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REGULATION (EEC) No 1987/69 OF THE COMMISSION

of 8 October 1969

laying down detailed rules concerning the sale by tender of sugar by intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 1009/67/EEC[1] of 18 December 1967 on the common organisation of the market in sugar, as last amended by Regulation (EEC) No 1398/69,[2] and in particular Articles 9 (8), 10 (3), 11 (2), 17 (4) and 38 thereof;

Whereas Council Regulation (EEC) No 447/68[3] of 9 April 1968 laying down general rules for intervention buying of sugar, as amended by Regulation (EEC) No 1395/69,[4] provides that sugar shall be sold by intervention agencies either by tender or by another sales procedure but by tender only when sugar is intended for animal feed or for export; whereas detailed rules for sale by tender should therefore be laid down;

Whereas, to ensure equal treatment to all interested parties in the Community, invitations to tender issued by the competent authorities of the Member States must conform to uniform rules; whereas in this connection provision must be made to ensure that the sugar is actually put to the intended use;

Whereas provisions for the tendering procedure may, for the most part, be modelled on those provisions which have been adopted for fixing export refunds by tender and in particular those contained in Commission Regulation (EEC) No 839/68[5] of 28 June 1968 on detailed rules for the application of export refunds on sugar, as last amended by Regulation (EEC) No 1163/69,[6] account being taken of the fact that the object of the invitation is to determine either the selling price to be paid for the sugar by the successful tenderer, the amount of the denaturing premium or the amount of the export refund;

Whereas, however, to facilitate participation by a greater number of interested parties in the invitation to tender, special rules should be laid down and provision made in particular for the possibility, with regard to the quantity of sugar offered for sale, of fixing a maximum quantity per tenderer; whereas, moreover, in view of the frequent fluctuations in sugar prices and quotations, the tenderer should not be obliged to abide by his tender if the award is made after the date and time specified by him;

Whereas, by reason in particular of storage costs and the rules in this respect provided for in Article 8 of Regulation No 1009/67/EEC, it is essential to specify when ownership of the sugar is transferred;

Whereas, for the purpose of determining the grade of the white sugar and the yield of the raw sugar sold, criteria must be adopted which are identical with those provided for in Commission Regulation (EEC) No 782/68[7] of 26 June 1968 laying down detailed rules for the buying-in of sugar by intervention agencies, as last amended by Regulation (EEC) No 1765/69[8]; whereas equal treatment for all interested parties may be ensured only by the introduction of uniform and precisely defined provisions on adjusting either the selling price, the denaturing premium or the export refund and correcting the export licence where the sugar is found to be of a quality other than that indicated in the invitation to tender;

Whereas, to make it possible for denaturing to be effected on the territory of any Member State, it should be specified that when sugar is denatured in a

[1] OJ No 308, 18.12.1967, p. 1.
[2] OJ No L 179, 21.12.1969, p. 13.
[3] OJ No L 91, 12.7.1968, p. 5.
[4] OJ No L 179, 21.7.1969, p. 4.
[5] OJ No L 151, 30.6.1968, p. 47.
[6] OJ No L 151, 25.6.1969, p. 9.
[7] OJ No L 145, 27.6.1968, p. 6.
[8] OJ No L 226, 6.9.1969, p. 19.

Member State other then the Member State which issued the invitation to tender the latter must supply the Member State in which denaturing was effected with the information it needs concerning the successful tenderer;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Sugar;

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down detailed rules for the sale by tender of sugar bought in by intervention agencies.

2. An award under the tendering procedure shall be equivalent to the conclusion of a contract of sale for the quantity of sugar awarded. The award shall be made either on the basis of:

(a) the price to be paid by the successful tenderer,

(b) the amount of the denaturing premium, or

(c) the amount of the export refund,

indicated in the tender.

3. The price to be paid by the successful tenderer shall be:

(a) the price indicated in the tender in the case of paragraph 2 (a);

(b) the price indicated in the terms of the invitation to tender in the case of paragraph 2 (b) and (c).

Article 2

For the purposes of this Regulation,

1. 'intended use' means:

   (a) animal feed;

   (b) export;

   (c) other purposes which may be determined.

2. 'lot' means:

   a quantity of sugar of the same quality, packaged in the same way and stored in the same place.

Article 3

1. For the purpose of putting the sugar in question up for tender, the following terms shall be determined:

(a) the total quantity put up for tender;

(b) the intended use;

(c) the time limit for the submission of tenders;

(d) the price to be paid by the successful tenderer if the sugar is intended for animal feed or for export.

