

(To be filled out in the EDPS' office)
REGISTER NUMBER: 1161

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 20/09/2013

CASE NUMBER: 2013-1033

INSTITUTION: EAHC

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

1.1 In case of procurement under the **operational budget:**

- Jacques Remacle, Head of Health Unit
- Salvatore Magazzu, Head of Consumers and Food Safety Unit

1.2 In case of procurement under the **administrative budget:**

- Luc Briol, Director
- Robert Geeraerts, Head of Administration Unit

Executive Agency for Health and Consumers (EAHC)
12, rue Guillaume Kroll, Luxembourg,
Drosbach building A3

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

2.1 In case of procurement under the **operational budget:**

- Health Unit – contact person: Ingrid Keller, Programme Coordinator (Health Programme)
- Consumers and Food Safety Unit – contact person:
 - Yolanda Arevalo Torres, Programme Coordinator (Consumers Programme)
 - Zoran Kovac, Coordinator (Better Training for Safer Food Initiative)

2.2 In case of procurement under the **administrative budget:**

- Directorate, Administrative Unit – contact person: Robert Geeraerts, Head of Administration

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

3/ NAME OF THE PROCESSING

Public procurement procedures at the Executive Agency for Health and Consumers

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The processing concerns the **management of procurement procedures under the Health Programme, the Consumer Programme, the Better Training for Safer Food Initiative**, and the implementation of the contracts resulting from those calls³. In addition, the processing concerns the management of **procurement procedures under the administrative budget in several areas (Communication, IT, Audit, Ex-post control, Human Resources)**, and the implementation of the contracts in these fields.

In particular, the calls for tenders aim at

- purchasing services within the fields identified in the annual work programmes (financing decisions) of the above mentioned programmes,
- and purchasing services/supplies in order to meet the administrative needs and tasks of the Agency.

The information requested within the frame of the calls is necessary:

- to carry out the procurement procedures – in particular to assess the tenderers' capacities, evaluate the tenders and award the contracts on the basis of exclusion, selection and award criteria, and
- to conclude and execute the contracts resulting from the calls for tender.

Description of the data processing operation:

1. Under the **operational budget**, EAHC usually launches

- open calls for tenders for the conclusion of direct service contracts or framework contracts,
- low value negotiated procedures,
- exceptional negotiated procedures,
- requests for services under EAHC or Commission framework contracts.

2. **Under the administrative budget, EAHC usually uses the available framework contracts of the European Commission (or launches low value negotiated procedures); open calls for tenders are launched only exceptionally.** From the data protection point of view this means that if EAHC awards specific contracts under Commission framework contracts, the personal data of the contractors are already processed by the Commission and are lawfully transferred to EAHC when a copy of the framework contract is given to the Agency. Also, the specific offers of framework contractors/tenderers (hereafter referred to as 'tenderers') that EAHC receives contain personal data. Therefore, it is important to state that EAHC is responsible for only those data processing operations which are carried out by it for the management of the specific contracts, and not for those by the Commission for the management of the framework contract.

With reference to Article 2(b) of Regulation 45/2001, the data processing operations include the collection, recording, organisation, storage, consultation, use, disclosure by transmission, erasure and destruction of personal data.

³ In case in the future EAHC will be mandated by the Commission to implement other programmes/initiatives, the notification shall cover that case as well.

In particular, the tenders containing the data are received, formally opened, copied if necessary, distributed to evaluators (on paper or electronically), evaluated, stored and eventually destroyed.

The data, provided by the tenderers and which includes personal data is used for the preparation, conclusion and implementation of the resulting contracts, while contact details may be used for sending e-mails or for the organisation of meetings with the contractor.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are all persons whose personal data is included in the tenders and in the contracts, namely the staff of the tenderers, the staff of the consortium members and the staff of the subcontractors, and the tenderers/consortium members/subcontractors themselves in case of natural persons.

In particular, the following persons may be considered data subject:

- legal representative of tenderer / consortium member / subcontractor,
- contact person of tenderer / consortium member / subcontractor,
- staff members of tenderer / consortium member / subcontractor.

In case of natural persons, the legal representative and contact person would be the same as the tenderer/consortium member/subcontractor.

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

Within the frame of calls for tenders, the following personal data is requested:

- legal representative of tenderer / consortium member / subcontractor: name, position/function, office address, telephone, fax, e-mail.
- contact person of tenderer / consortium member / subcontractor: name, position/function, office address, telephone, fax, e-mail.
- staff members of tenderer / consortium member / subcontractor: when applicable, name, job description, information on studies, expertise, past work experience and language knowledge, in form of CV (Europass template or free template: the data subject may provide any personal data s/he deems pertinent, such as contact details, date of birth, education, professional experience including data of previous/current employers, technical and other skills, etc.) or in form of pre-set tables ('selection criteria checklist table') to be filled in with professional data.

