



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

Director General

Brussels
FISMA.01.002/CW

By registered letter with acknowledgment of receipt

Kenneth Haar
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Advance copy by email : ask+request-7931-0130f87d@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2020/2525

Dear Mr Haar,

We refer to your e-mail dated 4 May 2020 in which you request access to documents, registered on 4 May 2020 under the abovementioned reference number.

You request access to:

(1) Any document sent by BlackRock to DG FISMA or the Commissioner and his cabinet concerning the tender of a contract on "Development of Tools and Mechanisms for the Integration of ESG Factors into the EU Banking Prudential Framework and into Banks' Business Strategies and Investment Policies".

(2) The internal rules that govern the award of a contract, such as the contract awarded to BlackRock entitled "Development of Tools and Mechanisms for the Integration of ESG Factors into the EU Banking Prudential Framework and into Banks' Business Strategies and Investment Policies", including procedures to assess whether conflicts of interest could be deemed to prevent DG FISMA from awarding the contract to a given bidder.

(3) Any assessment by DG FISMA of potential conflicts of interest of BlackRock written ahead awarding BlackRock the contract mentioned above.

I consider your request to cover documents held up to the date of signature of the contract, i.e. 2 March 2020.

The following documents fall within the scope of your application (1):

- *Open call for tender FISMA/2019/024/D – Tenders received via e-submission (confidential), 11 October 2019, Ares(2019)6337231*

- *FISMA/2019/024/D - Request for clarification - Abnormally low price, 16 December 2019, Ares(2020)376710*
- *2nd notification - Contract FISMA/2019/024/D1/OP/ST - 'Development of tools and mechanisms for the integration of environmental, social and governance (ESG) factors into the EU banking prudential framework and into banks', 2 March 2020, Ares(2020)1300776*

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application (1) cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

Disclosure of the documents requested would undermine the protection of the commercial interests of the companies that submitted offers, as putting this information in the public domain would affect their competitive position on the market. Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to this document.

The information to which you request access is one of the tenders received for the open procurement procedure FISMA/2019/024/D [which together are registered under the reference Ares(2020)6337231] and communication between the Commission and BlackRock on the financial offer of BlackRock. Disclosure of these documents would seriously undermine the commercial interests of the tenderer, in this case BlackRock.

The document *2nd notification - Contract FISMA/2019/024/D1/OP/ST - 'Development of tools and mechanisms for the integration of environmental, social and governance (ESG) factors into the EU banking prudential framework and into banks', 2 March 2020, Ares(2020)1300776* cannot be disclosed in accordance with the following provisions of Regulation 1049/2001:

- the exceptions to the right of access laid down in Article 4(1)(b) related to privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;
- the first indent of Article 4(2) which establishes 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', as the contract contains commercially sensitive information.

However the draft contract (which contains all the information other than that which cannot be disclosed in accordance with the above exceptions) can still be consulted at the following link: <https://etendering.ted.europa.eu/cft/cft-documents.html?cftId=5201>.

In examining your request, we considered the possibility of granting partial access to the requested documents. However, it turned out after examination of these documents and for the reasons cited above that the documents are covered in their entirety by the abovementioned exception so that the release of parts of the documents cannot be envisaged.

The following document falls within the scope of your application (2):

- *Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union, repealing Regulation (EU, Euratom) No 966/2012*

- *Extracts of the Vade-mecum on Public Procurement in the Commission, February 2016, updated January 2020*

Please see the following link to *Regulation (EU, Euratom) 2018/1046*:

<https://myintracomm.ec.europa.eu/budgweb/EN/leg/finrules/Documents/financial-regulation-2018-en.pdf>

You will also find in annex the relevant extracts of the Vade-mecum on public procurement where you can find specific information on the award of contracts (and more broadly on open procedures), on conflict of interests as well as references to articles of Regulation (EU, Euratom) 2018/1046 concerning those specific issues. The Vade-mecum is an internal document, and therefore the information that does not fall under your request is not disclosed.

Please note that the Vade-mecum must not be reproduced or disseminated for commercial purposes unless the Commission has first been consulted.

The Vade-mecum on public procurement procedures in the Commission of March 2008 (last update January 2020) is a document established by the Commission's Directorate-General for Budget. The aim is to provide Commission departments with advice and practical assistance in preparing and implementing these procedures within the context of direct implementation of the budget by the Commission.

Finally, it must be borne in mind that, although the Vade-mecum provides information and explanations that are in strict compliance with the rules and regulations in force (i.e. Regulation (EU, Euratom) 2018/1046), it cannot be relied on in law. It is these rules and regulations and any clarification resulting from Court judgments that take precedence.

The following document falls within the scope of your application (3):

- *TENDER N° FISMA/2019/024/D - MINUTES OF THE EVALUATION COMMITTEE, 7 February 2020, Ares(2020)787901*

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that document *TENDER N° FISMA/2019/024/D - MINUTES OF THE EVALUATION COMMITTEE, 7 February 2020, Ares(2020)787901* may be partially disclosed. Some parts of the document have been redacted as their disclosure is prevented by exceptions to the right of access laid down in Article 4(1)(b) of this regulation related to privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data, and Article 4(2) first indent related to commercial interests of a natural or legal person, including intellectual property.

Some redacted parts of the document contain the names of the members of the evaluation committee. Disclosure of these parts would undermine the protection of the integrity of the individuals, and the confidentiality of the decisional process.

Other redacted parts of the document contain commercially sensitive business information of the companies that submitted offers. This document contains the names of all tenders. Disclosure of this information would seriously undermine the commercial interests of the organisations/companies that were not selected for the tender. It could be detrimental for these organisations/companies to be mentioned for their unsuccessful participation to this tender.

In this document, you can find certain information related to the assessment of a potential risk of professional conflicting interest of BlackRock.

You may reuse public documents produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the document disclosed free of charge and 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 document. Please note that the Commission does not assume liability stemming from the reuse.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document.

We have examined whether there could be an overriding public interest in disclosure. However, your request does not contain elements that could justify full disclosure of these documents and no overriding public interest can be accepted.

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 Secretary-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 Brussels

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

Yours sincerely,

(e-signed)

John BERRIGAN

Contact:
EC-FISMA-CONTRACTS@ec.europa.eu

Enclosure: Extracts of the Vade-mecum on Public Procurement
Evaluation Report (redacted version)