Postal Regulatory Commission
Submitted 11/30/2010 2:46:43 PI
Filing ID: 71063
Accepted 11/30/2010

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

| | |
|---|---|
| COMPETITIVE PRODUCT PRICES<br>GLOBAL EXPEDITED PACKAGE SERVICES 2 (CP2009-50)<br>NEGOTIATED SERVICES AGREEMENT | Docket No.<br>CP2010-10 |

**NOTICE OF UNITED STATES POSTAL SERVICE RESPONSE TO COMMISSION REQUEST AND APPLICATION FOR NON-PUBLIC TREATMENT OF MATERIALS FILED UNDER SEAL**
(November 30, 2010)

On November 30, 2009, the Postal Regulatory Commission (Commission) issued Order No. 349, adding the specific agreement that is the subject of the instant docket to the Global Expedited Package Services 2 product.[1] In Order No. 569, which concerns the successor contract to the agreement 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. 569, 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. 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. 569, Order Approving an Additional Global Expedited Package Services 3 Negotiated Service Agreement, Docket No. CP2011-19, October 25, 2010, at 6.
[3] *See* United States Postal Service Updated Response to Order No. 349 Concerning Termination Date of Additional Global Expedited Package Services 2 Negotiated Service Agreement, Docket No. CP2010-10, October 29, 2010.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony F. Alverno
Chief Counsel, Global Business

Christopher C. Meyerson

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-7820; Fax -5628
christopher.c.meyerson@usps.gov
November 30, 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.[1]

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).[2] Because the portions of the materials filed non-publicly in this docket fall

[1] 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 file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3007.22.

[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 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 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.[3] 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

---

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] 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 (202) 268-4598, and her e-mail 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.

Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 2P020, Washington, DC 20260-0020, whose e-mail address is james.j.crawford@usps.gov, and whose telephone number is 202-268-7714.

**(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 No. CP2010-10. 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 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.

**(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. 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 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.

**(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 both private sector integrators and foreign postal administrations), 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.