

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 16/06/2015

CASE NUMBER: 2015-0516

INSTITUTION: EIT

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

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Jari AHOLA,
Head of Unit
Services and Finance Unit
EUROPEAN INSTITUTE OF INNOVATION AND TECHNOLOGY (EIT)
1/E Neumann Janos Street, Infopark, 1117 Budapest, Hungary

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

All the Units of the EIT (Services and Finance Unit, Partnerships Management Unit, Policy and Communications Unit, Directorate) process personal data within the frame of procurement procedures.

The procurement procedures are coordinated by the Procurement team of the Services and Finance Unit.

3/ NAME OF THE PROCESSING

Public procurement procedures at the European Institute of Innovation and Technology

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The processing concerns the management of procurement procedures the implementation of the contracts by the EIT. In particular, the calls for tenders aim at

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

- purchasing services/supplies in accordance with in the EIT Annual Work Programme (financing decision) - under the operational budget;
- purchasing services/supplies in order to meet the administrative needs and tasks of the EIT - under the administrative budget.

The purpose of the processing of personal data is 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:

The EIT launches the following types of procurement procedures:

- Open calls for tenders for the conclusion of direct contracts or framework contracts,
- Low value negotiated procedures,
- Exceptional negotiated procedures,
- Requests for services/order forms under EIT framework contracts,
- Requests for services / order forms under inter-institutional framework contracts (i.e. framework contracts of the European Commission or of another EU agency/body): From the data protection point of view if the EIT awards specific contracts/order forms under an inter-institutional framework contract, the personal data of the contractors are already processed by the leading institution and are lawfully transferred to EIT when a copy of the framework contract is given to the Agency.
In addition, the specific offers of framework contractors/tenderers (hereafter referred to as 'tenderers') that the EIT receives contain personal data. Therefore, in case of the use of inter-institutional framework contracts, it is important to state that EIT is responsible for only those data processing operations which are carried out by it for the management of the specific contracts/order forms, and not for those carried out by the leading institution for the management of the framework contract.
- Restricted procedures,
- Call for expression of interest / Vendor's list.

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.

In particular, the tenders including the personal 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 include personal data are used for the preparation, conclusion and implementation of the resulting contracts.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Data subjects are all natural persons whose personal data may be included in the tenders and in the contracts, namely:

- the staff of the tenderers / consortium members / subcontractors: e.g. legal representative, contact

persons and other staff members

- the tenderers / consortium members / subcontractors themselves, in case of natural persons,
- the EIT staff responsible for the implementation of the contract.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

(including, if applicable, special categories of data (Article 10) and/or origin of data)

6.1 Personal data

Within the frame of calls for tenders, the following personal data is processed by the EIT:

- name,
- position/function,
- office address, telephone, fax, e-mail,
- 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. The photo of the tenderer's staff is not required, however, it may be included in the CV of the tenderer's staff.

Pre-set tables ('selection criteria checklist table') to be filled in with professional data may be also requested by the EIT.

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 remark of the data controller:

- 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 if the tenderer is a natural person), private addresses, private telephone numbers or bank account numbers etc. are not processed.

6.2 Special categories of data

- Special 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 contract, since it is not pertinent.

- 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

The EIT ensures that the data subjects' personal data is processed as required by Article 11 of Regulation 45/2001.

Within the frame of public procurement procedures, the following information on the processing of personal data according to Regulation (EC) 45/2001 is made available to potential tenderers:

- **Invitation letter** including the standard data protection clause (Annex I)
- **Draft service contract** including the standard data protection and the confidentiality clauses (Annex I)
- **Privacy statement for procurement procedures** (Annex II) as published on the Procurement pages of the EIT website: <http://eit.europa.eu/collaborate/procurement> . The privacy statement explains the purpose of processing, the identity of the data controller, the data categories, the rights of data subjects and the procedure to be followed to exercise them, the data recipients, the legal basis and the grounds for lawfulness and the applicable data retention period.
- **In the Legal entity and Financial Identification forms:** a specific privacy statement³ is included by DG Budget in these forms which shall be filled in only by the main tenderer.

Additionally, in some procurement procedures (e.g. in the area of the provision of IT services or medical services), specific conditions concerning data protection may be included in the contract.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

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;
- 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 the EIT.

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 EIT (EIT-DPO@eit.europa.eu) and to the European Data Protection Supervisor

³ http://ec.europa.eu/budget/library/execution/privacy_statement_en.pdf

(EDPS@edps.europa.eu) for matters relating to the processing of their personal data.

The information above on the rights of data subjects is contained in the privacy statement in the area of public procurement available on the EIT website at <http://eit.europa.eu/collaborate/procurement>

9/ AUTOMATED / MANUAL PROCESSING OPERATION

The processing operations are carried out mainly manually (only partly in an automated way).

