

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.
CP2008-23

**NOTICE OF UNITED STATES POSTAL SERVICE RESPONSE TO ORDER NO. 349
AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED
UNDER SEAL**
(December 30, 2009)

On November 30, 2009, the Postal Regulatory Commission (Commission) issued Order No. 349, adding the specific agreement that is the subject of Docket Number CP2010-10 to the Global Expedited Package Services 2 product (CP2009-50).¹ That agreement replaced a prior agreement that was the subject of CP2008-23 with the same customer which expired one year from its effective date under the terms of the agreement. The prior agreement had been added to product category Global Expedited Package Services 1 (CP2008-5).² In Order No. 349, 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 December 1, 2009. The Postal Service files this response to that 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. 349, Order Concerning Additional Global Expedited Package Services 2 Negotiated Service Agreement, Docket No. CP2010-10, November 30, 2009, at 6.

² PRC Order No. 107, Order Concerning Additional Global Expedited Package Services 1 Negotiated Service Agreements, Docket Nos. CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23, CP2008-24, September 16, 2008, at 6.

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. § 3007.21,¹ the United States Postal Service (“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.²

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 be afforded to such information after weighing the nature and extent of the likely

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

² 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. § 3007.22.

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).³ 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 e-mail 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 customer 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 Mr. Christopher C. Meyerson, Attorney, 475 L'Enfant Plaza SW, Room 6612, Washington, D.C. 20260-1137, whose email address is Christopher.C.Meyerson@usps.gov, and whose telephone number is 202.268.7820.

³ 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 agreement reviewed by the Commission in PRC Docket Number CP2008-23. 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.

(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 agreements public could weaken the Postal Service's bargaining position with its customers.

Hypothetical: The Widget Factory negotiates a GEPS 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 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 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 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.

(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.