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

COMPETITIVE PRODUCT PRICES GLOBAL DIRECT CONTRACTS (MC2009-9) NEGOTIATED SERVICES AGREEMENT	Docket No. CP2009-29

NOTICE OF UNITED STATES POSTAL SERVICE RESPONSE TO COMMISSION REQUEST AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL
(June 18, 2010)

On May 19, 2010, the Postal Regulatory Commission (Commission) issued Order No. 462, adding the specific agreement that is the subject of Docket No. CP2010-47 to the Global Direct Contracts 1 product (MC2010-17).[1] In Order No. 462, the Commission also requested that the Postal Service provide cost, volume and revenue data associated with the agreement with the same customer that is the subject of this docket,[2] which has recently been terminated.[3]

In response to Order No. 462, the Postal Service hereby provides cost, volume and revenue data associated with the terminated agreement that is the subject of this docket. The Postal Service files this response to that request 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. 462, Order Approving Filing of Additional Global Direct Contracts 1 Negotiated Service Agreement, Docket No. CP2010-47, May 19, 2010, at 7
[2] *Id*.
[3] *See* United States Postal Service Response to Order No. 216 concerning Termination Date of Additional Global Direct Contracts Negotiated Service Agreement, Docket No. CP2009-29, May 19, 2009.

Respectfully submitted,

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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);

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) and 5 U.S.C. § 552(b)(3) and (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. §

[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.

504(g)(3)(A).[3] Because the portions of the materials filed non-publicly in this docket 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 Global Direct contracts, the Postal Service believes that the only third parties with a proprietary interest in the materials is the customer with which the contract is made and Canada Post Corporation (Canada Post). 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. James J. Crawford, Business Development Specialist, Global Business, United States Postal Service, 1735 North Lynn Street, Room 2030, Arlington, VA 22209-2030, whose email address is james.j.crawford@usps.gov, and whose telephone number is 703-292-3614.

The financial documentation also contains information that could be considered proprietary to Canada Post. The Postal Service has already informed Canada Post, in

[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.

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 identifies Dave Eagles, Director, International Relations, Canada Post Corporation, as the appropriate contact on behalf of Canada Post. Mr. Eagles' telephone number is (613) 734-6043, and his email address is dave.eagles@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Dennis Jarvis, General Manager, International Product Management, Canada Post Corporation. Mr. Jarvis's telephone number is (613) 734-8149, and his email address is dennis.jarvis@canadapost.ca.[4]

(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 Global Direct agreement reviewed by the Commission in PRC Docket No. CP2009-29. 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. To the extent practicable, the Post Service has limited its redactions in the workpapers to the actual information it has

[4] In the event of a request for early termination of non-public treatment under 39 C.F.R. § 3007.31, a preliminary determination of non-public status under 39 C.F.R. § 3007.32, or a request for access to nonpublic materials under 39 C.F.R. § 3007.40, the Postal Service notes, on Canada Post's behalf, that differences in the official observation of national holidays might adversely and unduly affect Canada Post's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, Canada Post has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect Canada Post's interests. A listing of Canada's official holidays can be found at http://www.pch.gc.ca/pgm/ceem-cced/jfaha/index-eng.cfm.

determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages, such as words or numbers in text, were replaced with general terms describing the redacted material. For example, where the mailer's name appears in the spreadsheet within a cell, it has been replaced by the word "Mailer."

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

If the portions of the performance report that the Postal Service has 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. First, 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. The Postal Service considers that it is highly probable that if this information were made public, its competitors would take immediate advantage of it.

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.

Information in the performance report also consists of sensitive commercial information of Canada Post. Disclosure of such information could be used by competitors of Canada Post to develop competitive alternatives to its products.

(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 is revealed to the public. Another delivery service has an employee monitoring filings concerning Global Direct 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.

Identified harm: Making cost, volume and revenue data associated with an expired Global Direct agreement public could weaken the Postal Service's bargaining position with its customers.

Hypothetical: The Widget Factory negotiates a Global Direct contract (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 Global Direct 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 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 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 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 customers, identify them as high-volume mailers 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 workpapers 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 workpapers, 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 workpapers to the USPS customer's detriment.

Identified harm: Public disclosure of information in the performance report would be used by Canada Post's competitors to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the performance report from the Postal Regulatory Commission's website. The competitor analyzes the report to assess Canada Post's prices. The competitor uses that information to target its competitive offerings accordingly.

(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 delivery of Global Direct items, 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 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.