



EUROPEAN COMMISSION
Neighbourhood and Enlargement Negotiations

The Director-General

Brussels, 27.10.2015

By registered letter with acknowledgment of receipt

Subject: Your application for access to documents – Ref GestDem No 2015/4928

Dear Mr Zinser,

Thank you for your email dated 15.09.2015, in which you requested access to documents under Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents. You requested us to provide you with tenders, signed contracts and delivered work with Coffey International Development Limited.

This request was registered on 16.09.2015 under the above mentioned reference number whereby part of your request was attributed to Directorate General for Neighbourhood and Enlargement Negotiations for reply. By our mail of 07.10.2015, we informed you that in accordance with Article 7 (3) of Regulation No 1049/2001, the time limit was extended with 15 working days and would expire on 28.10.2015.

In fact, a single contract by the European Commission with Coffey International Development Ltd. could be found that would correspond to the description given in your application: this is the specific contract ELARG.A2/18/2014 CRIS No 2014/354-277 Implementing Framework Contract n° PO/2012-3/A3/TEP – Lot 1 which was signed by the European Commission in Brussels on 12/12/2014 and for the contractor in London on 15/12/2014 respectively.

The following annexes are attached to the above-mentioned specific contract:

- Annex A1 – Statement of Contractor concerning right to delivered result;
- Annex A2 – Statement of creator / intermediary in delivery;
- Annex B – Terms of reference ELARG-A2/18/2014
- Annex C – Contractor's Specific Tender

¹ OJ L145, 31.05.2001, page 43.

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Having examined the above-mentioned contract and its annexes, I have come to the conclusion that access to annex C - Contractor's Specific Tender, must be fully refused. I regret to inform you that this part of the contract is covered by one of the exceptions provided for by Regulation (EC) No 1049/2001. It is apparent that disclosure of commercial information reflecting the specific know-how and proposed methods of Coffey International Development Limited contains commercially sensitive information. Consequently, disclosure of such information must be refused on the basis of Article 4 (2) first indent of Regulation 1049/2001 which stipulates 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". Therefore, annex C cannot be made available to you. Partial access to this document was examined and deemed impossible as the sensitive elements are integral to them.

To the extent that access is refused on the basis of Article 4 (2), first indent, of Regulation 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosure. For such an overriding public interest to exist, this interest, firstly, has to be public and, secondly, overriding, i.e. it must outweigh the interest provided by virtue of Article 4 (2), first indent, of Regulation 1049/2001. In your application you do not invoke any interest except your own interest which is of private nature. For these reasons you have not established arguments that would show the existence of an overriding public interest in disclosure at this point in time. Neither has the Commission identified such an overriding public interest, based on the elements in its possession. For all these reasons, I do not see in the case at hand a public interest within the meaning of Regulation 1049/2001, that is to say objective and general in nature and which is not indistinguishable from individual or private interests that would outweigh the public interest in protecting the commercial interests of Coffey International Development Limited.

As regards Annex A1 (Statement of Contractor concerning right to delivered result) and Annex A2 (Statement of creator / intermediary in delivery), they were not filled in by the parties. We are Please find attached the relevant templates of these two annexes under pages 4 and 5 of the specific contract.

As regards the specific contract, I have come to the conclusion that partial access can be granted, since it includes personal data. Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 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. When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Please find attached the specific contract expunged from the personal data. If you wish to receive these personal data, we invite you to provide us with arguments explaining your need for such information and demonstrating that there would be no adverse effects to the legitimate rights of

the person whose data should be disclosed. The exception set out in Article 4 (1) (b) of Regulation 1049/2001 is not subject to a public interest test.

Finally, with respect to Annex B (Terms of reference ELARG-A2/18/2014) of the specific contract, I have come to the conclusion that it can be fully disclosed. Please find attached Annex B.

You furthermore asked about the delivered work. This will be delivered in the final report expected from Coffey International Development Limited to the Commission, to be submitted in early 2016. Therefore, I regret to inform you that, currently, since the execution of the contract is still on-going, there is no document on the delivered work. As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. However, the final report covering the delivered work will be available with the publication of the final report in early 2016.

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 its 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-5
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

Christian Danielsson

Enclosures: 2