

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 13/09/2013

CASE NUMBER: 2013-1017

INSTITUTION: EASO

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Lieven Callewaert
EASO
MTC Block A
Winemaker's Wharf
Valletta Harbour
Malta MRS 1917

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

General Affairs and Administration Unit

3/ NAME OF THE PROCESSING

Procurement procedure and contract management

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing of personal data is to enable the procurement of services and supplies needed for the operation of the Agency and for the management of contracts.

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects include representatives or staff of tenderers and contractors and subcontractors whose personal data are included in the tender and/or contract.

Additionally, there is processing of personal data of Agency staff members who are members of the evaluation committee and opening board, and authorising officers.

Finally, EASO contractors may in the performance of the contract handle personal data of third parties.

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 and/or subcontractors, which may include:

- Name (title, first name, surname) and function;
- Contact details (company and department, postal address, country of residence, business telephone number, mobile telephone number, fax number, e-mail address, internet address);
- Bank account details (account number, name of the account holder, name and address of the bank, IBAN and BIC codes);
- Passport/ID number (natural persons) or company registration number (legal persons), VAT number and/or membership in a trade or professional organisation;
- Information for the evaluation of selection criteria: financial and economic capacity;
- Information for the evaluation of selection criteria or eligibility criteria: expertise, technical skills and languages, educational background, professional experience including details on current and past employment;
- Certificates for social security contributions and taxes paid, extracts from judicial records;
- Other personal data contained in CVs (gender, place and date of birth, nationality);
- A declaration on their honour that they are not in one of the exclusion situations referred to in Articles 106 and 107 of the General Financial Regulation;
- timesheets of interims for invoicing purposes;

Additional data on subcontractors:

- 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 Model Letter of Intent for Subcontractor/s, stating his/her unambiguous undertaking to collaborate with the tenderer if the latter wins the contract.

Concerning EASO staff members: personal data contained in the declaration of absence of conflict of interest (Name, signature).

Concerning third parties: personal data regarding selection of candidates for interim positions, for example CVs, are processed by a contractor in the implementation of EASO contracts for interim services.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

EASO's specific privacy statement informs potential tenderers about the processing of their personal data. This privacy statement is posted on EASO's website. Data protection clauses have been included both in the invitation to tender templates and in the model contracts.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

The data subjects are informed of their rights via the specific privacy statement, to be made available on the EASO website, the data protection notice in the invitation to tender, and the relevant contract clause. Data subjects have the right to access, update or correct their personal data by submitting a request in writing to the data controller, as stated in the privacy statement.

The right to rectify the information already provided can only apply to the factual data processed within the concerned procurement procedure. This right can only be exercised up to the closing date for submission of tenders. However, inaccurate identification data, such as address, phone number, etc., may be rectified at any time during and after the procurement procedure.

As stated in the privacy statement, the provision of personal data in the context of procurement procedures is in principle not compulsory, however failure to provide certain data may result in the exclusion from the evaluation and award procedure.

Furthermore a request for deletion of personal data may lead to an alteration of the terms of the tender and lead to exclusion as stated in Article 160 of the Rules of Application of the Financial Regulation, applicable to the Agency via Article 74 of the EASO Financial Regulation.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing of personal data related to procurement procedure and contract management is mostly manual, with some automation in regard to the storage of electronic files.

All tender documents are sent to the Agency in paper format, and sometimes also in electronic format on a CD-ROM or USB key (normal procedure) or by e-mail (low value contracts).

Tenderers are requested to provide the documents in 2-3 copies, which are handed over to the evaluation committee. EASO staff evaluating tenders is instructed to apply the greatest care when processing the personal data in the tender dossiers. This includes applying the following principles:

- The personal data are used solely for the purpose for which they were provided, namely the evaluation of the tender. The files containing personal data are stored safely in a locked cupboard or in electronic files with controlled access.
- The number of staff having access rights to the personal data is kept to a minimum.
- Once the evaluation committee has finished evaluating the tenders, all tender documents including copies are archived by the procurement team.

Regarding contracts, originals are paper-based and filed by Procurement staff. Contract files are archived centrally in Procurement's archives room.

10/ STORAGE MEDIA OF DATA

The paper versions of tender documents and contracts are stored in the Procurement archives room. Electronic files are stored in Procurement's folder on the shared drive accessible only to the Procurement team.

Contract managers may keep an electronic copy of the contract for the purpose of monitoring the implementation of the contract, and in this case it will be on the shared drive in a folder with restricted access. For tenderers who become contractors, their data (address, bank account, VAT number) is also stored in ABAC (electronic format).

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

EASO Management Board Decision No. 2 of 26.11.2010, Financial Regulation of the European Asylum Support Office.

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, ("Financial Regulation") in particular Articles 110, 131-133 and 204;

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 ("Rules of Application") in particular Articles 146-148, 201-202 and 287

The lawfulness of the processing of personal data in the context of procurement procedure and contract management is based on Article 5(a) of the Regulation 45/2001.

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

Regarding procurement procedure and contract management, the following are data recipients:

- Procurement staff participating in procurement procedures
- Staff of the evaluation committee
- External evaluator, if applicable
- Legal advisor, if required
- AOD, authorising officer under delegation
- In the context of audits or investigations, European Court of Auditors (ECA), OLAF, Internal Audit System (IAS), Financial Irregularities Panel.
- European Commission and EU agencies, in the context of the implementation of the European Commission's Decision of 16 December 2008 on the Early Warning System for the use of the authorising officers of the Commission and the executive agencies (2008/969/EC)
- Members of the public, in accordance with EASO's obligation to publish information on the outcome of the procurement procedure (Article 74 of the EASO Financial Regulation and Article Article 103 of the General Financial Regulation).

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

Upon the finalisation of the procurement procedure:

Successful tenders are retained up to 7 years by Procurement from the date of signature of the corresponding contract; and

Unsuccessful tenders are retained for 5 years by Procurement following their finalisation.

With the exception of extracts from judicial records, which are kept for 2 years only.

Contracts:

Contract files are retained for 10 years by Procurement after the last payment order and the expiry of the contract. This is in line with the Common Commission-Level Retention List for European Commission Files - First Revision SEC (2012)713

At the end of their retention period files shall be destroyed and a certificate of destruction shall be kept.

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

Data subjects can exercise their rights by contacting the data controller. Justified requests for blocking and erasure shall be handled without delay. However, a request for deletion may lead to an alteration in terms of the tender and lead to exclusion as stated in Article 160 of the Rules of Application of the Financial Regulation via Article 74 of the EASO Financial Regulation.

(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:

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

17/ COMMENTS

PLACE AND DATE: MALTA, 29 AUGUST 2013

DATA PROTECTION OFFICER: PAULA MELLO MCCLURE

INSTITUTION OR BODY: EASO