

*(To be filled out in the EDPS' office)*  
**REGISTER NUMBER: 0964**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 08/03/2013**

**CASE NUMBER: 2013-0271**

**INSTITUTION: REA**

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

**INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

GILBERT GASCARD  
RESEARCH EXECUTIVE AGENCY (REA)  
REA.00 (DIRECTOR)  
COV2 18/132  
B - 1049 BRUSSELS

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

REA.00 (DIRECTOR)

3/ NAME OF THE PROCESSING

Public procurements procedures and contracts undertaken under the budgets of the REA.

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

#### 4/ PURPOSE OR PURPOSES OF THE PROCESSING

A procurement procedure is a process that leads to the conclusion of a public contract. A public contract is defined as a purchase by a public authority (the REA) of a service, goods or works. Public contracts are provided for the institution in exchange for remuneration.

The purpose of the processing operation of public procurement procedures and the conclusion of contracts undertaken under the budgets of the REA is the supply of goods (assets or not assets), the execution of works or the provision of services necessary for the REA activities provided from the Market – i.e. from suppliers outside the EU Institutions.

In particular, the above-mentioned processing operation is necessary in order to:

- Evaluate the eligibility of economic operators to participate in the procurement procedure in accordance with the exclusion and selection criteria as defined in articles 93 to 97 of the Financial Regulation;
- Assess the technical or professional capacity of the tenderers, their staff and subcontractors and obtain the best offer for the REA with the view to award the contract (in the case of SLAs and EC framework contracts, the purpose of the operation is to regulate the relations between the REA and Commission's services).

Regarding the management and follow-up of EC framework contracts, the Agency relies on the procurement procedures managed by the services of the European Commission, like DG DIGIT, PMO or OIB.

#### 5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are natural persons (staff members, representatives, etc., of tenderers and/or subcontractors), whose details are referenced in tenders, contracts and related documents.

#### 6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

The categories of data that are processed are the following:

##### a) Identification data

First name, last name, e-mail address, telephone number (s), fax number, address, function, company and department, country of residence, passport/ID number, nationality, gender, place and date of birth.

##### b) Financial data

- Bank account reference (IBAN and BIC codes);
- Bank Account File (BAF);
- Certificates for social security contributions and payment of taxes;
- VAT number;
- Registration of the company in the National Fiscal Database;

- Legal Entity File (LEF)
- Balance sheet (last 3 years);
- Profit and Loss Account (last 3 years).

c) Data relating to the evaluation of compliance with eligibility and selection criteria

- Expertise;
- Technical skills and languages;
- Educational background;
- Professional experience including details on current and past employment.

d) Other categories of data

Declaration of honour that the tenderer is not in one of the exclusion situation referred to in Articles 93 and 94 of the Financial Regulation.

In the declaration of honour, there are specific clauses which stipulate that the Agency should/may request proof, through supporting documents, that the tenderer is not in one of the exclusion situation referred to in Articles 93 and 94 of the Financial Regulation.

e) Special categories of data

Data relating to criminal offences: Extracts from judicial records.

## 7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information to data subjects is provided during the following instances:

a) Invitation to tender

Every invitation to tender contains the following information:

- Purpose of the processing;
- Data controller.

b) Contracts

The model data protection clause inserted in the contracts contains information about the:

- Purpose of the processing;
- Potential data recipients;
- Existence of rights of access and rectification and the procedure to follow;
- Identity of the data controller;
- The existence of the right to have recourse to the REA DPO and the EDPS.

c) Privacy statement

A Specific Privacy Statement (SPS) relevant to the processing operation is available under the REA Intranet (ICS section 8.2 – Public Procurement) and will accompany the invitation to tender.

## 8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

The data subjects have the right of access and the right to rectify (where applicable) the data concerning them by contacting the REA service in charge of the procurement.

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 alter 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 is foreseen in the article 148(3) of the Financial Regulation aiming to ensure transparency and equality of treatment.

Data subjects may send their requests to the REA service designated for the procurement procedure in question.

## 9/ AUTOMATED / MANUAL PROCESSING OPERATION

Personal data in the public procurement operation are processed manually and by automated means.

Any conclusion by the Agency of a contract of pecuniary interest with a third party outside the EU Institutions against payment of an amount, in whole or in part, from the budgets (administrative and operational) of the REA, for the supply of goods (assets or non-assets), the execution of works or the provision of services, presupposes without exception a public procurement procedure.

For goods, works or services provided internally by another EU Institution, there is no Public Procurement procedure. In such a case the contractual relationships between the REA and another EU Institution for the provision of goods, works or services are based on Service Level Agreements (SLAs).

- Approval of purchases/expenditures

For purchases of above €15,000.00, the prior approval of the Director, as Authorising Officer, is required.

For purchases up to €15,000.00, the procurement procedure (negotiated procedure with at least one offer) can be issued by the competent Operational Initiating Agent (OIA) of the Administrative Budget.

The award decisions that follow any procurement procedure are approved by the Authorising Officer (i.e. the Director) for procurements above €15,000.00 and by the Authorising Office by Delegation (i.e. the Head of Unit A2 - Finance) for procurements up to €15,000.00.

The expenditure to be contracted vis-à-vis the tenderer after the award decision following a procurement procedure is accepted by the Authorising Officer (above €15,000.00) or the Authorising Officer by Delegation (up to €15,000.00) via the budgetary commitment procedure and the signature of the contract.

The types of contracts concluded by the Agency are referenced under the article 88 of the

Financial Regulation and the articles 116-117 of its Implementing Rules.

