

*(To be filled out in the EDPS' office)*

**REGISTER NUMBER: 1184**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 05/11/2013**

**CASE NUMBER: 2013-1231**

**INSTITUTION: TEN-T EA**

**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

Name: Mr Marcos Roman Parra, Head of Unit, Resources Unit T1  
Address: W910 03/042, Trans-European Transport Network Executive Agency (TEN-T EA),  
Chaussée de Wavre 910, B-1049 Brussels

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

Resources Unit T1, Financial management and external audits

3/ NAME OF THE PROCESSING

Procurement procedures

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the data processing operation is the management and administration of calls for tenders and contracts between TEN-TEA and economic operators.  
The data is collected and processed with the purpose to evaluate the eligibility of economic operators to participate in the procurement procedure in accordance with exclusion and selection criteria as

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

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

defined in Articles 106 to 110 of the Financial Regulation, and / or to evaluate the content of tenders submitted during the procurement procedure with the view to award the contract, in accordance with award criteria as defined in Article 110 of the Financial Regulation. Furthermore, the processing is necessary to manage and monitor the execution of the contracts.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are

All persons associated with the applicant entities whose details are included in tenders and contracts: tenderers, their staff and subcontractors.

The data are collected in the tenderer's offer or in supporting documents necessary to participate in the tendering procedure.

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

The processing of the following data is involved during the selection and award phases:

- Name, date of birth, & nationality;
- Contact details : address(es), telephone(s), fax(es) & e-mail;
- Information for the evaluation of the selection criteria or eligibility criteria: expertise, technical skills and languages, educational background & professional experience including details on current and past employment;
- Extract from judicial records;
- Financial identification: bank account reference (IBAN & BIC codes);
- VAT number when applicable.
- Declaration on honour that the data subjects concerned are not in one of the exclusion situation referred to in article 106 and 107 of the Financial Regulation.

Data related to racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health, sex life may be processed for consultation purposes only if these data appear "spontaneously" in the curriculum vitae, which are included in tenders and contracts.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Information to data subjects is provided at the different stages of the procurement procedure in the following three documents:

- Specific privacy statement for processing of personal data related to procurement procedures,
- Data protection clauses contained in the invitation to tender,
- Data Protection Clause in the General Conditions of the contracts (Art.6)

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

As mentioned in the specific privacy statement, data subjects are granted rights of access and rectification upon a request to the controller.

However, material 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 change 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 after the opening of tenders foreseen in Article 160 of the Rules of Application of the Financial Regulation/ RAP (Article 112 of the Financial Regulation) aiming to ensure transparency and equality of treatment can be considered as justified in light of Article 20(1) of the Regulation 45/2001.

#### 9/ AUTOMATED / MANUAL PROCESSING OPERATION

Processing of replies to invitations to tender involves the recording and processing of personal data (such as those listed above in section 6).

Companies which reply to invitations to tenders launched by the Agency provide personal information as part of their tender. The tenders are sent to the concerned unit(s) of the Agency. The information is provided in paper form.

For low-value contracts (below EUR 60.000 see Article 134 of the Rules of Application of the Financial Regulation), the procurement procedure refers to the Agency's Manual of Procedures (Part 4 - Section 4.2.3.2) and to the administrative expenditure templates used by the Agency.

For contracts other than 'low-value' (above EUR 60.000), the standard procedure, in line with the Financial Regulation and the respective models of DG BUDGET will be adapted to the particularities of the Agency (model direct service contract, appointment of opening and evaluation committee, declaration of absence of conflict of interest, evaluation report, award decision etc.) as the Agency has not yet used procurement for contracts which are not of low value.

All templates are based on the respective models of DG BUDGET (invitation to tender, evaluation report, award decision (contract), purchase order and general conditions). Any procurement relating matters implies the involvement of Agency's Unit T1 in charge of financial matters and its Legal Team.

As far as management and follow-up of framework contracts are concerned, the Agency relies on the procurement procedures managed by the services of the European Commission, like e.g. DG DIGIT, PMO or OIB.

