

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 17/06/2013

CASE NUMBER: 2013-0660

INSTITUTION: FRA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER:

CONSTANTINOS MANOLOPOULOS, HEAD OF ADMINISTRATION, FRA, SCHWARZENBERGPLATZ 11, 1040 AUSTRIA

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

Finance and Procurement Sector

3/ NAME OF THE PROCESSING

Procurement procedure

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The procurement is organized by the Agency - following Article 101 of Financial Regulation- in order to obtain the supply of assets, the execution of works or the provision of services that are necessary for the performance of Agency's tasks carried out in the public interest. The Agency is processing personal data to comply with its legal obligations related to procurement procedures, laid down in Financial Regulation and its Rules of Application. From the nature of Evaluation's

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

procedure arise the necessity of processing personal data, mostly for the purposes of selection criteria and award criteria. The legal basis for lawful processing of personal data is for e.g. Article 106 of Financial Regulation (exclusion criteria applicable for participation in procurement procedures) or 147 of Rules of Application (proof of economic and financial capacity).

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subject are tenderers and subcontractors (natural and legal persons) and staff members participating in procurement procedure. Further information can be found in Annex I.

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 data relating to tenderers (and mutatis mutandis to subcontractors, if applicable) can be processed during public procurement:

- identification and contact details (name and surname of natural person, name and legal form of legal person, address, identity card number, registration number, VAT number, phone number, e-mail address);
- proof of independent worker status (if applicable) and extract from the trade register, bank certificate stating financial situation; bank account details;
- 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;
- proof of having fulfilled all obligations to pay social-security contributions and taxes
- certificate of clear criminal record or extract of judicial record
- extract from the register of bankruptcy or relevant document
- documents attesting professional standing (curriculum vitae, copies of diplomas, certificates etc.)
- list of similar services provided by the tenderer and information on three contracts considered similar in scope

Data relating to staff members participating in the procurement procedure are limited to identification and contact details (name and surname, function, e-mail address, business telephone number)

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

In the light of Article 11 and 12 of the Regulation data subjects have a right to information about processing data relating to them.

Data subjects are informed about data protection policy applied by the Agency in Invitation to tender and in awarded Contract.

They are informed about the legal basis (i.e. Regulation (EC) No 45/2001) pursuant to which their data are processed.

Invitation to tender is containing the information about privacy statement, where data subject can find details concerning processing of their personal data. In detail, data subject are instructed about

their right to access and rectify their data, lawfulness of processing and supervision of Data Protection Officer of the Agency.

Additionally, one of the contract's provisions states that data subjects have right to address his/her concerns to Head of Administration of the Agency or to recourse at any time to the European Data Protection Supervisor(EDPS). Further information can be found in Annex II, Annex III and Annex IV.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

As mentioned in point 7 of this notification, data subject are informed about their rights within different stages of tendering process in acts like Invitation to Tender or Draft Contract. Data subjects are granted a right to access and update or correct their data (until the closing date for submission). Should the data subject have any inquiries concerning processing their personal data, they have a right to address them to the Head of Administration of the Agency or recourse at any time the European Data Protection Supervisor.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

Data is processed by the Agency manually and automatically.

In manual processing of personal data, physical files (received offers and other relevant records) are processed during the evaluation phase and storage in locked cupboards in procurement storage area. In automated processing personal data (such as names, addresses, bank accounts and other personal data as indicated in point 6 of this document) are stored in the electronic database (Tender Contract Management system – TCM). Access to TCM is restricted to authorised procurement and finance staff members.

10/ STORAGE MEDIA OF DATA

To manage and organize the storing of data the Agency adopted Procurement filing plan (see Annex V). Procurement filing plan is the act where specific operational standards for the procurement process are applied when capturing, registering, storing, retrieving and disposing of documents (information and its supporting medium which provides essence for performing work) and records (results of document processing). Documents and records are storage as physical file in procurement storage area and/or in electronic archive in TCM. Mentioned documents and records are containing following personal data:

- invitation to tender
- notifications to the tenderers
- decisions
- publication of the award notice
- correspondence with the tenderers or any organisation having expressed its interest to participate in selection procedure for contracts
- contractual follow-up
- complaints

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

As justified in light of provisions of Financial Regulations and Rules of Applications, the Agency is organising procurement procedure to obtain necessary services and goods for the performance of tasks carried out in the public interest. The legal basis of processing data within procurement procedures are Article 5(a),5(b), 5(c) and 5(d) of the Regulation within the meaning of Article 101 of Financial Regulation.

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

The categories of recipient to whom the data might be disclosed:

- institutional recipients, within the meaning of Article 8(a) of the Regulation (European Commission, including Internal Audit Service and OLAF, European Court of Auditors, EU Courts etc.)
- in accordance to legal obligations and the principal of transparency, the Agency is publishing contract award decisions and contract award notices
- staff members participating in procurement procedure

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Files relating to procurement procedure are to be retained according to the instructions laid down in Procurement filling plan. The retention time before disposal of documents and records- in accordance with Financial Regulation - is 10 years from the closure of procurement procedure.

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)

Data subjects are granted the right to erase upon the request to the controller. They can request the erase of their data in case of withdrawal from a tender procedure.

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.)

The Agency publishes data related to the contracts awarded by the Agency. This is done for reporting and statistical purposes. An example is provided in Annex VI – List of contracts awarded.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

N/A

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING (*Please describe*):

As per Art. 27.3 since the operates handles personal data of economic operators.

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

This notification contains the following Annexes:

- Annex I Procurement Procedure (see attached)
- Annex II Tender Specification (see attached)
- Annex III Invitation to Tender (see attached)
- Annex IV Draft Contract (see attached)
- Annex V Procurement Filling Plan (see attached)
- Annex VI link to List of Awarded Contracts <http://fra.europa.eu/en/about-fra/procurement/contracts-awarded>

PLACE AND DATE: VIENNA, 14/06/2013

DATA PROTECTION OFFICER: NIKOLAOS FIKATAS

INSTITUTION OR BODY: FRA