



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Françoise MURILLO
Head of Resources and Service Centre
European Agency for Safety and Health at Work
Gran Vía 33
ES-48009 Bilbao

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GB/TS/sn/D(2014)1190 C 2013-0734
Please use edps@edps.europa.eu for all correspondence

Subject: Prior checking notification concerning public procurement

Dear Ms Murillo,

I refer to the notification for prior checking concerning public procurement submitted to the European Data Protection Supervisor (EDPS) by the Data Protection Officer (DPO) of the European Agency for Safety and Health at Work (EU OSHA) on 27 June 2013.

We note that the procurement procedure is in most aspects in compliance with Regulation (EC) No 45/2001¹ (the Regulation) as outlined in the EDPS Public Procurement Guidelines² and will therefore only address the existing practices which do not seem to be fully compliant in that regard.

1. Data conservation. According to the information provided in the notifications, files of successful tenderers are kept for ten years after the contract signature³, with the exception of the extracts from judicial records which are kept only for up to two years. The files of unsuccessful tenders are kept for five years after the signature of the related contract.

Article 4(1)(e) of the Regulation states that personal data can be kept in a form permitting identification of data subjects for no longer than necessary for the purpose for which they were collected or further processed.

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

² EDPS Guidelines on the processing of personal data in the context of public procurement, grants as well as selection and use of external experts of 25 June 2013 (EDPS 2012-501).

³ As defined in the Common Commission-level Retention List for European Commission files of 17 December 2012 - first revision (SEC(2012)713).

The EDPS observes that the conservation of files of unsuccessful tenderers can be considered as necessary in order to allow for all possible legal remedies. Also, the conservation of the extracts from judicial records can be deemed necessary for the eventual audit by the Court of Auditors⁴.

At the same time, we would like to question the necessity of the storage of data of the successful tenders. In particular, we would like to recall that the further storage for control and audit purposes should correspond to the time limits set out in Article 48(1)(d) and (2) of the Rules of Application to the Financial Regulation⁵. Therefore, we invite the EU OSHA to shorten the existing conservation period to maximum seven years.

2. Information to data subjects. The privacy statement attached to the invitation to tender provides for all information as requested in Articles 11 and 12 of the Regulation. Nevertheless, the reference to the "appeal" to the EDPS should be replaced by the "recourse" to the EDPS in order to avoid confusion of the data subject.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that the considerations contained in this Opinion are fully taken into account. In particular, the EU OSHA should shorten the existing conservation period for files of successful tenderers to a maximum of seven years after signature of the contract.

We EDPS would like to invite the EU OSHA to inform us about the implementation of our recommendations within three months after the receipt of this letter.

(signed)

Giovanni BUTTARELLI
(signed)

Cc: Michaela SEIFERT, Data Protection Officer

⁴ As explained in the related letter sent by the EDPS to the management of all EU institutions and bodies on 12 March 2013 (EDPS 2011-0482).

⁵ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.