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OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSPO-01-164 / 03.04.2019

Sofia, April 15, 2019

SUBJECT: Protection of personal data in the context of the implementation of the Public Procurement Act

The Commission for Personal Data Protection (CPDP) composed of members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on April 10, 2019, considered a request for an opinion / ent. № NDMSPO-01-164 / 03.04.2019 / by the Administrative Secretary of the Ministry of Interior (Moi) Mr. Boyko Slavchev in connection with the protection of personal data in the application of the Public Procurement Act (PPA).

The following questions were asked:

- „1. Is it necessary for the contracting authorities, members of the commission, participants or their authorized representatives, etc., to have explicitly expressed their will in order to delete their personal data (names, signatures, PIN, etc.) from the documents to be published in the profile of the buyer on the website of the Ministry of Interior and if necessary - in what form?
2. Is it necessary from the documents to be published in the buyer's profile to delete the names of the contracting authority, members of the commission, candidates or participants in the procedure or their authorized representatives, or in view of the principle of publicity and transparency regulated in Art. 2, para. 1, item 4 of the Public Procurement Act, their names should not be deleted.
3. Is it necessary to delete the signatures and names of the persons representing the parties to the public procurement contract?
4. Is it necessary to delete the signatures, before publishing in the buyer's profile on the website of the contracting authority, the persons placed on the technical and price proposals of the participants, given that the technical and price proposal is

subsequently attached to the contract for public procurement and published in the buyer's profile?

5. What is the procedure for deleting the personal data of the persons contained in the documents submitted by the participants or prepared in the course of the procedure? ”

Legal analysis:

The Public Procurement Act (PPA) determines the terms and conditions for awarding public contracts for construction, supplies or services and for conducting design contests by contracting authorities in order to ensure efficiency in spending public funds.

In this regard, with the transitional and final provisions of the Law on Amendments to the Personal Data Protection Act (SG, issue 17 of 26.2.2019), amendments and additions were made to several provisions of the Public Procurement Act concerning the regime of protection of personal data. personal data.

According to Art. 2, para. 1, item 4 of the Public Procurement Act, public procurement is awarded in accordance with the principles of the Treaty on the Functioning of the European Union (TFEU) and in particular those on free movement of goods, freedom of establishment and freedom to provide services and mutual recognition. and the ensuing principle of publicity and transparency.

Moreover, depending on the type and stage of the procedure, the contracting authorities issue decisions, the form and content of which are regulated by Chapter V of the Public Procurement Act - "Publicity and Transparency" / arg. Art. 22, para. 1 of the Public Procurement Act. The provision of para. 5 explicitly provides the details of the decisions.

In addition, the contracting authorities have a statutory obligation to maintain a profile of the buyer, which ensures publicity of those exhaustively listed in Art. 36a, para. 1, items 1–11 of the Public Procurement Act documents. In addition, the publication of the documents in question should delete information in respect of which participants have lawfully invoked confidentiality in connection with the existence of a trade secret, the unique civil number or personal number of a foreigner and the signatures of individuals, and other information that is protected by law, indicating in the place of the deleted information the reason for its deletion / arg. Art. 36a, para. 3 of the Public Procurement Act. The envisaged obligation to delete the contracting authority in his capacity as controller of personal data also excludes the expression of additional will by the participants in the public procurement procedures.

The above rule is a legal expression of the principle of "minimizing data", according to which personal data should be

appropriate, relevant and limited to what is necessary in relation to the purposes for which they are processed / arg. Art. 5, § 1, b. "C" Regulation (EU) 2016/679 /. Posting personal identification numbers and personal signatures on the buyer's profile would be an excessive action beyond the purposes of data processing.

On the contrary (per argumentum a contrario) the names of the participants in the PPL procedures (contracting authorities, members of commissions, participants or their authorized representatives, etc.) should not be deleted in order to comply with the principle of publicity and transparency.

In connection with the above, it can be concluded that the personal data contained in the various documents in the procedures under the Public Procurement Act are processed on the basis of "compliance with a legal obligation that applies to the administrator" / arg. Art. 6, § 1, b. "C" of Regulation (EU) 2016/679 /.

In view of the above and on the grounds of Art. 58, § 3, b. "B" of Regulation (EU) 2016/679, the Commission for Personal Data Protection states the following

OPINION:

1. The amendments to the Public Procurement Act (PPA), concerning the regime for personal data protection of individuals, provide for an obligation for the contracting authority to delete the unique civil number or personal number of a foreigner, as well as the signatures of persons participating in proceedings. of the law.
2. The names of the participants (contracting authorities, members of commissions, participants or their authorized representatives, etc.) should not be deleted in order to comply with the principle of publicity and transparency proclaimed in Art. 2, para. 1, item 4 of the Public Procurement Act.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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