

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1131

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 16/07/2013

CASE NUMBER: 2013-0875

INSTITUTION: EUROPEAN OMBUDSMAN

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

EUROPEAN OMBUDSMAN,
1, AVENUE DU PRÉSIDENT ROBERT SCHUMAN
CS 30403
F-67001 STRASBOURG CEDEX

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

Personnel, Administration and Budget Unit

3/ NAME OF THE PROCESSING

Procurement procedures- Articles 101-120 of the Financial Regulation (FR) of 2012 applicable to the general budget of the European Union³ (Title V) and articles 121-172 and 186 of Rules of Application (RAP) 2012⁴.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

³ OJ L 298/1, 26.10.2012.

⁴ OJ L 362/1, 31.12.2012.

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing is to manage procurement procedures.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects may include:

- tenderers, contractors and candidates who submit an offer as well as their staff or subcontractors;
- EO staff members who perform tasks in procurement procedures or act as contract managers/authorising officers;
- staff of other institutions or bodies participating in tender procedures on which the EO took the lead;
- external experts assisting the institution with procurement procedures, in particular in the evaluation phase.

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

Personal data of tenderers, contractors and candidates, of their staff or subcontractors, which may include in particular:

- Name (first name, family name, previous family name);
- Gender, nationality, title, function;
- Contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, internet address);
- Bank account reference (IBAN and BIC codes), VAT number, national insurance number, passport number, ID number and personnel number;
- Place and date of birth;
- Other personal data contained in CVs (expertise, technical skills and languages, professional experience including details on current and past employment);
- A declaration on the tenderer's honour that the tenderer is not in one of the exclusion situations referred to in Articles 106 and 107 of the Financial Regulation of 2012 applicable to the general budget of the European Union;
- Certificates of payment of social security contributions and taxes, extracts from trade registers and judicial records.

Personal data of other data subjects, including, for example, in the declaration of absence of conflict of interest (Article 57 of the 2012 Financial Regulation) may include:

- Name (first name, family name, previous family name);
- Gender, nationality, title, function;
- Contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, institution/company and department, country of residence, internet address).

Tenderers are informed, both in the invitation to tender as well as, in a more succinct way, on the purchase order, about the processing of their personal data when the invitations to tender are sent out. The paragraph in the purchase order states that the contract implies the acceptance of the General Conditions of the Contract available at the following link:
<http://www.ombudsman.europa.eu/financial/pdf/fr/generalconditions.pdf>.

Article 20 of the General Conditions of the Contract entitled "Data Protection" states the following:

"Any personal data included in the Contract, including its performance, or relating to the Contract or the implementation thereof 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. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller, without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor."

The following statement is included in the invitation to tender letter:

"Regulation 45/2001⁵ (hereinafter the Regulation) applies to the processing of personal data by the European Ombudsman in the context of procurement procedures. The controller is the European Ombudsman and the collected data shall be processed solely for the tender procedure as well as for the execution of the contract with the successful tenderer(s). The data collected and further processed concern the tenderer (if she/he is a natural person), its staff or subcontractors (natural persons).

The data collected can relate to all or some of the following data:

- Name (first name, family name, previous family name);*
- Gender, nationality, title, function;*
- Contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, internet address);*
- Bank account reference (IBAN and BIC codes), VAT number, national insurance number, passport number, ID number and personnel number;*
- Place and date of birth; and*
- Other personal data contained in CVs (expertise, technical skills and languages, professional experience including details on current and past employment);*
- A declaration on the tenderer's honour that the tenderer is not in one of the exclusion situations referred to in Articles 106 and 107 of the Financial Regulation of 2012 applicable to the general budget of the European Union;*
- Certificates of payment of social security contributions and taxes, extracts from trade registers and judicial records.*

⁵ OJ L 8/1, 12.1.2001.

Applicants shall provide all requested data and comply with the procedural requirements; failure to do so may lead to the exclusion of the application from the tender procedure.

The recipients of the data are the staff members in charge of managing tenders and contracts, primarily the Personnel, Administration and Budget (PAB) Unit of the European Ombudsman, as well as the relevant staff members in the Unit that will actually use the contract. These staff members are reminded that only relevant and necessary data may be collected and further processed and only for the purpose for which they were transmitted. The data may also be disclosed to other individuals in the Evaluation Committee. Data may also be disclosed for audit purposes to the internal auditor, the Court of Auditors or OLAF.

Data subjects have the right to access and to rectify their personal data by contacting the Head of the PAB Unit. The right to rectify data can only apply to factual data processed within the relevant procurement procedure. This right can only be exercised up to the closing date for submission of tenders. However, inaccurate identification data may be rectified at any time during and after the procurement procedure by sending an e-mail to the Head of the PAB Unit. Tenderers may have the possibility to complement evaluation data by means of the respective appeal and review procedures.

The legal basis of the processing operation is:

- Regulation (EU, Euratom) N° 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

- Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

The time limit for data stored in paper files, as well as electronic files, is the following:

- Files relating to tender procedures, including personal data, are to be retained in the archives for a period of seven years following the signature of the contract. Extracts from the judicial records are kept for two years after the accomplishment of the particular procedure. Tenders from unsuccessful tenderers are kept for 5 years following the signature of the contract. Thereafter, documents are to be destroyed.

- Until the end of a possible audit if one started before the end of the above period.

Data subjects have the right to have recourse at any time to the Data Protection Officer of the European Ombudsman or to the European Data Protection Supervisor."

Staff members of the institutions or bodies, as well as experts involved in the selection process, are provided with the following information on forms they are asked to fill out, such as the form regarding the absence of conflicts of interest (Article 57 of the 2012 Financial Regulation):

"Regulation 45/2001⁶ (hereinafter the Regulation) applies to the processing of personal data by the European Ombudsman in the context of procurement procedures. The controller is the European Ombudsman and the collected data shall be processed solely for the tender procedure as well as for the execution of the contract with the successful tenderer(s).

⁶ OJ L 8/1, 12.1.2001.

The data collected can relate to all or some of the following data:

- *Name (first name, family name, previous family name);*
- *Gender, nationality, title, function;*
- *Contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, institution/company and department, country of residence, internet address).*

The recipients of the data are the staff members in charge of managing tenders and contracts, primarily the Personnel, Administration and Budget (PAB) Unit of the European Ombudsman, as well the relevant staff members in the Unit that will actually use the contract. The data may be disclosed to other individuals in the Evaluation Committee. Data may also be disclosed for audit purposes to the internal auditor, the Court of Auditors or OLAF.

Data subjects have the right to access and to rectify their personal data by contacting the Head of the PAB Unit.

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- *Regulation (EU, Euratom) N° 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002*
- *Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.*

The time limit for data stored in paper files, as well as electronic files, is the following:

- *Files relating to tender procedures, including personal data, are to be retained in the archives for a period of seven years following the signature of the contract. Extracts from the judicial records are kept for two years after the accomplishment of the particular procedure. Tenders from unsuccessful tenderers are kept for 5 years following the signature of the contract. Thereafter, documents are to be destroyed.*
- *Until the end of a possible audit if one started before the end of the above period.*

Data subjects have the right to have recourse at any time to the Data Protection Officer of the European Ombudsman or to the European Data Protection Supervisor."

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Data subjects are informed of their rights and of the procedure to exercise them via the statements listed under point 7 above.

Data subjects have the right of access and the right to rectify the data concerning him or her by contacting the Head of the PAB Unit.

The right to rectify data can only apply to factual data processed within the relevant procurement procedure. This right can only be exercised up to the closing date for submission of tenders. However, inaccurate identification data may be rectified at any time during and after the procurement procedure by sending an e-mail to the Head of the PAB Unit. Tenderers may have the possibility to complement evaluation data by means of the respective appeal and review procedures.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing of the applications is both manual and automated.

Invitations to tender are sent out by post.

All tender documents are sent to the EO Office in paper format.

In limited cases, when only one candidate is involved, tenders may also be submitted by fax or electronically, provided the original documents are submitted in due time also by post.

Tenders must be sent under double cover. The two envelopes shall be sealed and the inner envelope, in addition to the address of the recipient department as stated in the invitation to tender, shall bear the following: 'Invitation to tender – not to be opened by the Mail Service'.

If self-adhesive envelopes are used, they must be sealed with adhesive tape bearing the signature of the sender.

If the contract is to be awarded on a best-value-for-money basis, the following sentence is added.

"The inner envelope must also contain two sealed envelopes, one containing the technical part and the other the financial quotation. Each of these envelopes must clearly indicate the content ('Technical' and 'Financial')."

These documents are processed manually by the EO Office. For storage purposes and to facilitate access, electronic copies may be kept by the units involved in the process.

The personal data are used solely for the purpose for which it was provided, namely the evaluation of the tender.

10/ STORAGE MEDIA OF DATA

- The paper files are stored in locked cupboards by the responsible units.

- The electronic files are stored on servers with access rights limited to the relevant staff members of the Units involved in the procedure (namely, the PAB Unit and the Unit that will actually use the contract).

Evaluation Committee members have access to the files for the purpose of the evaluation and are invited not to keep copies after completion of the evaluation process.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The processing of personal data is necessary for the performance of tasks carried out in the public interest (see Article 5(a) of Regulation (EC) No 45/2001), namely the management of procurement procedures.

- Regulation (EU, Euratom) N° 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

- Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

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

All recipients are on a "need to know" basis.

The recipients of the data are the following:

- Members of the Evaluation Committee;
- Staff responsible for managing contracts within the Unit actually using the contract;
- Staff responsible for managing tenders and contracts in the PAB unit.

These staff members are reminded that only relevant and necessary data may be collected and further processed and only for the purpose for which they were transmitted.

- Data may also be disclosed for audit purposes to the internal auditor, the Court of Auditors or OLAF.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The time limit for data stored in paper files, as well as electronic files, is the following:

- Files relating to tender procedures, including personal data, are to be retained in the archives for a period of seven years following the signature of the contract.. Extracts from the judicial records are kept for two years after the accomplishment of the particular procedure. Tenders from unsuccessful tenderers are kept for five years following the signature of the contract. Thereafter, documents are to be destroyed.

- Until the end of a possible audit if one started before the end of the above period.

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

Upon a justified, legitimate request by the data subject: 15 days.

(Please, specify the time limits for every category, if applicable)

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):*

As foreseen in Article 27.2.(b)

Personal data are provided in a tender to allow the Evaluation Committee to evaluate the offer. This makes the processing operation subject to prior checking according to Article 27.2(b) of Regulation (EC) No 45/2001.

Article 27.2(a) may also apply, as extracts of judicial records are collected, even though the judicial record most often relates to the company in question and not to individuals.

17/ COMMENTS

Enclosures

Documents used for the procurement which include:

- Invitation to submit a tender
- Purchase order
- Declaration on absence of conflict of interest
- Declaration on the tenderer's honour
- Financial identification
- General Conditions of the Contract:

<http://www.ombudsman.europa.eu/financial/pdf/fr/generalconditions.pdf>

- Supply contract (or service contract) - example of existing procedure
- Specifications - example of existing procedure

PLACE AND DATE: BRUSSELS, 16/7/13

DATA PROTECTION OFFICER: ROSITA AGNEW

INSTITUTION OR BODY: EUROPEAN OMBUDSMAN