2. Additional terms may be determined, including:

(a) the minimum price for sugar offered for sale for purposes other than animal feed or export;

(b) the maximum amount of the denaturing premium or the export refund;

(c) the minimum quantity per tenderer or per lot;

(d) the maximum quantity per tenderer or per lot;

(e) the special period of validity of the denaturing premium certificate or of the export licence.

Article 4

1. The invitation to tender shall be issued by the appropriate intervention agency for the quantities of sugar held by it.

2. The intervention agency shall draw up an invitation to tender. The invitation shall indicate:

(a) the name and address of the intervention agency issuing the invitation to tender;

(b) the terms of the invitation to tender;

(c) the time limit for the submission of tenders;

(d) the lots of sugar put up for tender and for each lot:

   — the number;

   — the quantity;

   — the quality, by grade for white sugar and by yield for raw sugar;

   — the type of packaging;

   — the location of the warehouse in which the sugar is stored;

   — the delivery stage;

   — the presentation, where appropriate;

   — facilities, if any, for loading onto a means of transport by inland waterway, sea or rail.

3. The invitation to tender shall be published in the *Official Journal of the European Communities*. The intervention agency may also publish the invitation to tender, or have it published, elsewhere.

4. The invitation shall be published in the *Official Journal of the European Communities* at least ten days before the time limit for the submission of tenders expires.

Article 5

1. Tenderers shall either lodge a tender in writing against a receipt, with the intervention agency, or address the tender to the intervention agency by registered letter, telex or telegram.

2. The tender shall indicate:

(a) the invitation to which the tender relates;

(b) the name and address of the tenderer;

(c) the number of the lot;

(d) the quantity to which the tender relates;

(e) per 100 kilogrammes, either

— the price proposed, excluding internal charges, or

— the amount of the denaturing premium proposed, or

— the amount of the export refund proposed,

in the currency of the Member State in which the intervention agency issues the invitation;

(f) in the case of denaturing, the Member State in which the sugar will be denatured.

Tenderers may be required to furnish additional information.

3. A tender relating to several lots shall be regarded as constituting as many tenders as the lots involved.

4. A tender shall be valid only if:

(a) proof is furnished before the time limit for the submission of tenders expires and that the tenderer has lodged the deposit required for the invitation to tender;

(b) it includes a declaration by the tenderer that, if his tender is successful, he will:

— apply for a denaturing premium certificate and lodge the deposit required in this connection, where the invitation to tender relates to sugar intended for animal feed;

— apply for an export licence and lodge the deposit required in this connection, where the invitation to tender relates to sugar intended for export.

5. A tender may stipulate that it may be treated as submitted only if the award:

(a) relates to all or a specified part of the quantity indicated in the tender,

(b) is made not later than a time and date specified by the tenderer.

6. A tender which is not submitted in accordance with the provisions of this Article or which contains terms other than those indicated in the invitation to tender shall not be taken into consideration.

Article 6

1. The deposit required for the invitation to tender shall be:

(a) 0·5 units of account per 100 kilogrammes of white or raw sugar, for the intended uses referred to in Article 2 (1) (a) and (c);

(b) one unit of account per 100 kilogrammes of white or raw sugar, for the intended use referred to in Article 2 (1) (b).

2. The tenderer may lodge the deposit either in cash or in the form of a guarantee by an establishment complying with criteria laid down by each Member State.

Each Member State shall notify the Commission of the criteria referred to in the preceding paragraph and the Commission shall in turn inform the other Member States.

Article 7

Where the terms of the invitation to tender do not specify either a minimum price or a maximum amount for the denaturing premium or the export refund, these shall be fixed in accordance with the provisions of Article 40 of Regulation No 1009/67/EEC after examination of the tenders, account being taken of market conditions and potential outlets. However, a decision may be taken to discontinue the invitation to tender.

Article 8

1. Without prejudice to the provisions of paragraphs 2 and 3, the award shall be made to any tenderer whose tender is not less than the minimum price or whose tender does not exceed the maximum amount of the denaturing premium or the export refund.

2. For any one lot, the award shall be made to the tenderer who proposes either the highest price or the lowest denaturing premium or export refund.

If the lot is not competely accounted for by that tender, awards shall be made to the tenderers whose tenders contain the next highest price or the next lowest denaturing premium or export refund.

