



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

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**Subject: Concerns regarding a potential conflict of interest in the evaluation process of the Legislative Framework For Tobacco Control**

Dear Ms Darge,

I refer to your letter of 8 May 2024, in which you allege a potential conflict of interest that would involve Open Evidence, the leading party in the consortium contracted by the European Commission for services concerning EU actions in tobacco control, and express your concerns about potential breaches of confidentiality and professional misconduct.

You mention in your letter that it has come to your attention that an employee of Open Evidence actively participated in the international COP10 event held in Panama, possibly as a delegate of a Spanish cancer non-governmental organization (NGO) named “Asociación Española contra el Cancer”, particularly active in this specific area of public health policies.

You imply that this would represent a situation of conflict of interest and point to links between the said organisation and the European Network for Smoking and Tobacco Prevention (ENSP), another non-governmental organisation also active in the same area, which is a partner in the Open Evidence consortium to which the contract HADEA/2022/OP/0011 was awarded. In your view this could compromise the impartiality and objectivity required for the contractual work.

Allow me to point out that, in line with the provisions of Article 62(3) of the Financial Regulation <sup>(1)</sup>, the outsourcing of consultancy services in the present case is intended to provide the Commission services with technical evidence and technical support, the Commission remaining, of course, responsible for all policy considerations and determinations. DG SANTE confirms that the tasks outsourced to the contractor do not involve any measure of discretion implying policy choices.

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<sup>(1)</sup> [Regulation \(EU, Euratom\) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union](#)

DG SANTE is mindful of the need to protect the Commission's prerogatives in this regard and pays special attention to ensuring that outsourced activities provide sound and objective evidence to serve the Commission's decision making.

That is why the Commission scrupulously assesses during the procurement process – among other things – the possible risk of conflicts of interest, and why specific contractual obligations require that the contractors immediately inform the European Health and Digital Executive Agency (HaDEA) in case such a risk would materialise during the execution of the contract.

These principles, rules and scrupulous processes are applied to all outsourcing activities, irrespective of the status of the tenderers (public, private, non-governmental).

You request the Commission to provide clarification on the following matters:

- 1) Whether the Commission received confirmation that Open Evidence has communicated relevant obligations to its personnel in writing, as required by the contract, to prevent conflicts of interest?
- 2) Whether Open Evidence has notified the Commission of this conflict of interest and, if so, what actions have been taken to pre-empt the repetition of this situation and to ensure the contracted work is not affected?

Concerning your first question, indeed, the contract lays down the obligation of the contractor to pass on all relevant obligations in writing to: (a) its personnel; (b) any natural person with the power to represent it or take decisions on its behalf; (c) third parties involved in the implementation of the framework contract, including subcontractors. The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

This is a contractual obligation, and the contractor is responsible for its full compliance. Please note that the contract does not impose any obligation on the contractor to notify HaDEA about the fact that all the relevant obligations in relation to conflict of interest were communicated to its personnel in writing. However, to avoid any doubt, HaDEA has requested, and received, written confirmation from Open Evidence that it informed its employees in writing about such obligations after the signature of the Framework contract.

As to your second question, please note that Open Evidence submitted a Declaration on honour, signed by the authorised legal representatives, confirming that they (the lead contractor and the members of the contracting consortium) are not in any situation of conflict of interest. Such declaration was required from all tenderers in the procurement procedure.

In addition, as requested in the call for tenders, Open Evidence (and the other members of the Consortium) declared not to be in a situation of conflict of interest, as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest, in particular with regards to the provisions of Article 5.3 of the WHO Framework Convention on Tobacco Control.

The above-mentioned documentation was assessed by the evaluation committee, which did not find any indications of a conflict of interest.

In the specific case, where the NGO ENSP is a member of the contractors' consortium, the assessment carried out takes into account the respective role of the members of the consortium, and whether their status and field of activity are such as to create a potential risk of conflict of interest that could adversely affect the contract's deliverables.

As mentioned above, during the implementation of the contract, the contractor must take all the necessary measures to prevent any situation of conflict of interest or professional conflicting interest. The contractor must notify the contracting authority in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the implementation of the framework contract. The contractor must immediately take action to rectify the situation.

Furthermore, in line with Article II.8. the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the implementation of the framework contract and identified in writing as confidential.

These contractual obligations are binding upon all members of the group and their breach is subject to contractual sanctions. Up to this day, Open Evidence has not notified the contracting authority of any conflict of interest nor of any breach of confidentiality in relation to the ongoing contracts. Nor is DG SANTE aware of any occurrence that would result in any such breach or of any new element that would indicate the existence of a conflict of interests.

Concerning the participation of staff of Open Evidence (or of the other Consortium's members) to public events, the contracting authority is not in a position to prevent contractors or their staff member to express their opinions or otherwise exercise their rights and freedom of expression. Moreover, information provided by Open Evidence shows that the employee in question attended the event in a personal capacity, volunteering pro-bono work, and not as an employee of Open Evidence.

In light of your allegation, the contracting authority also requested Open Evidence to reconfirm the absence of conflict of interest for the ongoing specific contracts signed under the framework contract in question and reminded them of their obligation in relation to confidentiality. Open Evidence confirmed that the declarations of the absence of conflict of interest are still valid and that there has never been any breach of confidentiality.

In relation to the contracted work performed by Open Evidence, the contracting authority carries out a thorough assessment and verification of the quality and accuracy of all the submitted results (i.e., reports, other deliverables). Up to now there is no evidence showing that contracted work has been affected by any potential conflict of interest.

Yours faithfully,

Sandra GALLINA