The procedures that are followed in order to implement the Public Procurement procedure are referenced under the section 8.2 of the REA Internal Control Standards (ICS):  
[http://intranet-rea.cea.ccc.eu.int/sites/rea/ics/standards/ics\\_8/ics\\_8\\_2/Pages/default.aspx](http://intranet-rea.cea.ccc.eu.int/sites/rea/ics/standards/ics_8/ics_8_2/Pages/default.aspx).

Similar information can be found under the article 91 of the Financial Regulation and the articles 122-129 of its Implementing Rules.

- Main steps of Public Procurement procedures

The main steps of the Public Procurement procedures (above €15,000.00) can be summarised as follows:

- i. The Invitation to tender is sent (e.g. by email) or published (Agency website, Official Journal) by the Agency.
- ii. Tenderers may send their participation/offers either by email or by post.
- iii. An Opening committee (if applicable), which may also be the Evaluation Committee, opens the received tenders and performs a first verification on aspects such as exclusion criteria, respect of the established deadline, etc.
- iv. After the exclusion criteria are verified, the Evaluation committee evaluates the tenders in relation to the eligibility, selection and award criteria and provides the award decision to the Agency's Authorising Officer.
- v. After the contract is awarded (by a decision of the Agency's Authorising Officer), the results of the procurement procedure is published (where applicable) on the Agency's public website and/or in the Official Journal of the European Union.

The signed contracts are stored in ABAC workflow (where applicable). Some contracts can also be issued through ABAC assets.

External experts and contractors may participate in the evaluation of tenders when external expertise is required, on the basis of Article 179a of the Financial Regulation. They are legally bound by the framework contract and the specific contract (which refers to the framework contract) to process personal data only on instructions from the controller and they are reminded of the obligation of confidentiality. The participation of experts in the evaluation of tenders is done on an exceptional basis.

#### 10/ STORAGE MEDIA OF DATA

Data in electronic format, may be stored on the servers of the REA (limited access) and on the servers (email server, ABAC, etc.) of the European Commission.

Data in paper format is stored/archived in locked/secure cupboards.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- Articles 88-107 of the 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;
- Articles 116-159 of the 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;
- Article 50 on procurement of the 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);
- Vade-mecum on Public Procurement in the Commission of March 2008 (last update in January 2012);
- Article 5 (Lawfulness of processing), paragraphs a, b and c, of the 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.

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

- The Director of the Agency in his/her capacity of Authorising Officer by Delegation (AOD);
- Authorised members of the REA staff;
- The Opening Committee set up for the opening of applications and tenders in accordance with article 98§3 of the Financial Regulation;
- The Evaluation Committee set up for the evaluation of applications and tenders in accordance with article 98§4 of the Financial Regulation;
- Internal services (e.g. legal service, internal audit);
- European Court of Auditors (ECA);
- Internal Audit Service of the European Commission (IAS);
- European Anti-Fraud Office (OLAF);
- Financial Irregularities Panel (FIP);
- Investigation and Disciplinary Office of the Commission (IDOC);
- European Ombudsman;
- European Commission;
- The Court of Justice of the European Union (Court of Justice, the General Court and the Civil Service Tribunal);
- European Data Protection Supervisor (EDPS).

- External experts and contractors participating in the evaluation of tenders when external expertise is required, on the basis of Article 179a of the Financial Regulations. The participation of experts in the evaluation of tenders is done on an exceptional basis.

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.

- Public

Information may be disclosed to the public in accordance with the Commission's obligation to publish information on the outcome of the procurement procedure and on the beneficiaries of funds deriving from the budget of the European Union (Article 90 and Article 30(3) of the Financial Regulation, respectively). This information concerns in particular the name, address, amount awarded and the name of the project/programme (where applicable). This information is published in supplement S of the Official Journal of the European Union and on the public website of the Agency.

#### 13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Files relating to procurement procedures are to be retained in the service in charge until the procedure is finalised. Afterwards, the following retention period is applied according to the Common Conservation List (CCL), SEC (2007) 970 adopted by the Commission on 04/07/2007 (Annex 1, p.11, point 7.1.4 and p. 23, point 12.6.1):

- Data related to successful tenderers will be kept for a period of maximum ten years, following the signature of the contract.
- Data related to unsuccessful tenderers will be kept for a period of maximum five years, following the signature of the respective contract.

#### 13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

Requests for blocking and/or erasure of the different categories of data will be evaluated on a case-by-case basis.

More specific, the REA may decide that restrictions in blocking and erasure of data are applicable, as laid down in article 20§1 of the Regulation 45/2001 (e.g. an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters). In this case, the data subject shall be informed of the principal reasons on which the application of the restriction is based.

Time limit to rule on a request: 15 working days (beginning from the reception of the request).

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

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*):

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,*

- Other (general concept in Article 27.1)

17/ COMMENTS

Related/Relevant documents

- Templates of model contracts and other model documents (including the invitation to tender Form) are available on the Intranet of DG BUDG:

[http://intracomm.ec.testa.eu/budg/imp/procurement/imp-080-030-010\\_contracts\\_en.html](http://intracomm.ec.testa.eu/budg/imp/procurement/imp-080-030-010_contracts_en.html);

- Specific Privacy Statement relevant to the processing operation.

PLACE AND DATE: BRUSSELS, 08 MARCH 2013

DATA PROTECTION OFFICER: EVANGELOS TSAVALOPOULOS

INSTITUTION OR BODY: RESEARCH EXECUTIVE AGENCY (REA)