

REGISTER NUMBER: 299
NOTIFICATION FOR PRIOR CHECKING
<p>Date of submission: 19/09/2007</p> <p>Case number: 2007-573</p> <p>Institution: Council of the european Union</p> <p>Legal basis: article 27-5 of the regulation CE 45/2001(1)</p>
(1) O J L 8, 12.01.2001

INFORMATION TO BE GIVEN(2)
(2) Please attach all necessary backup documents
<p>1/ Name and adress of the controller Zangaglia Sergio</p> <p>DGA 4 - Finances DGA2 DIRECTION-UNITE DE COORDIN.FIN. +32(0)2/281 8062 Council of the European Union Wetstraat 175 - 1048 Brussels Phone : +32 2 285 61 11 - Fax +32 2 285 73 97</p>
<p>2/ Organisational parts of the institution or body entrusted with the processing of personal data DGA4 UNITE COORD. ACQUISITIONS (+32(0)2 281 8062)</p>
<p>3/ Name of the processing eTendering application covering public procurement procedures managed by the DGA 4 - Finances (Unité Coordination des Acquisitions)</p>
<p>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.</p>
<p>5/ Description of the category or categories of data subjects</p>

Service providers, Personnel of external firms

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

Different categories of data may be collected, depending on the role of the Data Subject in individual procurement procedure, the type of the procurement procedure and the nature of the contract to be awarded as a result of the procurement procedure. The list presented below is an exhaustive list of data that may be collected in the framework of public procurement. The final goal is to be able to collect all data related to the procurement procedure electronically. In practice however, especially in the beginning, a part of data (majority of proof documents listed under points 2 and 3) might not be available electronically, and may thus be submitted on paper.

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

A declaration covering all points of Art 11 and 12 of the Regulation (EC) n° 45/2001 will be included in the General Terms and Conditions of the use of the eTendering application and will be published on the internet site of the Data Controller Unit. When Data Subjects register in the application and submit their personal data, they will be provided with the direct link to the Terms and Conditions. In order to proceed with the registration they will be obliged to accept them. Draft General Terms and Conditions document is attached to this notification.

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 Decision 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 is in general limited to name, family name and contact information. Only if Data Subject is individual, participating as an economic operator in the procurement procedure, additional personal data may be asked for the purpose of registration (date and place of birth, ID / passport number and VAT number). Data Subjects will have an obligation to report any change in their personal data; they will furthermore be able to modify 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 validity of submitted documents. The documents themselves will not be included in the profile.

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. This notification is limited to collection and storage of data received through the future eTendering application in the framework of public procurement procedures. Other aspects of processing of personal data collected for the purpose of public procurement are subject to a separate notification (081N00) and the opinion of the EDPS (C2007-275).

1. Collection of data: Data will be collected electronically through an internet portal. 2. Consultation and use of data: Data in question will be 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 will not be modified by the Data Controller. 3. Transmission of data: Data will be accessible to the third parties (other services of the institution) directly, under the condition that they are authorised to access the data.

10/ Storage media of data

The data will be stored in the database of the 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

Direct access to the data collected through the eTendering application will be given to the members of the Data Controller Unit and to the members of the Tender Evaluation Committee (TEC). The TEC is composed of members of the Data Controller Unit and of the relevant Authorizing Department of the institution. Exceptionally, external experts, not officials of the institution can be members of the TEC. However, external experts will not receive direct access to the eTendering application.

13/ retention policy of (categories of) personal data

Data collected electronically will be stored automatically in the application (electronic archiving). Applicable time limits: 1. 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. 2. Storage of candidatures and tenders: In exceptional cases, the documents applicable to procurement procedures might be stored above the minimum applicable time limit. For example, in case of long term framework contracts (with a duration of more than usual 4 years), the contract might still be in force after the minimum time limit for storage of documents applicable to the relevant procurement procedure expires. In such cases, it might be preferable to keep the documents related to the procurement procedure until the contract actually expires.

After the expiration of the legally imposed time limit, it will be decided on a case by case basis, whether and which data should still be kept. In this case, which is rather exception to the rule, the decision will be documented. If the documents stored above the applicable time limit contain personal data, the documents in question can be blocked. However, the Data Controller sees no reason (not even in the exceptional cases) to keep the documents longer than 10 years. 3. User accounts in the eTendering application: The data necessary for maintenance of user accounts of Data Subjects will have to be kept after the applicable time limit expires, if they wish to continue to use their user account to access the eTendering application.

Therefore, the data necessary for maintenance of their user account will be kept until the Data Subject requests to delete it. This data is in general limited to name, family name and contact information. Only if Data Subject is individual, participating as an economic operator in the procurement procedure, additional personal data may be asked for the purpose of registration (date and place of birth, ID / passport number and VAT number).

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. All personally identifiable information or person-sensitive data (user accounts and documents containing personal data) will be able to be marked as "blocked" so that it may be retained by the application for audit purposes, but will not be displayed or provided electronically to any user while locked. Only administrative roles within the application will have the ability to block or unblock information within the system. These users will be given the appropriate data protection training. 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,
Not applicable.

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 collection and storage of data submitted electronically through the future eTendering application in the framework of procurement procedures managed by the Data Controller Unit.

PLACE AND DATE: Brussels, 17.09.2007

DATA PROTECTION OFFICER: Pierre Vernhes

INSTITUTION OR BODY: Council of the European Union