

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 27/07/2012

CASE NUMBER: 2012-0647

INSTITUTION: EASA

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

SURNAME: VANHEEL FIRST NAME: LUC

E-MAIL: LUC.VANHEEL@EASA.EUROPA.EU

FUNCTION: FINANCE AND BUSINESS SERVICES DIRECTOR

ADMINISTRATIVE ADDRESS: OTTOPLATZ, 1, D-50679 KOELN, GERMANY

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

Finance and Business Services Department of EASA / EASA Procurement & Contracts Section.
For low value public procurement procedures data is collected and processed at operational level.

3/ NAME OF THE PROCESSING

EASA Procurement & Contracts procedure

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The data is collected and processed with the purpose of evaluating the eligibility of economic operators and other candidates (natural and legal persons) to participate in public procurement procedures and to be awarded procurement contracts in accordance with exclusion and selection criteria and award criteria as defined in the Financial Regulation.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are natural persons participating in the public procurement procedures: tenderers/candidates, representatives and staff of tenderers/candidates, contractors, subcontractors, consortium members, project managers, authorising officers, other members of the Agency staff (Procurement and Contracts Section, financial verifiers/accountants, members of the Opening Board/Evaluation Committee, hierarchical superiors).

The following **categories of data subjects** may be processed within the public procurement:

- Data relating to tenderers (legal persons or individual economic operators);
- Data relating to the staff members of tenderers participating in the procurement procedure;
- Data relating to the tenderers' subcontractors and consortium members;
- Data relating to staff members of the Agency;
- Data relating to external experts involved in a procedure/contract.

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 special categories of data processing apply:

Data relating to suspected offences, criminal convictions or security measures (e.g. police certificates) of successful tenderers/candidates, as well as data being used to evaluate personal aspects of the data subject such as ability, efficiency, and conduct.

Other categories of personal data include the processing of personal data in the form of personal identification numbers, the data subject's private sphere (e.g. CV), pay, allowances and bank accounts, recruitment and contracts, the data subject's career, missions and journeys, social security and pensions, telephone numbers and communications. The absence of conflict of interest in what concerns the performance and implementation of the contract; complete impartiality and acting in good faith in what concerns the performance and outcome of the contract.

The following list indicates the sort of data typically relevant to procurement processes:

Data relating to tenderers (legal persons or individual economic operators):

- identification and contact details (official name, official legal form, abbreviation, name and first name of individual economic operators, place of registration, date of registration, VAT registration number, address, phone number, fax number, e-mail address, identity card number, date of birth, country of birth);
- proof of an independent worker status (if applicable) and extract from the trade register, bank certificate stating his/her financial situation; bank account number and

bank's name;

- 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 (for individual economic operators) of successful candidates;
- extract from the register of bankruptcy and reorganisation procedures or extract from the register of debt regulations or a certificate given by a creditor, as applicable;
- documents attesting professional standing (curriculum vitae, copies of diplomas, certificates, references regarding professional activities);
- list of similar services provided by the tenderer and information on contracts considered similar in scope;
- information as to absence of conflict of interests (see declaration attached).

Data relating to the staff members of tenderers participating in the procurement procedure:

- identification and contact details (name -first name, family name-, function, e-mail address, business telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, internet address);
- other data contained in the CVs (expertise, technical skills, educational background, languages, professional experience including details on current and past employment); case by case a picture might be attached to the CV (although not requested);
- extracts from judicial records and for high-value contracts before the signature of the contract (only for successful tenderers/candidates) ;
- declaration of honour of the authorised representative that they are not in one of the exclusion situations referred in Articles 93 and 94 of the Financial Regulation.

Data relating to the tenderers' subcontractors and consortium members:

- identification and contact details (official name, official legal form, address, VAT registration form);
- exceptionally (i.e. in case payments are to be made on consortium members' account): financial identification data (account name, address, city, country; bank name, branch address, account number, IBAN, name under which the account is opened and the telephone number, email address and fax number of the person concerned);
- data contained in the Declaration on exclusion criteria and absence of conflict of interest;
- data contained in the documents proving the economic/financial and technical/professional capacity of the subcontractor;
- data contained in the Tender Submission Form, guaranteeing the eligibility of the sub-contractor(s) for the parts of the services for which the intention to sub-contract in the Technical Proposal is stated.

