

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

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL  
PRIORITY MAIL CONTRACT 2

Docket No. MC2009-2

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL CONTRACT 2 (MC2009-2)  
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2009-3

**NOTICE OF THE UNITED STATES POSTAL SERVICE  
OF FILING RESPONSE TO COMMISSION REQUEST**  
(December 18, 2009)

On November 20, 2009, the Commission issued Order No. 344, adding Priority Mail Contract 23, which is the subject of Docket Nos. MC2010-9 and CP2010-9, to the Competitive Product List. That contract replaced a prior contract with the same customer, which was the subject of the instant dockets (Priority Mail Contract 2). In Order No. 344, the Commission requested that the Postal Service provide cost, volume, and revenue data associated with the expired contract. The Postal Service hereby files its response to that request. Attached to this filing are the redacted versions of files containing the requested data, along with an Application for Non-Public Treatment. The Postal Service is concurrently filing unredacted versions of those files under seal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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December 18, 2009

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

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of a report of cost, volume, and revenue data requested by the Commission. 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. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

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

**(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), (b)(4).<sup>1</sup> 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**

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<sup>1</sup> In appropriate circumstances, 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). 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.

**such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and 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 Elizabeth Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is [elizabeth.a.reed@usps.gov](mailto:elizabeth.a.reed@usps.gov) and whose telephone number is 202-268-3179.

**(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 a cost, volume, and revenue report requested by the Commission, which is associated with the now-expired Priority Mail Contract 2. The financial model has been updated to provide the requested information.

**(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: Public disclosure of information in the financial work papers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers 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 customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor “cost to serve” scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service’s customer in order to underbid the Postal Service’s prices.

Identified Harm: Public disclosure of information in the financial work papers could be used by the customer’s competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer’s competitor analyzes the work papers to assess the customer’s underlying shipping costs. The customer’s competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

**(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 market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such 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 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.