In addition, tenderers, being a private or public entity, are requested to fill in the 'Legal entity form' and the 'Financial identification form' of DG BUDGET. In case the tenderer is a natural person, he is requested to provide a legal entity form for individuals (including name, first name, other names, official address, postal code, P.O. Box, town/city, country, VAT number, identity card number or passport number, date of birth, place of birth, country of birth, phone, fax, e-mail, copy of passport or identity card). All legal entity forms include the privacy statement of the Commission (http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm).

General remarks of the data controller:

- Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual orientation may be received only in as much as this data appears spontaneously in the free template CV provided by the data subjects. This data is not processed during the management of the call or the implementation of the agreement, since it is not pertinent.
- The address, city, country, telephone and fax numbers, bank account numbers as well as e-mail addresses provided in the offer are usually the professional ones of the person filling in the form and submitting the tender. Thus, as a general rule (with the exception of if tenderer is a natural person), private addresses or bank account numbers etc. are not processed.
- In case of award under open calls or exceptional negotiated procedures, the winning tenderers are requested to send documents that prove that the exclusion criteria are met by them; these documents include criminal records, certificates from national tax authorities etc. Since in most of the cases the tenderers are not natural persons, these documents contain data about entities/organisations and no personal data is included. Nevertheless, it is possible to have natural person tenderer/consortium partner/subcontractor), in those cases, the exclusion criteria evidence includes special categories of personal data about them.

However, the above is not applicable in case of requests for services under framework contracts, nor in case of low value negotiated contracts where the winning tenderers shall not send exclusion criteria documents (judicial records, certificates from national tax authorities etc.). Therefore, in those cases such documents containing special categories of data are not collected.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Within the frame of public procurement procedures, information on the processing of personal data according to Regulation (EC) 45/2001 is provided in the following calls documents made available to potential tenderers (please see Annex I):

- Model invitation letter containing the standard data protection clause (Annex I)
- Model service contract containing the standard data protection and the confidentiality clauses (Annex I)
- Privacy statement for procurement procedures as published on the EAHC website: http://ec.europa.eu/eahc/about/data_protection.html (Annex II).

Legal entity form: A specific privacy statement⁴ is included by DG BUDGET in the legal entity forms to be filled in only by the main tenderer.

(In some calls for tenders, specific conditions concerning data protection may be inserted in the contract depending on the subject of the call.)

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

⁴ http://ec.europa.eu/budget/library/execution/privacy_statement_en.pdf

As a general rule, **tenderers** have the right for information, the right to access their personal data and the right to object. In addition, the tenderers have the right for rectification and the right for erasure of their inaccurate or incomplete factual personal data.

After the deadline of submitting tenders, personal data related to the exclusion, selection and award criteria cannot be accessed, rectified or erased (because it would lead to the alteration of the terms of the tender and to obligatory exclusion of the tenderer) with the exception of obvious clerical errors; while personal data related to the identification of the tenderer can be rectified at any time during the procedure and while the data is kept by EAHC.

The rights of data subjects can be practised only based on a written request. They cannot result in unequal treatment of the tenderers and cannot be exercised in a way that is contrary or harmful to the aim of the procurement procedure or to its confidentiality.

Contractors may, by written request, gain access to their personal data and rectify any personal data that is inaccurate or incomplete, as long as it does not call into question the decision awarding the contract and result in unequal treatment.

In case of any queries concerning the processing of personal data, the data subjects may send their written requests to the e-mail address of the responsible unit. Such requests for access, rectification, erasure and blocking etc. are handled within 30 days after the request.

The data subjects have the right of recourse at any time to the Data Protection Officer of the Executive Agency (EAHC-DATA-PROTECTION@ec.europa.eu) and to the European Data Protection Supervisor (EDPS@edps.europa.eu) for matters relating to the processing of their personal data. More information concerning the contact details can be found on the website of the Executive Agency.

The information above on the rights of data subjects is contained in the privacy statement in the area of public procurement available on the Agency website at the page http://ec.europa.eu/eahc/about/data_protection.html.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing operations are carried out partly by automated means and partly manually.

Tenders are requested to fill in a pdf. 'Tender form' which automatically generates the necessary annexes (e.g. Legal entity form, Financial identification form, Declaration of Honour) and copies the information that the tenderer has already entered in the form into the annexes. This form is then printed, signed and dated by the tenderers/consortium partners/subcontractors.

