

Data Protection Notice

Procurement Procedures and Contract Management

(11.12.2018)

This Data Protection Notice is provided to you in order to explain the policy of the Agency for the Cooperation of Energy Regulators ("**the Agency**") regarding your privacy, as well as how your personal information is handled in the context of procurement procedures initiated by the Agency, as well as the management of subsequent contracts awarded.

Who is responsible for my personal information?

The Agency is the data controller regarding all personal data processing carried out in the context of its procurement procedures, as well as regarding subsequent management of contracts.

To get in touch with the Agency's Data Protection Officer, please contact: dpo@acer.europa.eu.

What personal information of mine is being collected?

In order to allow the Agency to manage, coordinate and organise procurement procedures – including, e.g., the publication of procurement documentation, communication with tenderers, opening tenders, deciding on awards, preparing and managing the relevant contracts – the Agency may collect and process information related to you (as an individual), which, either by itself, or in combination with other information to which the Agency may have access, allows you to be identified.

This information may be classified as "**Personal Data**".

Personal Data which may be processed by the Agency in the context of coordinating, communicating and managing, the interested parties are as follows:

(a) **Tenderer Data**

When participating in a procurement procedure organised by the Agency, either as an individual or on behalf of a company or organisation (i.e., as a representative), the Agency collects information related to you, such as your name, job title / role, contact details (e.g., e-mail address, phone number, postal address), copy of your personal identification document or passport, signature, VAT number and criminal record.

(b) **External Expert Data**

In certain procurement procedures, the Agency may engage experts in order to assist in managing the process and / or reaching a reasoned and informed final decision on the award, subject to signing appropriate confidentiality, non-disclosure and data processing agreements.

In these cases, the Agency collects Personal Data related to those experts, such as their name, contact details (e.g., e-mail address, phone number, postal address), signature and additional information included in their CVs (e.g., information related to the expert's professional and academic background).

Why is the Agency using these Personal Data?

The Agency uses the Personal Data mentioned above for the following purposes:

(a) **Procurement / Contract Management**

In order to manage procurement procedures, including the publication of procurement documentation, assessment of and communication with tenderers, opening tenders, deciding on awards and preparing the relevant contracts, and to store, organise and manage all contracts entered into as a result of procurement procedures.

This includes also the steps needed for the Agency to engage external experts for any given procurement procedure – e.g., assessment of potential external experts to be engaged, communication with external experts, entering into confidentiality, non-disclosure and data protection agreements.

- It is mandatory for you to provide Personal Data to the Agency for this purpose, in order for you to be able to participate in any procurement proceedings organised by the Agency (whether as a tenderer or as an external expert). Failure to do so may prevent you from being considered by the Agency.

(b) **Compliance**

The Agency processes Personal Data to comply with Union or Member State laws which impose upon the Agency the collection and/or further processing of certain kinds of Personal Data.

When you provide any Personal Data to the Agency, the Agency must process it in accordance with the applicable law, which may include retaining and reporting your Personal Data to official authorities for compliance with its legal obligations.

All Personal Data processed by the Agency may be included in periodic backups carried out to ensure the availability of information stored on the Agency's IT systems, and may further be processed to ensure the appropriate handling of security incidents related to those systems, as well as the Agency's compliance with its legal obligations regarding the processing of Personal Data (e.g., related to management of personal data breaches).

Why can the Agency use these Personal Data?

The legal bases which the Agency relies on to process this Personal Data, according to the purposes identified above, are the following:

(a) **Procurement / Contract Management**

Processing for this purpose is necessary in order to allow the Agency properly to manage its procurement procedures, while bearing in mind the legal obligations upon it – in particular, those within Regulation (EU, EURATOM) no. 1046/2018, of the European Parliament and of the Council, of 18 July 2018 ("**Financial Regulation**") – which serve as the grounds for the Agency to assess potential tenderers against the European Commission's Early Detection and Exclusion System ('EDES').

Furthermore, this processing is also necessary in order to allow the Agency to store and keep track of the contracts awarded to tenderers, thereby ensuring that the Agency is able to comply with its contractual obligations and enforce its contractual rights against its counterparts.

