

(To be filled out in the EDPS' office)

REGISTER NUMBER: 922

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 23/10/2012

CASE NUMBER: 2012-0921

INSTITUTION: European Research Council Executive Agency (ERCEA)

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

**European Research Council Executive Agency (ERCEA)
Place Rogier 16, 1210 Brussels**

Represented by:

Pablo AMOR, Director, COV2 24/130, phone: 02.29/80167, email: pablo.amor@ec.europa.eu

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

The ERCEA unit launching the call for tender supported by the public procurement cell in Unit D3.

Contact persons:

- Sandra MACCANTI (ERCEA Public Procurement Correspondent), COV2 20/117, phone: 02.29/84050, email: sandra.maccanti@ec.europa.eu.

- Judit VITANYI (Legal Officer), COV2 20/105 , phone: 02.29/88546, email: judit.vitanvi@ec.europa.eu.

Processor:

(a) In case of inter-institutional procurement if the leading institution is the ERCEA personal data (mainly name, address and bank account number) may be transferred to the participating European institutions to provide them with the data necessary to complete their part of the procurement process, based on Commission Regulation (EC, Euratom) N° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) N°1605/2002 on the Financial Regulation applicable to the general

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

budget of the European Communities (OJ L 357, 31.12.2002, p.1) as amended by later Regulations and Corrigenda ("Implementing Rules to the Financial Regulation"), Title V for procurement.

(b) In case of inter-institutional procurement if the leading institution is a body different from the ERCEA, the ERCEA is not controller but itself processor of the processing operation.

3/ NAME OF THE PROCESSING

Public Procurement in the ERCEA

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The management and administration of procurement procedures by the ERCEA, including in particular the provision of evidence of the technical and professional capacity of tenderers, their staff and subcontractors.

The specific purpose for each tender is indicated in the relevant contract.

The processing is necessary for the performance of the tasks carried out in the public interest: for the functioning of the ERCEA goods have to be bought and services (including works) have to be provided.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Persons willing to participate in the procurement procedures of the ERCEA:

- tenderers/individual economic operators,
- staff of tenderers, and/or
- individual subcontractors.

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 tenderers (legal persons or individual economic operators - not all of the data mentioned below are personal data but are included here for completeness of information):

- identification and contact details (official name/name of individual operator, official legal form, abbreviation, name and first name of individual economic operators, place of registration, date of registration, VAT registration number, address, phone number, fax number, e-mail address, identity card number, date of birth, country of birth);

- statement of the overall turnover for the supplies and/or services referred to in the procurement procedure;

- organisational chart of the tenderer and company profile;

- certificate of clear criminal record or extract of judicial record (for individual economic operators);

- extract from the register of bankruptcy and reorganization procedures or extract from the register of debt regulations or a certificate given by a creditor, as applicable;
- documents attesting professional standing (curriculum vitae, copies of diplomas, certificates, references regarding professional activities);
- list of similar services provided by the tenderer and information on three contracts considered similar in scope.

Data relating to the staff members of tenderers participating in the procurement procedure:

- identification and contact details (full name, function, e-mail address, business telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, internet address);
- other data contained in the CVs (expertise, technical skills, educational background, languages, professional experience including details on current and past employment);
- declaration of honour of the legal representative that they are not in one of the exclusion situations referred in Articles 93 and 94 of the Financial Regulation.

Data relating to the tenderers' subcontractors and consortium members:

- identification and contact details (official name, official legal form, address, VAT registration form);
- financial identification data (account name, address, city, country; bank name, branch address, account number, IBAN, name under which the account is opened and the telephone number, email address and fax number of the person concerned);
- data contained in the "Declaration on exclusion criteria and absence of conflict of interest";
- data contained in the documents proving the economic/financial and technical/professional capacity of the subcontractor.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

a) A reference to Regulation (EC) No 45/2001 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 is included in the following documents:

- Invitation to tender
- Contract.

b) In the invitation to tender a link referring to the model for a specific privacy statement (SPS) to be adapted to the tender procedure's needs:

<http://erc.europa.eu/about-erc/call-tenders>. The SPS is attached to this notification (see annex 18). Section 4 of the SPS on Public Procurements states:

"If you would like to check, modify, correct or delete any personal data, you can apply to the Head of Unit/Department responsible for the tender procedure that is mentioned in the call for expression of interest or invitation to tender, acting on behalf of the ERCEA Director who is the Controller of the processing, by sending an e-mail giving details of your request to the mailbox indicated in point 6. Any request for change of your personal data will be responded to.