#### 10/ STORAGE MEDIA OF DATA

All original contracts are kept by the administrative financial coordinator (in a lockable cupboard). Electronic versions of the contracts are registered in ARES (electronic document management) and secured by an ECAS password (European Commission Authentication System).

#### 11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

Legal basis:

- Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes
- Decision C(2007)5282 of 5/11/2007 delegating powers to the TEN-T EA with a view to the performance of tasks linked to implementation of the community programme for grants in the field of the trans-European transport network, comprising in particular implementation of appropriations entered in the Community budget as amended by Decision C(2008)5538 of 7/10/2008

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 and repealing Council Regulation (EC, Euratom) No 1605/2002 OJ L 298, 26.10.2012, p. 1–96:see

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:298:0001:0096:EN:PDF>

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 OJ L 362, 31.12.2012, p. 1–111: see

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:362:FULL:EN:PDF>

Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, OJ L 297, 22.9.2004: see

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:297:0006:0016:EN:PDF> as amended by Commission Regulation (EC) No 651/2008 of 9 July 2008, OJ L 181, 10.07.2008: see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:181:0015:0022:EN:PDF>

Grounds of lawfulness

Regulation (EC) No 45/2001, Article 5(a): Processing of personal data within public procurement and related selection procedures at the TEN-TEA can clearly be considered as being necessary for the performance of a public interest task, namely the management and functioning of this institution within the meaning of Article 5(a) of Regulation 45/2001 (read together with its recital 27). In particular, the processing is necessary to ensure the selection of the best tenders in a fair and transparent way.

Regulation (EC) No 45/2001, Article 5(c): the processing is necessary for the performance of a contract to which the data subject is party.

The processing of personal data contained in the extracts from judicial records, other certificates to this respect or the declaration of honor is explicitly authorised in Article 106(1) of the Financial Regulation. Thus, the condition for processing of data relating to (suspected) offences and criminal convictions set out in Article 10(5) of Regulation 45/2001 is met.

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

- Staff members of the Agency's unit in charge of the call for tenders.
- Members of the financial cell, the financial coordinator, the Legal Team, the Head of Unit concerned, the Head of Unit Resources & the Director
- Members of the Opening and Evaluation Committee (if any)
- Potentially: outside experts participating in evaluation of tenders in the TEN-TEA's procurement

procedures.

-All contracts concluded before 31 December 2012 of a value between €25.000 and €130.000, are published on the Agency's website at:

[http://tentea.ec.europa.eu/en/about\\_us/mission\\_introduction/key\\_documents.htm](http://tentea.ec.europa.eu/en/about_us/mission_introduction/key_documents.htm)

As of 1 January 2013 all contracts of a value higher than €15.000 are automatically published in the Financial Transparency System (FTS) before 30 June N+1, which is the central website for publication of beneficiaries and contractors for the Commission and Executive Agencies.

- Depending on the contract value, contracts and names of contractors may also be published on the website of the Agency or in the Official Journal of the EU in line with the Financial Regulation.

-The European Court of Justice, the General Court or a national judge as well as the lawyers and the agents of the parties in case of a legal procedure as well as the Legal Service, DG MOVE, OLAF, the internal auditor, the IAS, the European Court of Auditors, the European Ombudsman and the European Data Protection Supervisor.

The data may be disclosed on a need to know basis to the Head of the Legal Team, Legal Adviser, Internal Auditor, IAS, European Court of Auditors, Legal Service, Civil Service Tribunal (other EU Courts), EDPS, OLAF.

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

Retention periods are set out in the Commission's Common Retention List. Files relating to tender procedures including personal data are to be retained for a period of at least 10 years following the signature of the contract.

However, tenders from unsuccessful tenderers have to be kept for 5 years after the award decision.

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

15 working days for all data.

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

#### 14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

Upon request, the Agency might transfer some anonymous data for future statistical purpose to DG MOVE or other Commission Services (PMO, DIGIT etc).

#### 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 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

PLACE AND DATE: BRUSSELS, 18/10/2013

DATA PROTECTION OFFICER: CAROLINE MAION

INSTITUTION OR BODY: TRANS-EUROPEAN TRANSPORT NETWORK EXECUTIVE AGENCY