The tenders are received in paper format in sealed envelopes by using a system based on one outer envelope and three inner envelopes⁵. Tenderers are asked to provide pdf. Tender form and the scanned versions (in pdf. format) of the signed original documents on separate CDs/DVDs/USB sticks placed in each of the inner envelopes. The electronic versions of the tenders are requested from the tenderers for operational purposes (to help the evaluation process and to use them for the preparation of the contracts): the data is processed partly automatically through an internal

⁵ As exception, in cases of low value procurement or requests for services, electronic submission of tenders is also allowed. In such cases, the confidentiality and the integrity of the offer including the personal data is ensured.

application of EAHC (called 'Grant Cycle' – contrary to the name, it not only includes information about grants, but also about tenders).

Copies of the tenders are either distributed to the evaluators in paper format (by internal mail) or electronically (either by e-mail or by uploading to CIRCABC from where the evaluators may download the documents).

After the contract is awarded, the data of the winning bid is processed by the unit in charge of the contract for purposes of management and follow up of the contract. Following the contract signature, the paper copies of the tenders are destroyed by OIL, on EAHC request, according to the procedure for destruction of confidential documents (e.g. documents destroyed by OIL).

10/ STORAGE MEDIA OF DATA

During the management of the call procedure, the original paper tenders (including CD/DVD/USB sticks) are stored in a locked cupboard in the office of the relevant Project Officer, while the original financial proposals are stored in a locked cupboard in the office of the Programme Coordinator.

For the evaluation purposes, the tenders may be uploaded to CIRCABC. In addition to this, the administrative part is also uploaded to 'Grant Cycle'.

Once the contracts are signed, the original paper tenders are stored in the Agency archive room, electronic offers are kept in the unit's drive.

During the contract implementation, the original signed contracts are stored in paper version in the Agency archive. The electronic version of the signed contracts is uploaded on the intranet website and on the U/drive of the Unit.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

1) General legal basis:

Council Regulation (EC, Euratom) No 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) (old Financial Regulation)⁶, in particular Article 179a, (Replaced from 01/01/2013 by Regulation (EU, EURATOM) No 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 (new Financial Regulation)⁷, in particular Article 204).

Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial

⁶ As amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 390 of 30.12.2006, p. 1) and by Council Regulation (EC, Euratom) No 1525/2007 of 17 December 2007 amending Regulation no 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 343 of 30.12.2006, p. 9)

⁷ Official Journal L 298, 26.10.2012., p. 1

Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1) (old Implementing Rules)⁸, in particular Article 265a, (Replaced from 01/01/2013 by 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 (new Rules of Application)⁹, in particular Article 287).

Commission Regulation (EC) No 1653/2004 of 21 September 2004 on the standard financial regulation for executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statutes for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 297, 22.9.2004, p. 6) (Standard Financial Regulation)¹⁰, in particular Article 20.

2) Legal basis specific for the area of public health:

Decision No. 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 establishing a second programme of Community action in the field of health (2008-13) (Health Programme)¹¹ and the subsequent Health Programmes

Commission Implementing Decision of 28 November 2012 (2012/C 378/07) concerning the adoption of the 2013 work plan in the framework of the second programme of Community action in the field of health (2008-2013), the selection, award and other criteria for financial contributions to the actions of this programme and the EU payment to the WHO Framework Convention on Tobacco Control, serving as financing decision (annual work plan 2013) and its subsequent annual work plans

3) Legal basis specific for the Consumer protection area:

Decision no 1926/2006/EC of the European Parliament and of the Council of 18 December 2006 establishing a programme of Community action in the field of consumer policy (2007-2013) (Consumer Programme)¹² and the subsequent Consumer Programmes

Commission Implementing Decision C(2012)8729 of 4 December of 2012 concerning the adoption of the annual work programme in the area of consumer policy for 2013 - Financing Decision (annual work programme 2013) and the subsequent annual work programmes

4) Legal basis specific for the Better Training for Safer Food (BTSF) Initiative:

Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules¹³ – Article 51 and 66

Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community¹⁴ – Article 2

⁸As amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 (OJ L 201, 02.8.2005, p. 3), Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006 (OJ L 227, 19.8.2006, p. 3), Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ L 111 of 28.4.2007, p. 13)

⁹ Official Journal L 362, 31.12.2012., p. 1

¹⁰ OJ L 297, 22.9.2004, p. 6. As amended by Commission Regulation (EC) No 1821/2005 of 8 November 2005 (OJ L 293, 9.11.2005, p. 10) and by Commission Regulation (EC) No 651/2008 of 9 July 2008 (OJ L 181 10.7.2008)

¹¹ The Health Programme (2008-2013) will be replaced by the new Health Programme (2014-2020).

