

## Privacy statement in the area of public procurement

The personal data of tenderers and contractors, including consortium partners and subcontractors ('data subjects'), are processed by the European Institute of Innovation and Technology ('EIT' or 'Agency') in line with Regulation (EC) N° 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.

### What is personal data and what is a personal data processing operation?

**Personal data** shall mean any information relating to an identified or identifiable natural person ('data subject'). An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

**Personal data processing operations** can be any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultations, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

### Who is the 'data controller'?

The data controller is the Head of Unit of the Services and Finance Unit.

### What is the purpose of the processing?

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.

### Who are the 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.

### Which categories of personal data are collected?

- 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.

#### **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.

### Who are the data recipients?

#### **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 (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.

### **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.

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

As a general rule, 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.

### **What are your rights as being a data subject?**

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](mailto:EIT-DPO@eit.europa.eu)) and to the European Data Protection Supervisor ([EDPS@edps.europa.eu](mailto: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>.

## **Legal basis for data processing operation**

### **1) General legal basis:**

Regulation No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union (Financial Regulation)<sup>1</sup>, in particular Title V thereof

Regulation No 1268/2012 of 29 October 2012 on the Rules of Application of the Financial Regulation<sup>2</sup>

### **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<sup>3</sup>), 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)

<sup>1</sup> Official Journal L 298, 26.10.2012., p. 1

<sup>2</sup> Official Journal L 362, 31.12.2012., p. 1

<sup>3</sup> <http://eit.europa.eu/interact/bookshelf/eit-financial-regulation>

### Lawfulness of the processing operation, the consent of the data subject

In line with Article 5(a) of Regulation 45/2001, the processing is necessary for the performance of a task carried out in the public interest on the basis of the EU Treaties or other instruments adopted on the basis thereof and for the legitimate exercise of official authority vested in the EIT.

You are free to give your data on a voluntary basis. In line with Article 5(d), all tenderers and contractors, including consortium partners and subcontractors, submitting an offer and providing information including personal data to the EIT by any means (in particular by paper or electronic form) are deemed to have unambiguously given their consent for the subsequent processing operations in application of Article 5(d) of Regulation 45/2001.

### How long do we keep your 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.