Special attention is drawn to the consequences of a request for deletion, as this may lead to an alteration of the terms of the tender and to exclusion as stated in Article 148 of the Implementing Rules of the Financial Regulation."

c) The General Guidelines for the management of the ERCEA administrative (operating) budget, Chapter 7 on Public Procurement (hereinafter ERCEA financial guidelines on public procurement) (see annex 1) include the SPS as Annex 4 and state in section 2.15 on "Data Protection":

"Any personal data handled during a procurement procedure shall be processed pursuant to Regulation (EC) No 45/2001 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. Any personal data shall be processed solely for the purposes of the performance, management and monitoring of the procedure by the person acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

Details concerning the processing of personal data are explained in the specific privacy statement template [Please find it in annex 4 to the guide] available in the part of the internet dedicated to public procurement (<http://erc.europa.eu/about-erc/call-tenders>).

To guarantee data accuracy any data you receive shall have been provided directly by the data subject(s).

The number and scope of documents requested from tenderers shall be limited to include only the minimum information necessary to evaluate the tender. Any unnecessary and excessive information shall not be treated/processed."

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

- The SPS may be downloaded from ERC website:

<http://erc.europa.eu/about-erc/call-tenders>

"If you would like to check, modify, correct or delete any personal data, you can apply to the Head of Unit/Department [...please complete with the name of the unit/department requesting the service/goods] that is mentioned in the call for expression of interest or invitation to tender, acting on behalf of the ERCEA Director who is the Controller of the processing, by sending an e-mail giving details of your request to the mailbox indicated in point 6. Any request for change of your personal data will be responded to.

Special attention is drawn to the consequences of a request for deletion, as this may lead to an alteration of the terms of the tender and to exclusion as stated in Article 148 of the Implementing Rules of the Financial Regulation.

Additionally, some restrictions to the right of access and rectification are imposed before the opening procedure, when contact between the ERCEA and the tenderers is forbidden (without prejudice to the exceptions of making clarifications or correcting administrative errors)."

- The ERCEA Financial Guidelines, Chapter 7 in public procurement provide in Section "2.12 Public access to information and documents relating to procurement procedures: During the tendering procedure, the participating economic operators have extensive rights to information.

Members of the public: on the basis of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, anyone may request access to documents connected with procurement in general only after signature of the contract.

Further details on access to information and documents related to tender procedures are provided in section 5.6.8 of the Vade-mecum [of the European Commission, also applied by the ERCEA]."

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Generally, a procurement procedures includes: the management, coordination and organisation of calls for tenders including in particular the reception of tenders and requests to participate, the tenders' opening, evaluation, negotiation, ranking, using, filing, archiving and destruction, the preparation of the opening report, the evaluation report, the award decision and the contract, the correspondence with tenderers or candidates, the generation of mailing labels and the publication of the results of the procurement award procedure in the Official Journal of the European Union and/or ERC webpage. In all procurement procedures, personal data are processed during the particular procedure, or if applicable, up to provision of publicity of the results of that procedure.

In most cases, the tenderers must provide a declaration on their honour that they are not in a situation of exclusion as defined in Article 93 and 94 of the Financial Regulation. Some "tenderers" can be legal entities of one person (e.g trainers) directly allowing the identification of the natural person. Therefore, some personal data contained in the above mentioned documents fall under article 27(2)(a) and (b) of Regulation 45/2001. (See also the Commission's Vade-mecum on Public procurement).

Particular to the Agency, public contracts represent a part of the Agency's expenditure. They are defined as purchases by a public authority (the Agency) of a service, goods or works. Public contracts are provided for the institution in exchange for remuneration (against payment).

The area covered by the public contracts awarded by the Agency is vast. It includes – and this list is intentionally limited – obtaining and fitting out the Agency's offices, purchasing IT equipment, commissioning consultancy services or technical assistance, carrying out studies and conducting information and communication campaigns, provided the contracts are in return for payment and concluded by the Commission/Agency with an economic operator, and, subject to the same provisions, setting up training courses, purchasing publications, accessing databases useful for Commission/Agency activities and organising conferences.

Within the ERCEA, a procurement cell - including the Agency's procurement correspondent - was set up in Unit D3 to give advice and to ensure legality and regularity during the preparation of public procurement procedures.

