Postal Regulatory Commission
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UNITED STATES POSTAL SERVICE

October 8, 2009

Honorable Shoshana Grove
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Ms. Grove:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service is providing copies of the enclosed documents, which concern an EMS Pay-for-Performance agreement for traffic between Empresa Brasileira de Correios e Telégrafos, an agency of the Brazilian government, and the Postal Service, starting October 1, 2009. As information, the Postal Service has marked these documents as "Confidential" and "Non-Public" because the documents contain information considered confidential and commercially sensitive by the affected postal operator and the Postal Service. The Postal Service considers certain portions of the documents to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the documents contain the commercial information of the affected postal operator, and as such, certain portions of the instrument are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of these documents under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the document becomes subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

Anthony F. Alverno

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

UNITED STATES
POSTAL SERVICE

September 8, 2009

Alberto de Mello Mattos
Head of International Department
International Department – DEINT
Empresa Brasileira de Correios e Telégrafos
SBN Quadra 01, bloco "A", 8° andar
70002-900 Brasilia – DF
BRAZIL

Fax: +55 61 3426 2114

Dear Mr. ~~Mattos~~: Alberto

We are pleased with the level of service we have with Brazil Post for our EMS items. We feel confident that both posts have strived to provide our customers with the highest level of service. We are not as concerned with the change in the level of service with Brazil due to these efforts, however, we understand the desire of Brazil Post to retain the highest level of service.

We would prefer to change the performance level to [redacted] with a penalty of [redacted] for the items below this threshold. [redacted] In addition, we rely on Brazil Post's assistance in efforts to raise the EMS Pay-for-performance Plan level of minimum performance in the future from [redacted].

I have enclosed a revised agreement form and hope that Brazil Post will agree to this slightly revised level starting for the fourth quarter of 2009.

If you have any questions about this, please contact Brian Hutchins at brian.hutchins@usps.gov.

Sincerely,

Lea Emerson

Lea Emerson
Executive Director
International Postal Affairs

Enclosure

1735 N LYNN STREET, ROOM 6026
ARLINGTON, VA 22209-6111
703-292-3574
FAX: 703-292-4030
WWW.USPS.COM

Attachment 2

Pay-for-performance Partners' Agreement Form

EMS Operators entering the agreement:

United States Postal Service

Brazil Post

Date of Implementation:

1 October 2009

Year/ Quarter	% delivery charge paid for penalized items below threshold	Threshold
4th/2009	[redacted]	[redacted]

I, as a representative of the U.S. Postal Service (EMS Operator), hereby agree that my Administration will participate in the EMS Pay-for-performance Plan under the above-stated conditions.

Signature: Lea Emerson

Date: 9/8/09

Please return to the EMS Unit:
International Bureau of the UPU
EMS Unit
Case postale
3000 Berne 15
Switzerland
FAX: + 41 31 351 52 00
E-mail: EMS.Unit@upu.int

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 the enclosed commercial and operational contract with an agency of a foreign government, which the Postal Service is transmitting to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). A redacted version of this contract is enclosed with the instant transmittal. 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)(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).[2] Because the

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

[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

portions of materials filed non-publicly 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 contracts such as the one transmitted here, the Postal Service believes that the postal operator that is a party to the contract is the only third party with a proprietary interest in the materials. Due to language differences, cultural sensitivities, and the intricacies of the Postal Service's relationship with the affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator.[3] The Postal Service identifies as an appropriate contact person Brian Hutchins, Manager, International Postal Relations. Mr. Hutchins' phone number is (703) 292-3591, and his email address is brian.hutchins@usps.gov. The Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b),

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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] The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

(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;

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting a contract with a foreign postal operator that is an agency of a foreign government. This contract consists of letters that define the terms on which the Postal Service and the relevant operator exchange Express Mail Service (EMS) items under the EMS Cooperative Pay-for-performance Plan, including delivery performance thresholds. The Postal Service maintains that the redacted portions of the document should remain confidential.

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

If the information 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. 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 and representations made to customers by the Postal Service and other EMS providers that contract with the Postal Service for any possible comparative vulnerabilities and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service and other EMS providers. Additionally, foreign postal operators or 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.

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

Harm: Competitors could use performance and penalty thresholds to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's detriment.

Hypothetical: The information about EMS performance and penalty thresholds in the contract is released to the public. Another expedited delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the Postal Service's performance level as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's.

(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 private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operators that already have access to this information, actual or potential customers of the Postal Service for products related to Inbound International Expedited Services 2, Outbound Express Mail International, 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 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. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity.

(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.