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**By registered copy with
acknowledgement of receipt**

Advance copy by e-mail (without
attachments):
ask+request-5546-
f34b62af@asktheeu.org

Subject: Your application for access to documents

Ref.: GESTDEM 2018/2874

Dear Sir,

We refer to the request for access to documents which you made on 8 May 2018, and which was registered on 25 May 2018 under the above-mentioned reference.

Your application relates to the following document:

- Orientation document for negotiated procurement procedure DIGIT/A3/PN/2017/060 - ITSS T&M III ceiling increase of Framework contracts DI/07390, DI/07391 and DI/07392

1. COMMERCIAL INTERESTS

Article 4(2), first indent of Regulation (EC) No 1049/2001 provides that "*The institutions shall refuse access to a document where disclosure would undermine the protection of: — commercial interests of a natural or legal person, including intellectual property*".

The exception of non-disclosure, laid down in Article 4(2), first indent, for the protection of commercial interests also covers the protection of the Commission's own interests,

especially if the disclosure of (part of) the document would "*render more difficult the Commission's position in future negotiations for contracts of a similar kind*"¹.

The document to which you request access contains commercially sensitive information, and more especially information on the negotiation strategy that the Commission intended to follow during the negotiation for ITSS T&M III Ceiling increase (page 11 of the document). The disclosure of such strategy is susceptible to render more difficult the Commission's position in later negotiation for similar cases as the Commission's strategy will then be known by the market.

According to Article 4(2) in fine of this Regulation provides that the Commission shall refuse the access "unless there is an overriding public interest in disclosure".

The commercially sensitive information shall only be transferred to recipients if they establish the existence of a higher (overriding public interest) of having the data transferred to them. The applicant is not demonstrating that there is such overriding public interest justifying the disclosure of the Commission's strategy.

Therefore, we are disclosing the document requested expunged from the negotiation strategy put in place by the Commission (page 11).

You may reuse the document requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation No 1049/2001, to make a confirmatory application requesting the Commission to review this position.

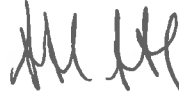
Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Brussels (Belgium)

or by email to: sg-acc-doc@ec.europa.eu.

¹ Judgment of the General Court of 27 February 2018 in case T-307/16, CEE Bankwatch Network v Commission, n° 111.

Yours sincerely,



Gertrud INGESTAD
Director General

Enclosure: Orientation document for negotiated procurement procedure
DIGIT/A3/PN/2017/060 - ITSS T&M III ceiling increase of
Framework contracts DI/07390, DI/07391 and DI/07392 (**without
commercially sensitive information**)

