

REGISTER NUMBER: 204

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 30 April 2007

Case number: 2007-275

Institution: Council of the European Union

Legal basis: article 27-5 of the regulation CE 45/2001(1)

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN(2)

(2) Please attach all necessary backup documents

1/ Name and adress of the controller

Zangaglia Sergio

Head of Unit

DGA 4 - Finances

DGA4 UNITE COORD. ACQUISITIONS

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2/ Organisational parts of the institution or body entrusted with the processing of personal data

DGA4 UNITE COORD. ACQUISITIONS (+32(0)2/281 8326)

3/ Name of the processing

Public procurement procedures managed by DGA 4 - Finances (Unité Coordination des Acquisitions)

4/ Purpose or purposes of the processing

The data is collected and processed with the purpose to evaluate the eligibility of economic operators to participate in the procurement procedure, and / or to evaluate the content of tenders submitted during the procurement procedure with the view to award the contract. As such, the collection and processing of data is in accordance with the Regulation No. 45/2001, Art.4, paragraph b, stipulating that personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.

5/ Description of the category or categories of data subjects

Prestataires de services, Personnel des firmes externes

6/ Description of the data or categories of data(including, if applicable, special categories of data (article 10) and/or origin of data)

The following personal data may be collected, depending on the role of the Data Subject in individual procurement procedure: 1. Data Subject is representing an economic operator (a private company) participating in the procurement procedure. The following personal data may be collected: name, address, phone number, fax number, e-mail address.

2. Data Subject is an individual participating as an economic operator in the procurement procedure. The following personal data may be collected: -Name, address, phone number, fax number, e-mail address; - Copy of a passport or national identity card; -Proof of the status of an independent worker or extract from the trade register; -Bank certificate stating their financial situation; -Their bank account number and bank information; -Statement as to their overall turnover and turnover for the supplies and / or services referred to in the procurement procedure; -Proof of having fulfilled their obligations to pay social-security contribution and taxes; - Certificate of clear criminal record or extract of the judicial record; -Extract from the register of bankruptcy and reorganization proceedings; -Extract from the register of debt regulations or a certificate given by a creditor; - Documents attesting to their professional standing (curriculum vitae, copies of diplomas, certificates, references regarding their professional activities); -Proof of security clearance.

3. Data Subject is an employee or subcontractor of an economic operator (private company) participating in the procurement procedure; their personal data is included in the candidature or the tender. The following personal data may be collected: -Name, address, phone number, fax number, e-mail address; -Copy of a passport or national identity card; -Proof of the status of an independent worker or extract from the trade register; -Statement as to their overall turnover and turnover for the supplies and / or services referred to in the procurement procedure; -Documents attesting to their professional standing (curriculum vitae, copies of diplomas, certificates, references regarding their professional activities); -Proof of security clearance.

7/ Information to be given to data subjects

At present, the data subjects are informed in the tendering documents that any personal data will be processed in accordance with the requirements of the Regulation (EC) n° 45/2001, they are furthermore informed of the purpose of processing. They are communicated their right to obtain the communication of their personal data and rectify any inaccurate or incomplete personal data and of the right of recourse. The following procedure is being put in place for the future: A declaration covering all points of Art 11 and 12 of the Regulation (EC) n° 45/2001 will be published on the internet site of the Data Controller Unit. The same text will be included in the tendering documents for each individual procurement procedure. Shortened text with a direct link to the declaration published on the internet site will be included in each notice published in the Official Journal for any procurement procedure. eTendering application:

while Data Subjects register in the application and submit their personal data, they will be provided with the direct link to the above mentioned declaration. In order to proceed with the registration they will be obliged to accept the declaration.

8/ Procedures to grant rights of data subjects(rights of access, to rectify, to block, to erase, to object)

The procedure, stipulated in the Council Decsion 2004/644/EC of 13 September 2004, Section 5, applies. In addition, the following procedures for certain categories of data will be put in place with the introduction of the eTendering application: 1. Data Subjects will submit a part of their personal data directly through the eTendering application. This data refers mostly to the contact information and bank account data. Data Subjects have an obligation to report any change in their personal data; they will furthermore be able to amend it directly in the application. Data Subjects will be informed of this procedure upon registration; they will be obliged to accept it in order to proceed with the registration.

2. Compliance with the exclusion criteria (Art. 93 of Council Regulation No. 1605/2002 of 25.6.2002): Data Subjects will be able to access their profile, containing a list of all documents they submit as a proof of compliance with the exclusion criteria during individual procurement procedures. The profile will also contain the information about the validation of submitted documents.