The implementation of the public procurement procedures is done by the operational unit launching the call for tender. The financial verification is carried out by Unit D0 (budget sector).

In a public procurement procedure:

- For potential candidates: an internet search is conducted and the data found is then manually copied into the tender documents (invitation to tender or email).
- When an offer is received: the paper file is manually put into a binder which is kept in a secured cupboard. In most cases, the tenderers must provide a declaration on their honour that they are not in a situation of exclusion as defined in Article 93 and 94 of the Financial Regulation.
- If a company wins the tender: the information submitted in the offer and that of the invitation is introduced manually into the documents to award and conclude the contract.

- The Workflow is registered in ARES. The signed and dated contracts are recorded in ABAC contract.

10/ STORAGE MEDIA OF DATA

Data is stored electronically on the ERCEA shared drive and in paper files in a cabinet located in the office of the person in charge of a specific tender procedure in a unit.

a) The ERCEA Public Procurement Correspondent established (for internal use only) a "register" protected by password which includes in particular the ARES number, the registration number, the estimated amount, type of the procedure, the deadline for submission of tenders and the name of the successful tenderer (see annex 19).

b) Each unit has its own storage system (electronic and paper) for data related to tenders for which the unit is responsible and which is set up on an adhoc basis per tender, based on the conditions in the ERCEA financial guidelines on public procurement.

The ERCEA Financial Guidelines, Chapter 7 on public procurement specify in Section "2.14 Filing and Archiving: The complete and verified procurement dossier justifying the whole procurement procedure shall always be with the operational units for filing.

The dossier shall contain: original tender dossiers, proofs of dispatch of tenders, proofs of respect of deadlines, records of opening and evaluation, award decision, exchanges with tenderers.

After the award decision has been taken, the legal and budgetary commitments are returned to Sector Budget (D0) for filing.

Units may keep working copies of the documents they may need later for contract implementation.

Storage: Tender documents submitted by candidates shall only be accessible to selected staff members.

- Electronic storage: any documents must be stored in a file to which access is restricted and, where possible, secured by password.

- Storage in paper form: any documents must be stored in a locked cupboard to which only selected staff members have access."

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- Council Regulation (EC, Euratom) N° 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 amended by later Regulations and Corrigenda ("Financial Regulation"), Title V for procurement.

- Commission Regulation (EC, Euratom) N° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) N°1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p.1) as amended by later Regulations and Corrigenda ("Implementing Rules to the Financial Regulation"), Title V for procurement.

- 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.

- For contract execution, the legal basis is the particular contract itself (see annexes 4 to 7). The ERCEA only uses the templates provided by DG BUDG of the European Commission, which contains the "Specific and General conditions of the Contract", including Article I.8 and Article II.4 on Confidentiality and Article II.5 on Data Protection.

- Despite not being legally binding, the Vade-mecum on "Public procurement" (annex 20) and ERCEA financial guidelines on public procurement (annex 1) are also considered.

The processing is lawful according to article 5 (a) of Regulation 45/2001, for the performance of tasks carried out in the public interest on the basis of the Financial Regulation and its implementing rules.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

All recipients receive the data on a "need-to-know" basis only.

1. Staff of operational and financial units concerned and the procurement cell within the Unit D.3 participating in the process of procurement procedures.

See also section 2.7 on "Opening and evaluating tenders" of Chapter 7 on Public Procurement of the ERCEA Financial Guidelines: *"All Committee members and outside experts shall be reminded of the purpose limitation of any data they have access to throughout the tendering procedure. They shall also be reminded that they have to communicate the purpose limitation to any third person they may transfer information on the tender procedure to."*

2. Staff of OLAF, IDOC, IAS (Internal Audit Services), IAC (Internal Audit Control) and the Commission's Legal Service as well as staff of other Directorate Generals of the European Commission (SG, DG BUDG and clearinghouse) upon request and only if necessary in the context of official investigations or for audit purposes.

3. Members of the public in accordance with the Commission's obligation to publish information on the outcome of the procurement procedure deriving from the budget of the European Union (Article 90 and Article 30(3) of the Financial Regulation, and Articles 118.4 and 119 of Implementing Rules respectively). The information concerns in particular the name and address of the successful tenderers and the amount awarded.

3.1. For open and restricted procedures: the award notice including the results of the procedure must be sent to the Publications Office (supplement S of the Official Journal of the European Union).

