

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.
CP2008-19

**NOTICE OF UNITED STATES POSTAL SERVICE CONCERNING TERMINATION
DATE OF GLOBAL EXPEDITED PACKAGE SERVICES 1 NEGOTIATED SERVICE
AGREEMENT AND APPLICATION FOR NON-PUBLIC TREATMENT OF
MATERIALS FILED UNDER SEAL**
(August 7, 2009)

On September 16, 2008, the Postal Regulatory Commission (Commission) issued Order No. 107, adding the specific Agreement that is the subject of this docket to the Global Expedited Package Services 1 product established in Docket No. CP2008-4. In subsequent orders, the Commission has requested that the Postal Service give notice of the termination date of the Global Expedited Package Services 1 agreements in the event that they terminate prior to the date anticipated when the agreements became effective.

On July 31, 2009, the Commission added a new agreement with this Mailer to the competitive products list. On August 6, 2009, the Mailer and the Postal Service entered into a modification of the current Agreement to redefine the term of the Agreement such that it would expire at midnight on August 8, 2009.¹ A copy of the

¹ The Mailer met the minimum commitment requirement of Article 8 prior to the anticipated term of the agreement. Article 14 enables the parties to the Agreement, by mutual written consent, to modify the terms of the Agreement, including modifying Article 12, Term of the Agreement. Because the new contract is now included in the GEPS 1 product group, the current contract is no longer required. The Postal Service gave notice to the Mailer of the effective date of the new agreement, which will be August

Modification Agreement is filed under seal as Attachment 2 to this Notice. A redacted copy of the Modification Agreement is filed publicly. Attachment 1 to this Notice is the Postal Service's application for non-public treatment of certain information in the Modification Agreement. The GEPS 1 Agreement reviewed in this docket was effective from September 21, 2008, with an anticipated termination date of September 30, 2009.

Thus, the Postal Service requests that the Commission take note of the following information.

Contract	Start Date	End Date
CP2008-19	September 21, 2008	August 8, 2009

Further, the Postal Service requests that the Commission grant its application for non-public treatment of information in the Modification Agreement as discussed in Attachment 1.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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August 7, 2009

9, 2009, and the Parties mutually agreed to terminate the current Agreement at midnight on August 8, 2009.

ATTACHMENT 1

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

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to Modification One To The Global Customized Mail Agreement Between The United States Postal Service and [The Mailer] (Modification Agreement) to a Global Expedited Package Services 1 (GEPS 1) contract which was added to the GEPS 1 product group by Order No. 107. The Modification Agreement is filed separately under seal with the Commission, although a redacted copy of it is filed with this Notice as Attachments 2.²

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 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); 5 U.S.C. § 552(b)(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

¹ PRC Order No. 225, Final Rules 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 the redacted portions of the Modification Agreement. The Postal Service also informed the customer that it could address its concerns, if any, with the Commission directly.

a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).³ Because the portions of 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 email 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 GEPS 1 contracts, the Postal Service believes that the only third party with a proprietary interest in the materials is the customer with whom 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 Ms. Laree Martin, Attorney, 475 L'Enfant Plaza SW, Room 6627, Washington, D.C. 20260-1135, whose email address is laree.k.martin@usps.gov, and whose telephone number is 202.268.3816.

(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;

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.

In connection with its Notice filed in this docket, the Postal Service included the above-referenced Modification Agreement. The Modification Agreement was filed under seal, with a redacted copy filed publicly after providing notice to the customer. The Postal Service maintains that the redacted portions of the Modification Agreement, including the name and other identifying information of the GEPS 1 customer should remain confidential.

With regard to the agreement filed with this Notice, the redactions constitute the name or address of a postal patron whose identifying information may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c)(2).

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

If the portions of the contract that the Postal Service 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. Revealing customer identifying information would enable competitors to focus marketing efforts on current postal customers which have been cultivated through the efforts and resources of the Postal Service. The Postal Service considers that it is highly probable that if this information were made public, its competitors would take immediate advantage of it. The GEPS 1 agreements include a provision allowing the customer to terminate the contract without cause by providing at least 30 days' notice. Therefore, there is a substantial likelihood of losing the customers to a competitor that targets them with lower pricing.

(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 this modification agreement is revealed to the public. Another expedited delivery service has an employee monitoring the filing of GEPS 1 agreements 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 existing contract with the USPS in favor of using the competitor's services.

(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.

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 customer identifying

information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. As discussed above, disclosure of customer identifying information leaves the Postal Service vulnerable to competitive “cherry-picking.” Customers may continue to renew their GEPS 1 contracts, but the implementation of a new 10-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. For transparency purposes, the Postal Service routinely discloses which GEPS 1 agreements are with new or existing customers. In the case of existing customers, the Postal Service also identifies the Commission docket in which the prior agreement was reviewed. This will make it possible for competitors to determine the customers’ identities and focus sales and marketing efforts on them when the initial 10-year period of non-public treatment expires. While this may seem inconsequential at the outset, in reality it has the same effect in ten years as it would for the information to be made public from the start. Therefore, the Postal Service seeks indefinite non-public treatment of the customer’s name, address, and other identifying information in the non-public materials.

(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. The Postal Service

further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

**MODIFICATION ONE TO THE
GLOBAL CUSTOMIZED MAIL AGREEMENT BETWEEN
THE UNITED STATES POSTAL SERVICE AND
[REDACTED]**

This Modification amends the Global Customized Mail Agreement between [REDACTED] ("Mailer") with offices at [REDACTED], and the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the United States Government, with offices at 475 L'Enfant Plaza SW, Washington, DC 20260-9998, signed by the Mailer on July 2, 2008, and by the USPS on July 7, 2008, pursuant to Article 14 of that Agreement. The Mailer and the USPS may be referred to individually as a "Party" and together as the "Parties."

The Parties may execute this Modification in one or more counterparts (including by facsimile or by electronic means such as .pdf format). Not all Parties need be signatories to the same document. All counterpart signed documents shall be deemed an original and one instrument.

Article 12. TERM OF THE AGREEMENT shall now read as follows:

ARTICLE 12. TERM OF THE AGREEMENT

1. The USPS will notify the Mailer of the Effective Date of the Agreement within thirty (30) days after receiving the approval of the entities that have oversight responsibilities for the USPS. The Agreement will remain in effect until midnight on August 8, 2009.
2. The USPS shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process.

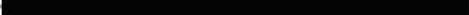
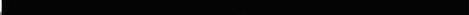
All other terms and conditions of the Agreement shall remain in force.

In witness whereof, this Agreement is deemed executed on the latter of the two dates accompanying the Parties' signatures.

ON BEHALF OF THE UNITED STATES POSTAL SERVICE:

Signature: Frank A. Cebello
Name: Frank A. Cebello
Title: Executive Director, Global Business Management
Date: 8/6/09

ON BEHALF OF 

Signature: 
Name: 
Title: 
Date: 8/5/09