This processing is thus not only necessary for the Agency's management and functioning, but also to comply with the mentioned Union legal instruments. When dealing with individual tenderers (i.e., tenderers which are natural persons, acting on their own behalf), the Agency may also rely on the need for this processing in order to enter into and perform contracts with those tenderers.

(b) **Compliance**

Processing for this purpose is necessary for the Agency to comply with its legal obligations.

The inclusion of all Personal Data stored by the Agency in its IT systems in periodic backups, as well as all processing carried out to ensure the appropriate handling of security incidents related to those systems, is deemed necessary in order to ensure the proper management and functioning of the Agency and, as such, necessary in order to perform a task in the public interest.

Who can see your Personal Data, and who will they be shared with?

Your Personal Data may be shared with the following list of persons / entities ("**Recipients**"):

- Companies, entities or professional associations engaged by the Agency, including other Union institutions and/or bodies, as well as external experts, in order to provide services related to the management of procurement procedures and contracts, as well as services related to technical maintenance / assistance and operational security of IT systems used by the Agency to store Personal Data processed in connection with these purposes, which typically act as processors on behalf of the Agency, and have access to Personal Data only to the extent strictly required for them to provide those services;

- Persons authorised by the Agency to process Personal Data needed to carry out activities strictly related to the purposes described above, who have undertaken an obligation of confidentiality or are subject to an appropriate legal obligation of confidentiality (e.g., staff members of the Agency);
- Public entities, bodies or authorities, including other Union institutions or bodies, to which your Personal Data may be disclosed, in accordance with Union or Member State law, or with binding orders from those entities, bodies or authorities.

The Agency will not transfer your Personal Data outside of the EU.

For more information on transfers of Personal Data carried out by the Agency for these purposes, please contact the Agency's Data Protection Officer, at: dpo@acer.europa.eu.

How long do we keep your data?

Personal Data processed under this Data Protection Notice are generally retained by the Agency for 5 years after the contract in question has ended or, regarding tenderers who are not awarded a contract, for 5 years after the signature of the contract with the winning tenderer. In the event that no contract is awarded the data will be kept for 5 years after the closure of the procurement procedure.

Please note that, in any case, the Agency may continue to store Personal Data for a longer period, as may be necessary for internal auditing and security purposes (including within periodic backups carried out) and, in general, to protect the Agency's interests related to potential liability related to this processing.

For more information on the applicable retention periods, please contact the Agency's Data Protection Officer, at: dpo@acer.europa.eu.

What are my rights? How can I exercise them?

As a data subject, you are entitled, in general, to exercise the following rights before the Agency:

- Access your Personal Data being processed by the Agency (and/or obtain a copy of those Personal Data), as well as information on the processing of your Personal Data;
- Correct or update your Personal Data being processed by the Agency, where it may be inaccurate or incomplete;
- Request the erasure of your Personal Data being processed by the Agency, where you feel that the processing is unnecessary or otherwise unlawful;
- Request the blocking of your Personal Data, where you feel that the Personal Data processed is inaccurate, unnecessary or unlawfully processed, or where you have objected to the processing;
- Exercise your right to portability: the right to obtain a copy of your Personal Data provided to the Agency, in a structured, commonly-used and machine-readable format, as well as the transmission of that Personal Data to another data controller.

You may also have a right to **object to the processing of your Personal Data**, based on relevant grounds related to your particular situation, which you believe must prevent the Agency from processing your Personal Data for a given purpose. This right may apply whenever the Agency relies on the need to perform a task in the public interest as the legal basis for a given processing purpose, e.g., **Procurement / Contract Management** and others (see above – [Why is the Agency using these Personal Data?](#)).

To exercise any of the abovementioned rights, you may send a written request to the Agency, at the following addresses:

- procurement@acer.europa.eu
- dpo@acer.europa.eu

Please note that the above rights may not apply, or may not apply in full, as there may be applicable legal exemptions or restrictions to those rights. This will be assessed by the Agency on a case-by-case basis; if such an exemption or restriction is found to be applicable, you will be informed of the Agency's main reasoning for this.

In any case, please note that, as a data subject, you are entitled to file a complaint with the European Data Protection Supervisor, if you believe that the processing of your Personal Data carried out by the Agency is unlawful. You will suffer no prejudice on account of any such complaints lodged.