3.2. For contracts worth between €25 000 and €60 000 (also for aggregate value of specific contracts based on a framework contract awarded during a financial year exceeds the thresholds set in Directive 2004/18/EC): a list of contractors, specifying the subject and amount of the contract awarded, is drawn up for annual publication on the ERC site by 31 March of the following year.

4. In case of inter-institutional procurement, if the leading institution is the ERCEA certain personal data (name, address bank account number etc.) are transferred to the participating

institutions to provide them with the data necessary to complete their part of the procurement process.

The recipient is informed of his obligations in respect of the transfer by reference to the legal basis and by way of the ERCEA Financial Guidelines on Public Procurement.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The ERCEA is bound by the Commission Retention List (SEC(2007)970). According to it and see also section 2.14 of the ERCEA Financial Guidelines, Chapter 7 on public procurement:

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

- Tenders from unsuccessful tenderers are kept for 5 years following the signature of the contract into question.

If before the end of the above periods either an audit or legal proceedings have started, the retention period is suspended until the end of these proceedings.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS
(Please, specify the time limits for every category, if applicable)

As per the ERCEA Implementing rules concerning the DPO pursuant to Article 24(8) of Regulation 45/2001 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 (Steering Committee decision 210610/6), Article 13.1: "*Further to their right to be appropriately informed about any processing of their personal data, data subjects may approach the relevant Controller to exercise their rights pursuant to Articles 13 to 19 [which include the right to block and erase] of the Regulation, as specified below:[...] c) The Controller shall, at any time within three calendar months of receipt of the request, grant access pursuant to Article 13 of the Regulation by enabling the data subject to consult these data on-site or to receive copy thereof, according to the applicant's preference.*"

Legitimate requests are treated immediately. If further verification is necessary before a decision is taken, the data subject receives a preliminary confirmation of reception of the request. Only data encoded as record of reception of the tender is kept as it was at the time of reception, as required by the Commission registration rules - (SEC(2003)349). Any updated addresses or other contact details are used for correspondence and exchanges that follow.

See also section 4 of the Specific Privacy Statement on Public Procurements that states: "*Additionally, some restrictions to the right of access and rectification are imposed before the opening procedure, when contact between the ERCEA and the tenderers are forbidden (without prejudice to the exceptions of making clarifications or correcting administrative errors).*"

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*):

A public procurement procedure is the management, coordination and organisation of calls for tenders, including their evaluation, the ranking of offers and the award decision based on general and personal data, usually provided by the tenderer. In certain cases sensitive data as per Article 27.2.(a) is processed.

Public contracts are provided for the institution in exchange for remuneration (against payment).

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

Since the processing operations have already been established (15/07/2009), the present notification concerns an ex-post prior check.

List of attachments:

- 1.a. **General Guidelines for the management of the ERCEA administrative (operating) budget, Ares(2012)315571 of 16/3/2012**
- 1.b. **Chapter 7 on Public Procurement Ares(2012)1210182, October 2012.**
2. **Check list for each public procurement procedure (low value contract below 60.000, open/ restricted procedure, Call for expression of interest – CEI)**
3. **Invitation to Tender**
4. **Draft direct contract services and supply**
5. **Framework service/supply contract**
6. **Order form**
7. **Purchase order**
8. **Amendment of contract**
9. **Appointment of evaluation committee**
10. **Appointment of opening board**
11. **Award decision**
12. **Declaration of absence of conflict of interests and of confidentiality (for members of both the Opening Board and the Evaluation Committee of a tender procedure)**
13. **Declaration of honour**
14. **Record of opening of tenders**
15. **Report of evaluation of tenders**
16. **Letter to successful and unsuccessful tenders/applicants**
17. **Letter for performance guarantee**
18. **Specific Privacy Statement "Public Procurement – [service/supply] contract"**
19. **Template of the "Contract Register" (register of public procurement procedures)**
20. **The Vade-mecum on "Public procurement" of March 2008, latest update January 2012, can be found on the Commission's website <http://www.cc.cec/budg/imp/procurement/doc/vm/vade-mecum-public-procurement-bookmarked-en.pdf>. Due to the length of the document it is not attached to the notification but can be provided upon request.**

PLACE AND DATE: **Brussels, 18/10/2012**

DATA PROTECTION OFFICER: **KOLLOCZEK, Nadine**

INSTITUTION OR BODY: **ERCEA**