

REGISTER NUMBER: 664

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 03/02/2011

Case number: 2011-0135

Institution: EACEA

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 address of the controller

Unit or service: R2 – Finance, Accounting, Programming

Function: Head of Unit

Administrative address: BOU2 01/17

Postal address: Education Audiovisual and Culture Executive Agency, Avenue du Bourget 1, BOUR, BE-1140 Brussels

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

Full name: MIMRAN Corinne

Unit or service: R2

Function: Head of unit

3/ Name of the processing

Procurement procedures

4/ Purpose or purposes of the processing

The purpose of the data processing operation is the management and administration of calls for tenders and contracts between EACEA and economic operators.

The data is collected and processed with the purpose to evaluate the eligibility of economic operators to participate in the procurement procedure in accordance with exclusion and selection criteria as defined in articles 93 to 97 of the Financial regulation, and / or to evaluate the content of tenders submitted during the procurement procedure with the view to award the contract, in accordance with award criteria as defined in article 97 of the Financial regulation. Furthermore, the processing is necessary to manage and monitor the execution of the contracts.

5/ Description of the category or categories of data subjects

All persons associated with the applicant entities whose details are included in submitted tenders and in contracts: tenderers, their staff and subcontractors.
The data are collected in the tenderer's offer or in supporting documents necessary to participate in the tendering procedure.

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

Data relating to suspected offences, offences, criminal convictions or security measures.
Data relating to the evaluation of personal aspects of the data subject (such as his or her ability, efficiency and conduct).

7/ Information to be given to data subjects

Information to data subjects is provided at the different stages of procurement procedure in the following three documents:

- Privacy statement for processing of personal data related to procurement procedures,
- Data protection clauses contained in the invitation to tender,
- Model Data protection clause included in contracts.

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

As mentioned in the Model Privacy statement, data subjects are granted rights of access and rectification upon a request to the controller.

However, material data demonstrating compliance with the eligibility and selection criteria may not be updated or corrected after the deadline for submission of the tenders since elements that would change the nature of the offer cannot be changed after the offer has been received as this would compromise the award procedure. This limitation of the rectification right after the opening of tenders foreseen in Article 148(3) of the Financial Regulation aiming to ensure transparency and equality of treatment can be considered as justified in light of Article 20(1) of the Regulation 45/2001.

9/ Automated / Manual processing operation

Public procurement procedures and management of contracts

Processing of replies to invitations to tender will involve the recording and processing of personal data (such as name, address and CV).

Companies which reply to invitations to tenders provide personal information as part of their tender. The tenders are sent to Unit R2. The information is provided in paper form.

On the date set for the opening of the tenders, Unit R2 transfers the documents to the Opening and Evaluation committee with the purpose to evaluate the tenders in relation to the eligibility, selection and award criteria. The evaluation committee drafts an evaluation report on the results of the evaluation. The authorising officer takes the final decision and awards the contract.

After the contract is awarded, the data of the winning bid are processed by the unit in charge of the contract for purposes of management and follow-up of the contract.

All data recipients are reminded of their obligation not to use the data received for any further purpose than the one for which they were transmitted.

As far as management and follow-up of framework contracts are concerned, the Agency relies on the procurement procedures managed by the services of the European Commission, like e.g. DG DIGIT, PMO or OIB.

10/ Storage media of data

11/ Legal basis and lawfulness of the processing operation

COUNCIL REGULATION (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1), as subsequently amended ('Financial Regulation'): Articles 93, 94 and 97 (1).

COMMISSION REGULATION (EC, EURATOM) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1), as subsequently amended ('Implementing Rules'): Articles 135-137.

COMMISSION REGULATION (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, (OJ L 297, 22.09.2004, p. 6), as subsequently amended: in particular Article 50 on procurement.

Grounds for lawfulness

REGULATION (EC) No 45/2001, Article 5(a): Processing of personal data within public procurement and related selection procedures at the EACEA can clearly be considered as being necessary for the performance of a public interest task, namely the management and functioning of this institution within the meaning of Article 5(a) of Regulation 45/2001 (read together with its recital 27). In particular, the processing is necessary to ensure the selection of the best tenders in a fair and transparent way.

REGULATION (EC) No 45/2001, Article 5(c): the processing is necessary for the performance of a contract to which the data subject is party.

The processing of personal data contained in the extracts from judicial records, other certificates to this respect or the declaration of honour is explicitly authorised in Article 93(1) of the Financial Regulation. Thus, the condition for processing of data relating to (suspected) offences and criminal convictions set out in Article 10(5) of Regulation 45/2001 is met.

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

Staff members of the unit in charge of the call for tenders
Members of the Opening and Evaluation Committee
Potentially: Outside experts participating in evaluation of tenders in the EACEA's procurement procedures.

13/ retention policy of (categories of) personal data

Files relating to tender procedures including personal data are to be retained for a period of at least 10 years following the signature of the contract.

However, tenders from unsuccessful tenderer's have to be kept for 5 years after the award decision.

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)

Blocking:

According to Article 13, paragraph 3, of EACEA's Implementing rules of Regulation 45/2001: the Controller has to assess as soon as possible whether to block the data or not within 15 working days after reception of the request. If the request is accepted, the Controller has another 30 working days to implement the technical blocking of the personal data.

Erasure:

Max. 15 working days.

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,

After the minimum period mentioned above has elapsed, the documents to be sent to the historical archives of the Commission for further conservation (e.g. for 25 years or permanently) will be selected. The remaining documents are to be destroyed.

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

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

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.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

Article 27.2.(d)

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

Other (general concept in Article 27.1)

17/ Comments

PLACE AND DATE: Brussels, 3 February 2011

DATA PROTECTION OFFICER: Hubert Monet

INSTITUTION OR BODY: The Education, Audiovisual and Culture Executive Agency (EACEA)