¹² OJ L 404 of 30.12.2006, p. 39

¹³ OJ L 165 of 30.4.2004, p. 1 and the corrigenda to it (OJ L 191, 28.5.2004, p. 1 and OJ L 204, 4.8.2007, p. 29)

Commission Implementing Decision of 10 June 2013 on financing the 2013 work programme on training in the field of food and feed safety, animal, health, animal welfare and plant health in the framework of the "Better training for safer food" programme (Financing decision 2013)¹⁵ and the subsequent financing decisions

LAWFULNESS

Data processing is considered lawful because it meets the conditions described in Article 5 (a), and (d) on a subsidiary basis:

"Article 5

Personal data may be processed only if:

(a) **processing is necessary** for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or **in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data is disclosed;**

(d) the data subject has unambiguously given his or her **consent**.

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

Within EAHC/Commission:

- Within the responsible Unit data is disclosed to the relevant Project Officer responsible for the Call, Project Assistant, Secretary and Head of Unit, and they may be disclosed to the relevant PO back-up and Programme Coordinator (as necessary).
- Outside the Unit data is disclosed to the relevant Financial Officers, Internal Controller, Ex-Ante Verifying Officer, Authorising Officer, Legal Advisor, Internal Audit Control (IAC), Ex-Post Controller.
- Data is disclosed to Commission staff involved in the opening ceremony and the evaluation.

EU institution or body:

For the purpose of safeguarding the financial interests of the European Union:

Data may be disclosed to the internal audit services of the Commission (IAS), the Court of Auditors, the European Anti-Fraud Office (OLAF), the Commission's Legal Service upon request and only if necessary in the context of official investigations or for audit purposes.

For the purpose of handling complaints:

Data may be disclosed to the European Ombudsman, the Legal Service of the Commission, the General Court, the European Court of Justice upon request and only if necessary in the context of handling the complaint.

For the purpose of verifying data protection

Data may be disclosed to the European Data Protection Supervisor upon request and only if necessary in the context of handling the complaint.

¹⁴ OJ L 169 of 10.7.2000, p. 1. and the corrigenda to it (OJ L 2, 7.1.2003, p. 40; OJ L 137, 31.5.2005, p. 48 and OJ L 20, 24.1.2008, p. 35)

¹⁵ OJ C 170, 15.6.2013, p. 38

For the purpose of translating the tenders including CVs

Data may be disclosed to the Translation Centre.

Third parties subject to national law adopted for the implementation of Directive (EC) 95/46:

- If necessary, tenders and/or information concerning the contract implementation may be transferred to external experts subject to Directive (EC) 95/46 for evaluation purposes only.

In such cases, a written contract is signed stipulating in particular that the expert shall act only on instructions of the data controller and shall comply with obligations set out in Articles 16 or 17(3) second indent of Directive 95/46. The external experts are reminded that they can process personal data only for the purposes for which they were transmitted.

Third parties not subject to Directive (EC) 95/46

- If necessary, tenders and/or information concerning the contract implementation may be transferred to external experts not subject to Directive (EC) 95/46 for evaluation purposes only.

In such cases, a written contract is signed stipulating in particular that the expert shall act only on instructions of the data controller and shall comply with obligations set out in Articles 21 and 22 of Regulation (EC) 45/2001. The external experts are reminded that they can process personal data only for the purposes for which they were transmitted.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

EAHC applies the retention periods laid down in the Commission's Common Retention List.

1) In case of successful (awarded) tenderers: All personal data related to the management of the procurement procedure and the service contract implementation is retained for *10 years* from the date of payment of the balance (or of a recovery order issued after analysis of the final accounts), with the exception of the extracts from the judicial records that can be kept only for 2 years.

Original successful tenders are stored at EAHC, while the copies of the successful tenders are not kept.

2) In case of unsuccessful tenderers: The personal data in the original unsuccessful tenders is kept at EAHC for *5 years* following the signature of the contract. The copies of the unsuccessful tenders will not be retained in EAHC following the signature of the contract.

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.

After the period mentioned above has elapsed, the tender files containing personal data is sampled to be sent to the historical archives of the Commission for further conservation.

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 stated in point 7 and in the privacy statement for procurement, blocking or erasure of the personal data is, as general rule, possible during the management of the procurement procedure, and following the award decision in the phase of the contract implementation. Requests for blocking and erasure are handled within 30 days after receiving the request.

More information is provided in the privacy statement in the area of public procurement on the website of the Agency: http://ec.europa.eu/eahc/about/data_protection.html

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*):

The data processed during the management of calls for tenders and the implementation of contracts falls under the scope of Article 27(2)(a) and (b) or Regulation (EC) 45/2001.

X Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

X Article 27.2.(b)

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

í Article 27.2.(c)

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

í Article 27.2.(d)

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

í Other (general concept in Article 27.1)

17/ COMMENTS

Since the processing operations have already been established
- since the set-up of the Agency (procurement under the operational budget)
- since January 2009 (procurement under the administrative budget),
the present notification concerns an ex-post prior check.

PLACE AND DATE:

DATA PROTECTION OFFICER:

INSTITUTION OR BODY: