

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1152

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 05/09/2013

CASE NUMBER: 2013-0990

INSTITUTION: ERA

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 Railway Agency, 120 rue Marc Lefrancq, 59300 Valenciennes, France

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

Salvatore Ricotta, Head of Administration Unit a.i, e-mail address: Salvatore.Ricotta@era.europa.eu, tel: +33 (0) 32 70 96 560

3/ **NAME OF THE PROCESSING**

ERA's public procurement procedures

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

Management, coordination and organization of calls for tenders including in particular the reception of tenders and requests to participate (both referred to as "tenders"), their evaluation, negotiation, ranking, copying, distributing, using, filing, archiving and destruction, the preparation of the opening report, the evaluation report, the decision and the contract, the correspondence with tenderers or candidates (both referred to as "tenderers"), the generation of mailing labels and the publication of the results of the procurement procedure in the Official Journal of the European Union.

Management and administration of procurement procedures by the Agency, including in particular :

- the provision of evidence of the technical and professional capacity of tenderers, their staff and subcontractors,
- the execution of the contract and additional purposes such as statistics, reporting or auditing

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Natural persons participating in procurement procedures of the Agency: tenderers - natural persons,

- staff of tenderers, and/or
- subcontractors - natural persons

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, their staff or subcontractors which may include in particular:

- Identification data : name (first name, family name, previous family name); gender, nationality, title, function; place and date of birth
- Contact data: contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, internet address);
- Bank information data: bank account reference (IBAN and BIC codes), VAT number, national insurance number, passport number, ID number
- Evaluation/assessment data: other personal data contained in CVs (expertise, technical skills and languages, professional experience including details on current and past employment).

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

In the specifications attached to the invitation to tender the following standard clause is included:

Confidentiality & public access to documents

In the general implementation of its activities and for the processing of tendering procedures in particular, ERA observes the following rules:

- i Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 and 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, and;
- ii Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

In the draft framework contract the following article on Data Protection is included:

ARTICLE II.6 – PROCESSING OF PERSONAL DATA

II.6.1 Any personal data included in the contract shall be processed pursuant to Regulation (EC) 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. Such data shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

II.6.2 The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

II.6.3 The contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.6.4 Where the contract requires the processing of personal data by the contractor, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his rights.

II.6.5 The contractor shall grant its personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

II.6.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:

- (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation
- (f) design its organisational structure in such a way that it meets data protection requirements.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

In general, the tenderers can request to access their data by contacting in writing the Controller. The procedure described in the privacy statement is the following:

'In case you wish to verify which personal data is stored on your behalf by the responsible Controller, have it modified, corrected, or deleted, please make use of the contact information mentioned in the Call for tenders, by explicitly describing your request. Any correction of your personal data will be taken into consideration from the data protection point of view.

Special attention is drawn to the consequences of a request for deletion, in which case any trace to be able to contact you could be lost.

Please be advised that you may supplement submitted information with the update, correction or explanation but your data will not be deleted before the time mentioned in the point 6 elapsed.

The right to rectify the information already provided can only apply to the factual data processed within the concerned procurement procedure. The mentioned right can only be exercised up to the closing date for submissions of offers. However inaccurate identification data may be rectified at any time during the procurement procedure.

Furthermore, you are free to address the Data Protection Officer of ERA (DataProtectionOfficer@era.europa.eu) and the European Data Protection Supervisor (edps@edps.europa.eu) at any time and for any reason you may deem appropriate'

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The management and administration of procurement procedures by the Agency is done manually.

10/ STORAGE MEDIA OF DATA

Personal data in paper format for on-going contracts is stored in a cupboard which can be locked and is only accessible to authorized staff.

Personal data in electronic form is stored on the shared drive of the computer server and access is limited to staff on a "need-to-know" basis. However staff from the Finance and Procurement unit have access to all documents.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

EU Financial Regulation; Implementing rules; financial regulation of the European Railway Agency

The data processing is considered lawful because it is necessary to:

- Meet requirements of the legal instruments mentioned above,
 - Ensure compliance of the Agency with legal obligations, and
 - Take steps prior to entering into contract with the data subject
- as described in points (a), (b) and (c) of article 5 of Regulation 45/2001

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

Staff of operational and financial units of the Agency participating in management of procurement procedures;

- All authorised agency staff dealing with financial and accounting matters have access to your data, without prejudice to possible transmission to the Internal Audit Service, the Court of Auditors, the Financial Irregularities Panel, the Anti-fraud Office and any other institution or entity with responsibility for audits or investigations.

Publication of some identification data of the awarded contractor in accordance with the Agency'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 Community (Article 90 and article 30(3) of the Financial Regulation). The information will concern the name and address, the amount awarded and the works, goods or services requested. It is published in supplement S of the Official Journal of the European Union and/or on the website of the Agency.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

In line with article 38§6 of ERA's Financial Regulation and article 35 of the Implementing Rules stating that "The Authorising Officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget", files relating to tender procedures are kept for a period of 7 years following signature of the contract or following the last payment by the Agency. Tender files from unsuccessful tenderers are kept only for 5 years following the signature of the contract into question. 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

(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.

Non applicable

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

No such transfers are foreseen

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,

NO

↑ Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

YES.

↑ Article 27.2.(c)

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

NO

↑ Article 27.2.(d)

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

NO

↑ Other (general concept in Article 27.1)

17/ COMMENTS

PLACE AND DATE: VALENCIENNES- FRANCE

DATA PROTECTION OFFICER: ZOGRAFIA PYLORIDOU

INSTITUTION OR BODY: EUROPEAN RAILWAY AGENCY