9/ Automated / Manual processing operation

In the framework of public procurement procedures, certain data included in the candidatures and tenders submitted by the participating economic operators may fall in the category of personal data (as described under 3.2.). This data is collected and processed with the purpose of ascertaining eligibility of economic operators to participate in the procurement procedure and to be awarded a contract. A part of data is further necessary for the execution of contracts, concluded with the selected operator/operators.

1. Collection of data: Data is currently received in paper format (by registered mail) and is stored in the archive as received. In the future, the majority of data will be collected electronically through an internet portal an eTendering application which is currently being developed.

2. Consultation and use of data: Data in question is used in order to establish the eligibility of economic operators to participate in a procurement procedure and / or to be awarded a contract. The data is not modified by the Data Controller. When the participating economic operator is an individual and as such Data Subject, the absence of certain documents containing personal data can lead to exclusion from the procurement procedure. This fact is captured in Tender Evaluation Committee (TEC) reports and in the internal database of the Data Controller Unit (UCA database). If the reasons for exclusion of an economic operator from a procurement procedure justify an exclusion from all contracts and grants financed by the Community budget for a certain period of time (according to the Art. 133 of the Council Regulation No. 2342/2002 of 23.12.2002), this fact is also communicated to the European Commission in the framework of the Early Warning System (EWS being subject of a separate notification).

3. Transmission of data: Data is transmitted to third parties (other GSC services) either in copy or the Data Controller allows inspection of data on the spot. Exceptionally, the originals are submitted to a third party (Contact information and bank account data - to the Accounting Unit. This data serves as input data for Legal Entity File - Vendor Master Data in the framework of the SOS II project). eTendering application: Data will in general be accessible to the third parties directly, under the condition that they are authorised to access the data.

Comment from the DPO : The processing of Legal entity files which contain identification and financial information of contractual partners of the SGC is the subject of a separate notification (in preparation). This processing does not seem to fall under the prior checking procedure but the official notification will be forwarded to the EDPS as complementary information. The purpose of the SOS II project is to introduce an integrated, SAP-based management of finances and accounting within the GSC.

10/ Storage media of data

Paper, network drive, UCA database, future eTendering application

11/ Legal basis and lawfulness of the processing operation

Legal basis for the collection and processing of data is the Financial Regulation applicable to the general budget of the European Communities (Council Regulation No. 1605/2002 of 25.6.2002). Articles 93 and 94 are referring to the exclusion criteria and the Article 97 to the selection criteria for evaluating the capability of economic operators. Regarding the selection criteria, the Implementing Rules of the Financial Regulation (Council Regulation No. 2342/2002 of 23.12.2002) provide further legal basis in the Articles 135 (stipulating data applicable to selection criteria), 136 (stipulating data applicable to proof of economic and financial capacity), and 137 (stipulating data applicable to proof of technical and professional capacity). According to the Article 93 of the Financial Regulation, economic operators must be excluded from participation in a procurement procedure if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata; (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify; (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests; (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Economic operators must certify that they are not in one of the above mentioned situations. Furthermore, the Article 94 of the Financial Regulation stipulates that contracts may not be awarded to economic operators who, during the procurement procedure, are subject to a conflict of interest or are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

The lawfulness of processing of the data is based on the Regulation 45/2001, Article 5 (a). It is necessary to carry out a task in the public interest on the basis of legal instruments established on the basis of the Treaties establishing the European Communities and on the basis of the legitimate exercise of official authority vested in the Community institution. Furthermore, the recital clause 27 of the Regulation 45/2001 states that processing of personal data for the performance of tasks carried out in the public interest by the Community institutions and bodies includes the processing of personal data necessary for the management and functioning of those institutions and bodies.

12/ The recipients or categories of recipient to whom the data might be disclosed

The data is disclosed / transmitted to the following recipients: 1. Members of the Tender Evaluation Committee (TEC). The TEC is composed of members of the Data Controller Unit, the relevant Authorizing Department of the institution, and only exceptionally external experts, not officials of the institution. A copy of tender is given to the members of the TEC after the opening of tenders. A copy of candidatures is given to the members of the TEC if required. TEC reports including the data about evaluation of candidatures and / or tenders are distributed to all TEC members. The information about the distribution of documents and TEC reports can be retrieved from the respective TEC report.

2. For contracts above certain amount (EUR 100,000), the results of tender evaluation are submitted to the Advisory Committee on Procurement and Contracts (ACPC) for approbation. Members of the ACPC are officials of the institution. All ACPC members receive the ACPC file related to specific procurement procedure within one week before the meeting in which the procurement procedure is put on the agenda. The ACPC file contains the awarded tender / tenders and the TEC reports.

