



Brussels, **05 JUL. 2018**  
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**By registered copy with  
acknowledgement of receipt**

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**Subject: Your application for access to documents**

Ref.: GESTDEM 2018/2875

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:

- Change requests documents Nos 7190-29 and 7190-82 under Framework contract No 7190 MEQ III
- Amendment 13 to FC 7190 - MEQ III

## **1 PERSONAL DATA**

The documents to which you have requested access contains personal data. The "Amendment 13 to FC 7190 - MEQ III" contains the name of the parties that are empowered to sign the agreement and the "Change requests documents Nos 7190-29 and 7190-82 under Framework contract No 7190 MEQ III" contain handwritten signatures.

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<sup>1</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>2</sup>.

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.

### **1.1 Amendment 13: Name of the person that is empowered to sign for Bechtle AG**

These personal data appear on pages 1 and 3 of the document.

We consider that, with the information available, the necessity of disclosing these 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. Therefore, we are disclosing the document requested expunged from these personal data.

### **1.2 Amendment 13: Name and other personal data of the Authorising Officer**

These personal data appear on pages 1 and 3 of the document.

Notwithstanding the considerations set out above, the Commission's current administrative practice is to grant access, in principle, to the names and functions of Commissioners and their cabinet members and staff in senior management positions.

DIGIT has therefore decided not to expunge the requested document from this particular set of personal data.

### **1.3 Change requests Nos 7190-29 and 7190-82: Handwritten signatures**

These personal data appear on page 2 of the two documents.

We consider that, with the information available, the necessity of disclosing these 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. Therefore, we are disclosing the document requested expunged from these personal data.

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<sup>1</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>2</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission / The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

## 2 COMMERCIAL INTERESTS

Article 4(2), first indent of the Regulation 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 requested document contains information about the specific price and the discount of the contractor.

It must, first of all, be recalled that the case-law has established that "*the price schedule, (...), were covered by a general principle according to which their disclosure would, in principle, undermine the protection of commercial interests*"<sup>3</sup>.

The contracting authorities must indeed protect the openness of public procurement through undistorted competition, and ensure that economic operators can freely communicate with them without having to fear that possibly damaging information, such as any business secrets, will be communicated to third parties<sup>4</sup>.

This is *a fortiori* the case when considering the nature of the information contained in the requested document, which consists of specific elements of pricing which are more detailed than the total price of the successful offer reflected in the award notice<sup>5</sup>.

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

The applicant does not refer to a public interest capable of outweighing the need to protect the contractor's and the Commission's commercial interests as set out above, and DIGIT has not been able to identify one.

Therefore, we are disclosing requested the document expunged from information related to specific prices (Change request No 7190-29, pages 1 to 4, and Change request No 7190-82, pages 1, 2 and 3).

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 accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

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<sup>3</sup> Judgment of the General Court of 21 September 2016 in case T-363/14, *Secolux v Commission*, paragraph 54.

<sup>4</sup> Judgments of the Court of Justice of 14 February 2008 in case C-450/06, *Varec*, paragraphs 33-55, and of the General Court of 29 January 2013 in joined cases T-339/10 and T-532/10, *Cosepuri v EFSA*, paragraphs 93-101.

<sup>5</sup> Judgment of the General Court of 21 September 2016 in case T-363/14, *Secolux v Commission*, paragraph 58.

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](mailto:sg-acc-doc@ec.europa.eu).

Yours sincerely,



Gertrud INGESTAD  
Director General

Enclosures: Change requests documents Nos 7190-29 and 7190-82 under Framework contract No 7190 MEQ III (**without personal data and commercially sensitive information**)

Change requests documents Nos 7190-29 and 7190-82 under Framework contract No 7190 MEQ III(**without personal data and commercially sensitive information**)