



EUROPEAN COMMISSION
DIRECTORATE-GENERAL DEFENCE INDUSTRY AND SPACE

The Director-General

Brussels
DEFIS.01/ATS

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Subject: Your application for access to documents - Ref GestDem 2020/6253

Dear Tomas VANHESTE,

We refer to your request for access to documents, registered on 19 October 2020 under the above-mentioned reference number.

1. SCOPE OF YOUR REQUEST

Your application concerns:

Documents - including but not limited to emails, presentations, agendas and minutes - which contain the following information:

** All statements concerning how and why the Eurodrone fulfills the six award criteria.*

All documents related to the Eurodrone and the award criteria, among others documents by the applicants in which they explain why their submission fulfills the six criteria and documents in which the European Commission and possibly also the European Defence Agency give their judgement on the way the Eurodrone fulfills these six criteria.

As the evaluation of the award criteria has not yet started, we have identified only one document as falling within the scope of your request:

- **European Defence Industrial Development Programme Submission form and annexes (Final invitation) V4.2 (EDIDP-MALE RPAS-DA) – September 2020**

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

Having examined the document identified under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we regret to inform you that access to the document identified cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The detailed reasons are set out below.

2.1 Protection of the public interest as regards defence and military matters

Article 4(1)(a), second indent, of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where the disclosure would undermine the protection of the public interest as regards defence and military matters'.

As the Eurodrone project is related to defence and military matters, the refusal of access to the requested document is justified based on Article 4(1)(a), second indent, of Regulation (EC) No 1049/2001.

The exceptions in Articles 4(1)(a) of Regulation (EC) No 1049/2001 do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

2.2 Protection of commercial interests of a natural or legal person

Article 4(2), first indent, of Regulation (EC) No 1049/2001 provides that '[t]he 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, [...] unless there is an overriding public interest in disclosure'.

As recognised by the case law of the General Court, there is a general presumption of non-disclosure of a bid of a tenderer¹. That general presumption of non-disclosure of a bid applies, per analogy, also to grant applications. The reason for this analogy lies in the nature of the information contained in grant applications. Indeed, grant applications contain, as does a tender, information relating to methodologies, know-how, specific pricing or business strategies as to how the services will be provided or how the project will be implemented. The same reasoning applies to the information requested in your initial application.

Consequently, there is a real and non-hypothetical risk that public access to the abovementioned information would undermine the commercial interests of the legal person involved. Therefore, access to the document concerned must be denied, based on the exception laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001.

2.3 The impact on the institution's decision-making process

¹ Judgment of the General Court of 26 May 2016, *International Management Group v European Commission*, T-110/15, EU:T:2016:322, paragraph 30, Judgment of the General Court of 13 November 2015, *ClientEarth v European Commission*, Joined Cases T-424/14 and T-425/14, EU:T:2015:848, paragraph 65.

As stated in article 4(3), first subparagraph, of Regulation (EC) No 1049/2001, “access to documents, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process <...>”.

As the decision regarding the Eurodrone proposal has not yet been taken, the disclosure of the requested document would seriously undermine the decision-making process of the Commission. In addition, the Commission does not see any overriding public interest in disclosing them.

3. PARTIAL ACCESS

As stated by the Court of Justice, where the document requested is covered by a general presumption of non-disclosure, such document does not fall within an obligation of disclosure, in full, or in part². Therefore, no partial access is granted for requested document.

Furthermore, no partial access is possible with regard to the document identified as its content, which falls under the scope of your initial application, is covered by the exceptions provided for in Article 4(1)(a), second indent and Article 4(2), first indent, of Regulation (EC) No 1049/2001.

4. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during to the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice.

We would therefore appreciate if you could confirm receipt of the present e-mail by replying to defis-access-documents@ec.europa.eu.

² Judgment of the Court of Justice of 28 June 2012, *European Commission v Éditions Odile Jacob*, C404/10 P, EU:C:2012:393, paragraph 133.

Yours sincerely,

(e-signed)

Timo PESONEN