The information about the distribution of documents can be retrieved from the register of procurement procedures submitted to the ACPC, the ACPC meeting agenda and the meeting report. Currently, a procedure is being put in place, to inform the TEC and the ACPC members in writing at their appointment about the procedure regarding the treatment of eventual personal data included in the candidatures and tenders. 3. Accounting Unit Data required for the execution of the payment according to the contracts awarded as a result of procurement procedures (legal entity data, bank account data) is transmitted to the Accounting Unit - a procedure detailing the modalities of this transfer is currently being put in place. This data falls in the category of personal data only when the awarded operator is an individual. 4. Audit Service, OLAF, Court of Auditors, European Parliament: For the purpose of audit and discharge of the budget, the above mentioned institutions / services are given access to all documents related to individual procurement procedures upon request.

13/ retention policy of (categories of) personal data

Data is stored as follows: 1. Data received in paper format is stored as received in the archive of the Data Controller Unit. 2. UCA database: Basic personal data of the Data Subjects (name, contact information) and their status in a procurement procedure (e.g. submitted a candidature to participate in a procurement procedure, candidature selected or rejected; awarded a contract as a result of the procurement procedure) is entered in the UCA database by the Data Controller Unit.

3. eTendering application: Data collected electronically will be stored automatically in the application (electronic archiving). Some of the documents received in paper format might also be stored electronically in the application (scanned copy). Applicable time limits: Data must be stored for at least 5 years from the date on which the European Parliament grants discharge for the budgetary year to which the data relates.

13 a/ time limits for blocking and erasure of the different categories of data

(on justified legitimate request from the data subject)

(Please, specify the time limits for every category, if applicable)

The data can be blocked or erased within 14 days from the date on which the request is justified. However, for audit purposes, the data cannot be erased before the deadline stated in 3.4. If personal data constitutes a part of candidature or tender, it cannot be isolated to be blocked or erased, because this could not be done without modifying the submitted candidature or tender. Therefore the entire document that contains personal data must be blocked as follows: 1. Data received and stored in paper format: The document is labled to make sure that every authorized person is aware that the data is blocked when trying to access it. 2. UCA database and the future eTendering application: In both applications it will be possible to block documents or user accounts containing personal data. A designated person in the Data Controller Unit will have the possibility to block a document / user account. A blocked document will no longer be accessible to the users; a blocked user account will no longer be visible nor operational. In both cases, the blocking and the reason for it, as well as eventual unblocking will be documented.

14/ Historical, statistical or scientific purposes

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,

1. Storage of candidatures and tenders: In case of recurring contracts, it might be useful to store the documents applicable to procurement procedures longer than 5 years. Historic data on previous similar procurement procedures can be helpful to understand the market and develop the correct procurement strategy. After the expiration of the legally imposed time limit, it is decided on a case by case basis, whether and which data should still be kept. If the documents stored above the applicable time limit contain personal data, the documents in question can be blocked. 2. eTendering application: The data necessary for maintenance of user accounts of Data Subjects (name, family name and contact information), will have to be kept as long as Data Subjects wish to use their user account to access the eTendering application.

15/ Proposed transfers of data to third countries or international organisations

Not applicable

16/ The processing operation presents specific risk which justifies prior checking (please describe):

The following processing operations are likely to present specific risks to the rights and freedoms of data subjects (Art.27 of the Regulation): - Processing of data relating to offences, criminal convictions or security measures (when Data Subject is an individual, participating as an economic operator in the procurement procedure); - Processing operations for the purpose of ascertaining that the operator is not in a situation which would require exclusion from contract (when Data Subject is an individual, participating as an economic operator in the procurement procedure); - Processing operations intended to evaluate personal aspects relating to the data subject, including his or her ability or efficiency (when Data Subject is individual, participating as an economic operator in the procurement procedure; or when Data Subject is an employee or subcontractor of an economic operator participating in the procurement procedure and their personal data is included in the candidature or the tender).

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract.

17/ Comments

This notification applies only to the procurement procedures managed by the Data Controller service. These are in principle procurement procedures with the estimated value above EUR 60,000, conducted in principle as open or restricted procedure, or Call for Expression of Interest; exceptionally as a negotiated procedure. The rules for the division of responsibilities between the Data Controller Unit and the Authorizing Officers / Departments are stipulated in the internal rules and procedures (Marchés de travaux, fournitures et services: Règles et procédures internes).

PLACE AND DATE: 25 April, 2007

DATA PROTECTION OFFICER: Pierre VERNHES

INSTITUTION OR BODY: General Secretariat of the Council