Data relating to staff members of the Agency:

- declaration of absence of conflict of interest and impartiality (to be signed by Opening Board and Evaluation Committee members)

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Data subjects are provided with the Data Protection Notice on Procurement Procedures within the tendering documents. Reference is further made to

Section 1.13 of the tender specifications template which reads as follows:

“Confidentiality & public access to documents

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

- 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;
- Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.”

and

Article I.8 of the standard contract currently used in EASA (attached).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

The EASA Implementing Rules on Data Protection lay down in Article 9 to Article 20 the rules according to which Data Subjects can exercise their rights and implements the procedure obtaining access to the Register of processing operations kept by the DPO.

The tenderers, candidates and contractors can send correspondence to EASA to indicate the need for any change relating to their personal data. If necessary, they may also request in writing, with a copy of an identification card, a copy of their personal data being processed by EASA.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing of personal data is made by way of manual processing operation: The documents are intended to form part of a filing system.

10/ STORAGE MEDIA OF DATA

Per procedure and/or per contract number electronic storage (with access restricted to EASA's Procurement and Contracts Section) as well as hard-copies (locked in archive room or section members' cupboards), not encrypted or anonymous.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The processing of personal data related to procurement procedures falls within the scope of Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.

The legal basis of the processing of personal data within procurement procedures at EASA can be found in Articles 93 and 94 of the Financial Regulation (Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJL 248, 16.09.2002, p.1), the “general Financial Regulation”) and Articles 134, 135, 136 and 137 of its implementing rules (Commission Regulation (EC, Euratom) n° 2343/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJL 357, 31.12.2002), the “Implementing Rules”.), to which the Financial Regulation of the European Aviation Safety Agency (EASA MB/9/03 – decision) refers in its Title V, Art 74.

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

(1.)

- Specific or selected staff members of the Agency (procurement team, evaluators, contract managers, auditors, finance, initiators etc.) and the legal department (if appropriate)
- exceptionally external experts involved in a procedure/contract (e.g. during an evaluation or for contract management)

(2.)

- European Court of Auditors
- Commission Internal Audit Service
- European Court of Justice
- Central Exclusion Database
- Office européen de Lutte Anti-Fraude (OLAF)
- European Ombudsman
- European Data Protection Supervisor (EDPS)

(3.) Access to limited sort of data:

- Tenderers (legal persons or individual economic operators)
- Staff members of tenderers participating in the procurement procedure (potentially)
- Tenderers' subcontractors and consortium members (potentially)
- The public (including but not limited to European citizens)

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

In general - according to Art. 49 IR- supporting documents must be kept for five years following the discharge for the budget year in question (i.e. approx. seven years).

However, the following retention period applies for documents relating to tender procedures or to the management of contracts:

Successful tenderers: documents relating to tender procedures or to contract management are archived for at least ten years following signature of the contract or following the last payment by the Agency, respectively.

Unsuccessful tenderers or candidates: tenders and requests to participate are kept only for five years following signature of the contract. For procurement records the retention period is at least 7 years after the completion of the contract. For procurement records the retention period is 7 years after the completion of the contract.

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

The EASA Implementing Rules concerning Data Protection provide for the details and procedures on the data subjects' right to have data blocked and or erased. Normally, the closing date or deadline to submit the application is the time limit.

(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

The data controller envisages transferring personal data within or between EU institutions or bodies entitled to receive such data by law following a request from the recipient. He verifies the competence of the recipient and makes a provisional evaluation of the need for the transfer of the data and the recipient is informed of his obligations in respect of this transfer

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

AS FORESEEN IN:

ġ Article 27.2.(a) X

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

ġ Article 27.2.(b)

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

ġ Article 27.2.(c) X

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

ġ Article 27.2.(d)

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

ġ Other (general concept in Article 27.1)

17/ COMMENTS

We would also like to inform you that the processing operation has already been established i.e. it has already been implemented since the Agency became operational.

In attachment please find:

in Annex 1: Data protection information notice

in Annex 2: Declaration of absence of conflict of interest and confidentiality

in Annex 3: Statement of absence of conflict of interest

in Annex 4: Service contract template
in Annex 5: Declaration of objectivity and confidentiality
in Annex 6: Declaration of impartiality and confidentiality
in Annex 7: Code of Conduct for the staff of EASA