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

COMPETITIVE PRODUCT PRICES GLOBAL PLUS 2 CONTRACTS (MC2008-7) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2009-48

NOTICE OF UNITED STATES POSTAL SERVICE RESPONSE TO COMMISSION REQUEST AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL
(September 9, 2010)

On July 31, 2009, the Postal Regulatory Commission (Commission) issued Order No. 267, adding the specific agreement that is the subject of the instant docket to the Competitive Product List, including it within the Global Plus 2 product.[1] In Order No. 505 which concerns the successor contract to the contract that is the subject of the instant docket, the Commission 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. 505, 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. 267, Order Concerning Filing of a Functionally Equivalent Global Plus 2 Contract Negotiated Service Agreement, Docket No. CP2009-48, July 31, 2009, at 7
[2] PRC Order No. 505, Order Approving Functionally Equivalent Global Plus 2A Contracts Negotiated Service Agreements, Docket Nos. MC2010-27, CP2010-69 and CP2010-70, July 30, 2010, at 9
[3] *See* PRC Order No. 267, at 3.

Respectfully submitted,

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September 9, 2010

ATTACHMENT 1

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

In accordance with 39 C.F.R. § 3007.21, 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.

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. § 504(g)(3)(A).[1] Because the portions of the materials filed non-publicly in this docket fall

[1] 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

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 Plus 1 and 2 contracts, the Postal Service believes that the only third parties with a proprietary interest in the materials are the customers with which the contracts are made, Canada Post Corporation (CPC), and the supplier for the Global Bulk Economy service.[2] The Postal Service maintains that customer identifying information should be withheld from public disclosure. Therefore, rather than identifying the customers, the Postal Service gives notice that it has already informed the customers, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address their confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third

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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.

[2] However, other postal operators can be considered to have a proprietary interest in some rate information in the financial workpapers included with this filing. The Postal Service maintains that such information should be withheld from public disclosure. In view of the practical difficulties, the Postal Service has not undertaken to inform all affected postal operators about the nature and scope of this filing and about the ability to address any confidentiality concerns directly with the Commission as provided in 39 C.F.R. § 3007.20(b). Due to language and cultural differences as well as the sensitive nature of the Postal Service's rate 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 operators. The Postal Service identifies as an appropriate contact person Guadalupe Contreras, Manager, International Postal Relations. Ms. Contreras's phone number is (703) 292-4098, and her email address is guadalupe.n.contreras@usps.gov. 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 filing in the absence of actual notice might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver that would allow it to forgo providing a notice to each postal operator, and to designate a Postal Service employee as the contact person under these circumstances, since it is impractical to communicate with dozens of operators in multiple languages about this matter.

parties with proprietary interest in the materials filed in this docket is Mr. James J. Crawford, Business Development Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 2P020, Washington, DC 20260-0020, Washington, DC 20260-9998, whose email address is james.j.crawford@usps.gov, and whose telephone number is 202-268-7714.

Consistent with a contractual commitment to Canada Post Corporation (CPC), and in compliance with 39 C.F.R. § 2007.20(b), the Postal Service has already informed CPC of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies Bruno Ouellet, Director, International Integration, Canada Post Corporation, as the appropriate contact on behalf of CPC. Mr. Ouellet's telephone number is (613) 734-6967, and his email address is bruno.ouellot@canadapost.ca. CPC 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.[3]

The Postal Service maintains that identifying information concerning the supplier for the Global Bulk Economy service should be withheld from public disclosure. Therefore, rather than identifying the supplier, the Postal Service gives notice that it has

[3] 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 CPC's behalf, that differences in the official observation of national holidays might adversely and unduly affect CPC's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, CPC has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect CPC's interests. A listing of Canada's official holidays can be found at http://www.pch.gc.ca/pgm/ceem-cced/jfa-ha/index-eng.cfm.

already informed the supplier, 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 such notice to the third party with proprietary interest in the materials filed in this docket is Mr. Michael B. Frady (Burt), International Operations Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-0660, whose email address is Michael.b.Frady@usps.gov, and whose telephone number is 202-268-7044.

(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 now-expired Global Plus 1 and 2 contracts. In response to the Commission's request, the Postal Service is providing the actual volume and revenue information along with estimated cost information for the Commission's use. The redactions applied to the performance report protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it has 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." Likewise, where an actual number appears as a percentage discount as a column

header, in the public filing the number is replaced by the word “Discount” and followed by the percentage symbol (e.g., Discount%).

(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.

The financial workpapers include specific information such as costs, pricing formulas, and mailer profile information. All of this information is highly confidential in the business world. If this information were made public, the Postal Service’s competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Competitors would be able to take advantage of the information to offer lower pricing to Global Plus 1 and/or Global Plus 2 customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service’s assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the information in the workpapers whether additional margin for net profit exists. From this information, each customer

could attempt to negotiate ever-increasing incentives, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised.

Price information in the financial workpapers also consists of sensitive commercial information of the customer. Disclosure of such information could be used by competitors of the customer to assess its underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

Information in the financial spreadsheets 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.

Information in the financial spreadsheets also consists of sensitive commercial information of the supplier for the Global Bulk Economy service. Disclosure of such information could be used by competitors of the supplier for the Global Bulk Economy service 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 involved in the contract for which a performance report is filed is revealed to the public. Another delivery service has an employee monitoring the filing of Global Plus 1 and/or Global Plus 2 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 or other incentives to terminate its contract with the USPS in favor of using the competitor's services.

Identified harm: Public disclosure of information in the financial workpapers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. It analyzes the workpapers 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 Global Plus 1 and/or Global Plus 2 customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of the business-to-business and business-to-customer delivery services markets for which the Global Plus 1 and 2 product is designed.

Identified harm: Public disclosure of information in the financial workpapers would be used by the customer's competitors to its detriment.

Hypothetical: A firm competing with the customer obtains a copy of the unredacted version of one of the financial workpapers included in the performance report from the Postal Regulatory Commission's website. The competitor analyzes the prices and the workpapers to assess the customer's underlying costs, volumes, and volume distribution for the corresponding delivery products. The competitor uses that information to (i) conduct market intelligence on the customer's business practices, and (ii) develop lower-cost alternatives using the customer's mailing costs as a baseline.

Identified harm: Making cost, volume and revenue data associated with expired Global Plus 1 and 2 agreements public could weaken the Postal Service's bargaining position with its customers.

Hypothetical: A delivery service negotiates a Global Plus 1 and/or Global Plus 2 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 Plus 1 and/or Global Plus 2 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 delivery service 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 delivery service then contacts the Postal Service, threatening to cancel Contract 2, 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 certain delivery services. The competitors then offer similar services at lower prices until the Postal Service's market share declines.

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 contracts 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 financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the contract and workpapers to assess Canada Post's prices. The competitor uses that information to target its competitive offerings accordingly.

Identified harm: Public disclosure of information in the contracts would be used by competitors of the supplier for the Global Bulk Economy service to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the contract and workpapers to assess the prices of the supplier for the Global Bulk Economy service. 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 delivery service markets, 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.