



## European Aviation Safety Agency

**Frank Manuhutu** • Chief Legal Adviser • Rulemaking Directorate

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Cologne, 04. FEB. 2013  
SSCH/oco/R(7) 2013(D)50560

Mr. Anders Pedersen  
OpenTED

**Sent by e-mail only:**  
[ask+request-282-6ff1f1bd@asktheeu.org](mailto:ask+request-282-6ff1f1bd@asktheeu.org)

**Subject:** Your request on access to documents  
**Reference:** Your e-mail dated 6 December 2012

Dear Mr Pedersen,

By e-mail of 6 December 2012 you have requested access to the contract including all annexes and project descriptions which the Agency has awarded to the company "Gepe Gebäudedienste Peterhoff GmbH, Otto-Brenner-Str. 21, 52353 Dueren" in the context of the procurement procedure "EASA.2012.OP.12 - Removal and caretaking services for the European Aviation Safety Agency".

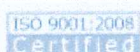
I regret to inform you that the set of documents you seek fall under the system of exceptions provided for in Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31 May 2001, p. 43) and that consequently, we cannot provide them to you.

The exception that applies to the documents you requested is the first indent of Article 4(2) of Regulation (EC) No 1049/2001. Under this provision access shall be refused to a document where the disclosure would undermine the protection of commercial interests of a natural or legal person including intellectual property, unless there is an overriding public interest in disclosure.

Participation in procurement procedures often requires that the applying operators disclose to the Agency a significant amount of confidential information about their undertakings such as on strategic development, company performance and detailed technical proposals in relation to the call for tenders.

The documents at issue contain business sensitive information such as detailed technical and financial proposals, contact details, banking information and their demonstrated capabilities to perform the services, which the Agency has gathered solely for the purpose of the tendering procedure and the resulting contract.

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The Agency is bound by professional secrecy to ensure the confidentiality of the documents it receives and is restricted in their use for the sole purpose of the evaluation of offers during the tendering phase and the execution of the contracts.

Consequently, disclosure of the awarded contract including all annexes and project descriptions would undermine the commercial interests of the undertaking involved in the procurement procedure.

Regarding a possible overriding public interest within the meaning of Article 4 of Regulation (EC) No 1049/2001 which would prevail over the requirement to protect the decision making process, you have not submitted any arguments suggesting the existence of such interest. For your information, a private interest does not constitute an overriding public interest. However, this does not exclude your right to demonstrate the existence of such an overriding public interest justifying the disclosure of the document at issue.

You are hereby notified that you have a right to request the Agency to reconsider its decision not to disclose the above mentioned documents by making a confirmatory application. In such case, you should send your justified confirmatory application in writing to the Executive Director of the Agency (Postfach 10 12 53, 50452 Cologne, Germany). Please note that you have 15 working days from receipt of this letter in which to make the confirmatory application. Any confirmatory application received beyond this deadline cannot be accepted.

Within 15 working days of receipt of your request the Executive Director will inform you regarding the outcome of this re-examination of your confirmatory application, either by granting you access to the document(s), or by confirming the refusal. In the latter case, he will also inform you of any further appeal routes you may take.

However, we are pleased to inform you that detailed information on the procedure EASA.2012.OP.12 (including the draft contract that formed the very basis for the signed version) is publicly available on the EASA website at the following hyperlink:  
<http://www.easa.europa.eu/procurement/closed-calls-for-tenders.php>

Further publicly available information on the award of the contract can be found following hyperlink: <http://ted.europa.eu/udl?uri=TED:NOTICE:385731-2012:TEXT:EN:HTML>

We trust that such links should provide you with the information you are seeking to obtain.

Yours sincerely,



F. MANUHUTU