3. If, in the case of a lot or part of a lot, several tenderers propose either the same price or the same amount for the denaturing premium or the export refund, the intervention agency in question shall award the quantity concerned:

(a) either in proportion to the quantities indicated in the tenders in question;

(b) or by dividing that quantity between the tenderers in agreement with them;

(c) or by drawing lots.

Article 9

1. An award shall:

(a) if the sugar is intended for animal feed:

— confer the right to the issue, in respect of the quantity awarded, of a denaturing premium certificate showing the denaturing premium specified in the tender,

— entail the obligation to apply for such a denaturing premium certificate in respect of that quantity;

(b) if the sugar is intended for export:

— confer the right to the issue, in respect of the quantity awarded, of an export licence showing the refund specified in the tender and, in the case of white sugar, the grade specified in the invitation to tender,

— entail the obligation to apply for such an export licence in respect of that quantity and white sugar of that grade.

2. Rights and obligations arising from awards shall not be transferable. They shall be exercised or fulfilled within two weeks following the date of receipt of the statement referred to in Article 10.

3. Where all or part of the sugar is denatured in a Member State other then the Member State which issued the invitation to tender, the Member State in which denaturing is effected:

(a) shall, at the request of the successful tenderer, issue the denaturing premium certificate for the quantity of sugar in question immediately on receipt of an attestation from the Member State which issued the invitation to tender;

(b) shall notify the Member State which issued the invitation to tender that the certificate has been issued.

4. The attestation referred to in paragraph 3 shall indicate in particular:

(a) the name and address of the successful tenderer,

(b) the amount of the denaturing premium,

(c) the quantity of sugar in question.

Article 10

1. The intervention agency concerned shall immediately notify all tenderers of the outcome of their participation in the invitation to tender. The agency shall also send a statement of award to the successful tenderers.

2. Statements of awards shall indicate in particular:

(a) the invitation to which the tender relates;

(b) the number of the lot and the quantity in respect of which the award is made;

(c) the price, the amount of the denaturing premium or the amount of the export refund, as the case may be, accepted for the quantity referred to under (b).

Article 11

1. The sugar purchased shall be removed from store not later than four weeks following the date on which the statement referred to in Article 10 is received.

2. The sugar purchased shall be paid for before the sugar in question is removed from store.

Article 12

1. Ownership of sugar which is the subject of an award shall be transferred when the sugar is removed from store.

2. The intervention agency and the successful tenderer may however agree on ownership being transferred at another stage. Such agreement shall be valid only if it is made in writing. Where it is agreed to transfer ownership before the sugar is removed

from store, the purchaser shall pay the intervention agency the costs of storing from the time that ownership is transferred until the sugar is removed from store.

Article 13

1. The provisions of Article 15 of Regulation (EEC) No 782/68 shall apply for the purposes of determining the grade or the yield of the sugar in question at the time of removal from store.

2. The contracting parties may however agree, after the award has been made, that the grade or yield determined when the sugar was bought in by the intervention agency shall apply to sugar sold as a result of the invitation to tender.

Article 14

1. If application of the provisions of Article 15 of Regulation (EEC) No 782/68 establishes that white sugar is of a grade lower than that indicated in the invitation to tender, the price for that sugar shall be adjusted in respect of the intended uses referred to in Article 2 (1) (b) and (c) of this Regulation by applying the provisions of Article 12 of that Regulation.

2. If it is found that sugar intended for export is of a grade other than that indicated in the invitation to tender, the grade shown in the export licence shall be corrected.

3. If application of the provisions of Article 15 of the above-mentioned Regulation establishes that the yield of raw sugar is other than that indicated in the invitation to tender:

(a) the price for that sugar shall be adjusted by applying the provisions of Article 13 of that Regulation;

(b) the amount of the denaturing premium or the amount of the export refund shall be adjusted by multiplying by a coefficient equal to the yield found to exist divided by the yield indicated in the invitation.

Article 15

1. Except in cases of *force majeure,* the deposit required for the invitation to tender shall only be released in respect of the quantity:

(a) for which the tenderer:

— has not withdrawn his tender before the award is made; and

— has paid the purchase price within the period specified following compliance with the terms stipulated and has applied for either a denaturing premium certificate or an export licence as a result of the award; or

(b) for which the tender has not been pursued.

2. The deposit shall be released immediately.

3. In cases of *force majeure* the intervention agency shall determine the measures necessary in view of the circumstances invoked.

Article 16

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 October 1969.

For the Commission

The President

Jean REY