).⁴ Because the portions of the materials which the Postal Service is applying to file only under seal fall 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) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of GEPS 1 contracts, the Postal Service believes that the only third party with a proprietary interest in the materials is the customer with which the contract is made. The Postal Service maintains that customer identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Ms. Laree Martin, Attorney, 475 L'Enfant Plaza SW, Room 6627, Washington, D.C. 20260-1137, whose email address is laree.k.martin@usps.gov, and whose telephone number is 202.268.3816.

⁴ 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.

(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;

The materials at issue are portions of the performance report associated with the now-expired GEPS 1 agreement reviewed by the Commission in PRC Docket Number CP2008-13. The financial model submitted under seal in that docket provided projected cost, volume and revenue information. In response to the Commission's request, it has been updated to demonstrate actual volume and revenue information along with estimated cost information for the Commission's use. Actual cost information is not yet available for the entire period of the contract at issue.

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

If the reported information were made public, the Postal Service anticipates that the information could be used against it by potential customers in rate negotiations and by competitors in pricing and marketing efforts. Public disclosure of the information would also present a serious risk of commercial harm to the customer if its competitors were able to acquire market intelligence about the customer's underlying costs, mailing patterns and customer base. The Postal Service considers the likelihood of these harms to be great, since this is information that would be readily accessible and relatively easy to interpret and apply.

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

Identified harm: Making cost, volume and revenue data associated with expired GEPS 1 agreements public could weaken the Postal Service's bargaining position with its customers.

Hypothetical: The Widget Factory negotiates a GEPS 1 contract for incentive-based pricing for Express Mail International and Priority Mail International (Contract 1). When the term of that contract is nearing its one-year period, the customer seeks to enter into a new contract (Contract 2), with greater incentives based on a more aggressive commitment to revenue and/or volume. The terms of Contract 2 are agreed upon, and it is provided to the Commission for review prior to the expiration of Contract 1. The Commission reviews Contract 2 and finds it to be functionally equivalent to other GEPS 1 agreements and adds it to the competitive products list. Simultaneously, the Commission asks that a data collection report be filed with regard to Contract 1. The Postal Service provides the cost, volume and revenue data associated with Contract 1 as ordered, and the data is made public on the Commission's website. The Widget Factory reviews the data and determines that the Postal Service has additional margin for profit that could be undercut without its cost coverage declining below statutorily required levels. The Widget Factory then contacts the Postal Service, threatening to cancel Contract 2 and seek another expedited delivery service to meet its mailing needs, unless the Postal Service agrees to further reductions in the rates.

Identified harm: Postal Service competitors could use the information to the detriment of the Postal Service.

Hypothetical: The information in the performance report is disclosed publicly on the Postal Regulatory Commission's website. Other expedited delivery service providers review the information, and by applying the statutory limits below which the Postal Service is not authorized to provide competitive products, the competitors are able to

fairly accurately determine the lowest price at which the Postal Service can offer international expedited delivery services. The competitors then offer similar services at lower prices until the Postal Service's market share declines. Additionally, the competitors would be able to identify GEPS 1 customers, identify them as high-volume mailers of expedited packages and target them for sales and marketing efforts, essentially "cherry-picking" from the Postal Service's customer base.

Identified harm: Public disclosure of information in the report would be used by competitors of the customer to its detriment.

Hypothetical: A competitor of the USPS customer obtains a copy of the unredacted version of the report from the Postal Regulatory Commission's website. It analyzes the work papers to assess the customer's underlying costs, and uses that information to identify lower cost alternatives to compete against the USPS customer. The USPS customer's competitor could also use the disaggregated mailing profile information in the work papers, which includes distribution by weight and country group, to acquire intelligence about the customer's mailing patterns, customer base, and market strengths. The competitor then uses this intelligence to direct its marketing and sales efforts to those regions, products, or target markets revealed by the information in the work papers to the USPS customer's detriment.

(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 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; and

The Postal Service believes that customer-identifying information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. As discussed above, disclosure of customer-identifying information leaves the Postal Service vulnerable to competitive “cherry-picking.” Customers may continue to renew their GEPS 1 contracts, but the implementation of a new ten-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. For transparency purposes, the Postal Service routinely discloses which GEPS 1 agreements are with new or existing customers. In the case of existing customers, the Postal Service also identifies the Commission docket in which the prior agreement was reviewed. This will make it possible for competitors to determine the customers’ identities and focus sales and marketing efforts on them when the initial ten-year period of non-public treatment expires. While this may seem inconsequential at the outset, in reality it has the same effect in ten years as it would for the information to be made public from the start.

The customer’s interests in protecting its proprietary information from its competitors would also be maintained if its identifying information were to be given indefinite non-public treatment. Therefore, the Postal Service asks the Commission to

enter an order giving indefinite non-public treatment to the customer's name, address, and other identifying information in the non-public materials.

(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 in all respects.