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acknowledgement of receipt**

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

Ref.: GESTDEM 2018/2876

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/R3/PN/2016/041 - ITIC SM Ceiling increase of Framework contract  
DI/07270

#### **1. PERSONAL DATA**

The document to which you have requested access contains personal data, in particular the names of the member of the teams that were in charge of the negotiations (last page).

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.

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. Therefore, we are disclosing the document requested expunged from these personal data.

## **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 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*"<sup>3</sup>.

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 ITIC SM Ceiling increase (pages 14 and 15 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

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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.

<sup>3</sup> Judgment of the General Court of 27 February 2018 in case T-307/16, CEE Bankwatch Network v Commission, n° 111.

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 (pages 14 and 15).

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.

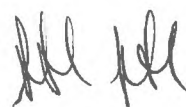
In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation No 1049/2001, to make a confirmatory application 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](mailto:sg-acc-doc@ec.europa.eu).

Yours sincerely,



Gertrud INGESTAD  
Director General

Enclosure:            Orientation document for negotiated procurement procedure  
DIGIT/R3/PN/2016/041 - ITIC SM Ceiling increase of Framework  
contract DI/07270 (**without personal data and commercially  
sensitive information**)

