



EUROPEAN COMMISSION
CONSUMERS, HEALTH, AGRICULTURE AND FOOD EXECUTIVE AGENCY

Health and Food Safety Unit

Luxembourg,
CHAFEA.B/DM

By registered letter with acknowledgment of receipt:
Aisha DOWN
Emerika Bluma 8
Sarajevo
Bosnia and Herzegovina

Advance copy by email:
ask+request-7377-125c6824@asktheeu.org

Subject: Your applications for access to documents

Ref.: Ares(2019)6453044, Ares(2019)6453124, Ares(2019)7003834 and
Ares(2019)7027118

Dear Ms Down,

We refer to your emails in which you made several requests for access to documents.

You requested access to:

- *two contracts for Everis in 2015 for a track and trace system, one for 800,000 Euros and one for 549,190.6 Euros. (Budget commitment SI2.734633.2 and SI2.734633.1). The request for documents relates to both contracts:*
- *this contract, all due diligence that was done on the contracted party before the contract was finalized, and the details of the team members who worked on this contract;*
- *the tender through which Everis was contracted to consult on this traceability system for tobacco products, the contract between CHAFEA and Everis on this commitment (SI2.734633.2), and the team at Everis which did the work for this contract;*
- *The tender through which CHAFEA contracted Everis to consult for the EU's track and trace system, 2015 71 05 CHAFEA/2015/HEALTH/40, (UNDER FWC DI/07171 ABCIII LOT2) TOBACCO TRACKING AND TRACING;*
- *All submissions received from all parties for this tender;*
- *All submissions received by CHAFEA on the subject of this tender and the subsequent contract from third-party stakeholders;*

- *All documents and correspondence - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations - related to meetings between CHAFEA, other bodies of the Commission, the Secretariat General, and third parties on the subject of this tender.*

Your applications concern the following documents:

- 1 - Initial Request form, 29/04/2016;
- 2 - Technical Specifications attached to the Request for Offer, 29/04/2016, Ares(2016)2051274;
- 3 - Annex B – Contractor's Financial Offer and Work Breakdown Structure, 29/04/2016, Ares(2016)2051274;
- 4 - Declaration of Honour with respect to the exclusion criteria and absence of Conflict of Interest, 29/04/2016, Ares(2016)2051274;
- 5 - Annex D, Declaration of Confidentiality, 29/04/2016, Ares(2016)2051274;
- 6 – Clarifications related to the request Chafea/2015/health/40, 12/05/2016;
- 7 – Proposal form, 20/05/2016;
- 8 - Supplier Additional Information form, 20/05/2016;
- 9 - Formal Offer form, 10/06/2016, Ares(2016)2712355;
- 10 – Formal Offer under Framework Contract DI/07171 Lot 2, 10/06/2016, Ares(2016)2712355;
- 11 – Annexes to the Formal Offer, 10/06/2016, Ares(2016)2712355;
- 12 - Evaluation of the offers and award of specific contract, 10/06/2016, Ares(2016)2712355;
- 13 - Specific Contract No 2015 71 05, 19/07/2016, Ares(2016)3610607.

Full disclosure:

We enclose copies of documents 3, 4 and 5.

Partial disclosure:

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 (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons

with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data¹ ('Regulation 2018/1725').

The documents 1, 2 and 6 to 13 to which you request access contain personal data, in particular initials, first names, surnames, phone and fax numbers, email and postal addresses, CVs and pictures.

Art 3(1) of Regulation 2018/1725 provides that "*personal data means any information relating to an identified or identifiable natural person [...]*". The Court of Justice of the European Union has specified that any information, which because of its content, purpose or effect is linked to a particular person, is to be considered as personal data².

Please also note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of Chafea are to be considered personal data³.

In its Judgment in Case C-28/08 P⁴ (*Bavarian Lager*), the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

Only if the conditions for transfer defined in the Regulation 2018/1725 are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Art 5 of the Regulation, can the transmission of personal data occur.

As to the handwritten initials and signatures and other handwritten text without any substantive content, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the concerned persons.

Therefore, we are disclosing the requested documents 1, 2, 6 to 9, 12 and 13 from which these personal data have been redacted.

No disclosure:

Having examined the documents 12 and 13 requested under the provisions of Regulation No 1049/2001 regarding public access to documents, we have come to the conclusion that it may be partially disclosed. Some parts of the document have been blanked out or deleted as their disclosure is prevented by exceptions to the right of access laid down in Art 4 of this Regulation.

The redacted parts of the documents contain commercially sensitive business information of the companies.

¹ Official Journal L 205 of 21.11.2018, p. 39.

² Judgment of the Court of Justice of the EU of 20 December 2017 in Case [C-434/16](#), *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of the General Court of 19 September 2018 in case [T-39/17](#), *Port de Brest v Commission*, paras 43-44, [ECLI:EU:T:2018:560](#).

⁴ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, para 63.

⁵ Whereas this and other judgments mentioned here related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Disclosure of these parts would undermine the protection of commercial interests of natural or legal persons, including intellectual property.

Therefore, the exception laid down in Art 4(2) first indent of Regulation 1049/2001 applies to these two documents. This exception applies unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest.

Having examined the documents 10 and 11 requested under the provisions of Regulation 1049/2001 regarding public access to documents, we regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Art 4 of this Regulation.

The documents 10 and 11 which you seek to obtain contain personal data, in particular first names, surnames, phone numbers, email and postal addresses, CVs and pictures, and commercially sensitive business information of the company that submitted them.

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.

Furthermore, disclosure of the requested documents 10 and 11 would undermine the protection of the commercial interests of the company that submitted them, as putting this information in the public domain would affect its competitive position on the market. Therefore, the exception laid down in Art 4(2) first indent of Regulation 1049/2001 applies to these two documents.

The general presumption of non-disclosure of a bid of a tenderer to another legal or natural person has been confirmed by the General Court at numerous occasions⁶. The protection of a bid does not cease with the signature of the contract, but extends even after its conclusion.

The bid of the tenderer contains commercially sensitive information relating to methodologies, know-how, specific pricing, breakdown of budgets or timetables, involvement of experts or partners, information on detailed operational aspects, timetables, business strategies and other information carrying a commercial value. Disclosure to the public of such information relating to the execution of the service would undermine the protection of the natural and legal person's expertise, know-how, strategy and creativity and, thus their commercial strength, as it might be used by competitors in future similar procedures, to the detriment of the concerned natural and legal persons.

Public disclosure of the bank account would undermine the integrity of financial operations of the entity it belongs.

⁶ For example, Judgment of the General Court of 26 May 2016 in Case T-110/15, International Management Group v European Commission, EU:T:2016:322, para 30, Judgment of the General Court of 13 November 2015 in Joined Cases T-424/14 and T-425/14, ClientEarth v European Commission, EU:T:2015:848, para 65

We have considered whether partial access could be granted to the requested documents 10 and 11. It is not possible to grant access to an expunged version of the documents, as they are entirely covered by the exceptions.

The exception laid down in Art 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

We have examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest.

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

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director of Chafea at the following address:

European Commission
Consumers, Health, Agriculture and Food Executive Agency
DRB-A3/041
L-2920 Luxembourg

or by email to: CHAFEA-ACCESS-DOCUMENTS@ec.europa.eu

Yours sincerely,

Donata MERONI
Head of Unit