Tenders are requested to fill in manually the annexes of the tender specifications (i.e. Tender submission form, Legal entity form, Financial identification form, Declaration of Honour, Financial offer form). These forms shall be signed and dated by the tenderers/consortium partners/subcontractors.

Submission of offers:

A) Paper submission: The tenders are received in paper format in sealed envelopes by using a system based on one outer envelope and three inner envelopes. Tenderers are asked to provide the pdf and the scanned versions 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).

B) Electronic submission: in cases of low value procurement or requests for services /order forms, electronic submission of the offers is also allowed. In such cases, the confidentiality and the integrity of the offer including the personal data is ensured by using a dedicated functional mailbox with very limited access.

Copies of the tenders are either distributed to the evaluators in paper format or electronically.

After the contract is awarded, the data of the winning bid is processed manually for purposes of contract signature and implementation.

10/ STORAGE MEDIA OF DATA

In case of paper submission of the offers, during the management of the procurement procedure, the original paper tenders (including CD/DVD/USB sticks) are stored in a locked cupboard of EIT Procurement (with limited access).

In case of electronic submission of the offers, the offers are stored in the dedicated functional mailbox (with limited access).

During the implementation of the contract, the original signed contracts are stored in paper version in the locked cupboards of EIT Procurement. The electronic version of the signed contracts is uploaded on the G drive /Sharepoint.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

1) General legal basis:

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)⁴, in particular Title V thereof

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)⁵

2) Legal basis specific for EIT:

Decision of the Governing Board of the European Institute of Innovation and Technology of 27 December 2013 on adopting the financial regulation of the EIT (EIT Financial Regulation)⁶, in particular Articles 85 and 86 thereof

EIT Annual work programmes (financing decisions), as adopted by the EIT Governing Board

EIT Decision 22/2010 of 4 June 2010 on implementing rules of the document management process and procedure and the European Institute of Innovation and Technology (00041.EIT.2010/I/Dir/CN/am/rh)

Grounds for lawfulness

Data processing is considered lawful because it meets the conditions described in Article 5(a) of Regulation 45/2001, and 5(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

12.1 EU institutions and bodies:

- Within the EIT:

Within the responsible Unit, data is disclosed to the relevant staff members responsible for the operational tasks (e.g. Project/Policy Officer/IT officer/Finance Officer, Assistant, Secretary and Head of Unit).

Outside the Unit data is disclosed to the relevant staff members of the Services and Finance Unit

⁴ Official Journal L 298, 26.10.2012., p. 1

⁵ Official Journal L 362, 31.12.2012., p. 1

⁶ <http://eit.europa.eu/interact/bookshelf/eit-financial-regulation>

(EIT Procurement, EIT Finance, Legal advisor), Authorising Officer, Internal Auditor (IAC).

- Within the Commission and other EU institutions and bodies:

For evaluation purposes:

Data may be disclosed to the Commission or other EU agency staff involved in the opening ceremony and the evaluation of offers.

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/court cases:

Data may be disclosed to the European Ombudsman, the European Data Protection Supervisor, 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/court case.

For the purpose of translating the tenders including CVs:

Data may be disclosed to the Translation Centre.

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

Exceptionally and if necessary, tenders and/or information concerning the contract implementation may be transferred to external lawyers (advocates), IT contractors and external experts subject to Directive (EC) 95/46 for specific and limited purposes only.

In these cases a written contract (following the model of the Commission including a specific article on data protection) is signed between the EIT and the contractor in order to ensure that that Article 23 of the Regulation is respected by the data processor.

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

As a general rules, this is not applicable, as the EIT does not transfer any data to entities established in third countries.

Nevertheless, exceptionally and if necessary, tenders and/or information concerning the contract implementation may be transferred to external lawyers (advocates), IT contractors and external experts not subject to Directive (EC) 95/46 for specific and limited purposes only.

In these cases a written contract (following the model of the Commission including a specific article on data protection) is signed between the EIT and the contractor in order to ensure that that Article 23 of the Regulation is respected by the data processor.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The EIT applies the retention periods laid down in the Commission's Vade-mecum for procurement and in EIT Decision 22/2010.

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 EIT, 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 EIT for *5 years* following the signature of the contract. The copies of the unsuccessful tenders will not be retained in EIT 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/EIT/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)

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

Since the processing operations have already been established, the present notification concerns an ex-post prior check.

PLACE AND DATE: BUDAPEST, HUNGARY, 15/06/2015

DATA PROTECTION OFFICER: BEÁTA GY RI-HARTWIG

INSTITUTION OR BODY: EIT