REGULATION (EEC) NO 2537/72 OF THE COMMISSION

of 4 December 1972

concerning invitations to tender for the supply of butteroil to the World Food Programme

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products[1], as last amended by Regulation (EEC) No 1411/71[2], and in particular Article 6 (7) thereof;

Whereas Council Regulation (EEC) No 1692/72 of 20 August 1972 laying down general rules for the supply of milk fats to the World Food Programme and to UNWRA[3] makes provision for the supply to the World Food Programme, hereinafter referred to as 'the WFP', of 13 000 metric tons of butteroil manufactured from butter held by intervention agencies;

Whereas Article 2 (2) of Regulation (EEC) No 1692/72 provides that the butteroil must be supplied under a tendering procedure organized by the appropriate agencies of the Member States in accordance with provisions still to be determined;

Whereas this tendering procedure should, for the most part, be based on that hitherto applied in respect of supplies to the WFP and, in particular, on the terms set out in Commission Regulation (EEC) No 900/70 of 19 May 1970 concerning invitations to tender for the supply of 16 000 metric tons of butteroil to the World Food Programme[4], as last amended by Regulation (EEC) No 789/71[5];

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Milk and Milk Products.

HAS ADOPTED THIS REGULATION:

Article 1

1. In accordance with the terms set out in this Regulation, tenders shall be invited for the supply to the WFP of butteroil manufactured from butter bought in under Article 6 (1) of Regulation (EEC) No 804/68.

2. Delivery shall be fob port of loading.

Article 2

1. The tendering procedure provided for in Article 1 shall be organized by the intervention agencies of the Member States in accordance with provisions still to be determined.

2. The intervention agency shall draw up a notice of invitation to tender which shall be published in the *Official Journal of the European Communities* not less than ten days before the closing date for submission of tenders.

3. In its notice of invitation to tender the intervention agency shall indicate the storage depots in which the butter intended for the manufacture of butteroil is stored and shall take all necessary steps to allow interested parties to examine samples of the butter at their own expense prior to submitting a tender.

Article 3

Participation in the tendering procedure shall be confined to processing undertakings approved for this purpose by the Member State on whose territory processing is to take place. Only undertakings which are capable of fulfilling the obligations set out in the Regulation may be approved.

Article 4

1. Tenders shall be submitted either by hand, against receipt, to the intervention agency or by registered letter addressed to the intervention agency. The intervention agency may also authorize the use of telex.

2. Where the invitation to tender covers a number of lots, each tender may relate to one lot only.

[1] OJ No L 148, 28.6.1968, p. 13.
[2] OJ No L 148, 3.7.1971, p. 4.
[3] OJ No L 178, 5.8.1972, p. 1.
[4] OJ No L 108, 20.5.1970, p. 13.
[5] OJ No L 86, 16.4.1971, p. 24.

3. The tender shall state:

(a) the name and address of the tenderer;

(b) the amount, expressed in the currency of the Member State in which the invitation to tender is issued, at which the tenderer undertakes to deliver the butteroil fob; this figure shall include the purchase price of the butter under the conditions set out in Article 9 and Article 13 (1) and the cost of processing, packaging and delivering the butteroil to the fob stage; stowage costs are excluded;

(c) the storage depot or depots at which the tenderer wishes to collect the butter, chosen from among the storage depots listed for each lot;

(d) the port of loading chosen from among the following; Antwerp, Bremen, Dunkirk, Genoa, Hamburg, Le Havre, Marseilles, Rotterdam and Trieste.

4. A tender shall not be valid unless it relates to an entire lot put up for tender.

5. A tender shall not be valid unless:

(a) it is accompanied by evidence of the approval referred to in Article 3;

(b) the tenderer gives an undertaking that he will comply with Article 6 (2) and Article 10;

(c) the tenderer includes a declaration that he will forgo any claim regarding the quality and characteristics of any butter sold;

(d) proof is furnished that the tenderer lodged the deposit referred to in Article 5 before the time limit for the submission of tenders expired.

Article 5

1. The tendering deposit shall be 10 units of account per metric ton of butteroil.

2. It shall be paid, at the discretion of the Member State concerned, either in the form of a cheque made out to the intervention agency, or in the form of a guarantee meeting criteria laid down by the Member State concerned.

Article 6

1. The intervention agency shall take all necessary steps to allow the successful tenderer to collect the butter required for the manufacture of the butteroil from the storage depot specified in his tender.

2. The butteroil to be supplied under this procedure must be manufactured exclusively from butter collected by the successful tenderer for this purpose from the intervention agency.

Article 7

In the light of the tenders received and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount shall be fixed or a decision shall be taken not to proceed with the invitation to tender.

Article 8

1. The tender shall be rejected if the amount proposed is higher than the maximum amount fixed for the lot in question.

2. Without prejudice to paragraph 1, the contract shall be awarded to the tenderer proposing the lowest amount in his tender. Where a number of tenders quoting the same amount expressed in units of account must be considered, the contract shall be awarded by drawing lots.

3. Each tenderer shall be immediately informed of the result of his participation in the invitation to tender.

4. Rights and obligations arising out of the invitation to tender shall not be transferable.

Article 9

1. The purchase price of the butter shall be 186 units of account per 100 kilogrammes ex cold storage depot.

2. Subject to the provisions of Article 13 (1), the tenderer shall pay for the butter delivered within 45 days of the date fixed by the intervention agency for the delivery fob of the butteroil.

Article 10

1. The successful tenderer shall deliver the quantity of butteroil covered by the tender and meeting the quality and packaging requirements set out in the Annex to this Regulation fob to the port indicated in the tender on the date specified by the intervention agency. The butteroil shall be treated as delivered fob when the butteroil crosses the rail of the ship at the port of loading.

2. The successful tenderer shall submit to any quantitative control carried out at the port by the representative of the WFP. He shall for this purpose supply a list of the lots making up the consignment.

Article 11

Where processing into butteroil or delivery fob is effected in the selling Member State:

1. The appropriate agency of the Member State in which these operations take place shall at the time of manufacture or packaging:
   - subject the butteroil to the inspection referred to in Article 3(b) of Regulation (EEC) No 1692/72;
   - ensure that Article 6 (2) has been complied with.
2. If the agency in question finds that the requisite conditions have been met, it shall issue a certificate to this effect to the successful tenderer.
3. When the goods have been delivered fob under the conditions referred to in Article 10, the appropriate agency in the Member State in which loading takes place shall, on production of the certificate referred to in paragraph 2, issue a loading certificate.

Article 12

Where processing into butteroil or delivery fob is effected in a Member State other than the selling Member State, proof that the goods have been delivered fob under the conditions referred to in Article 10 shall be given by the production of the control copy referred to in Article 1 of Commission Regulation (EEC) No 2315/69 of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods.

Sections 101, 103 and 104 of the control copy shall be completed. Section 104 shall be completed by deleting what does not apply and inserting one of the following in the second indent:

(a) where the butter is to be processed in another Member State:

'beurre destiné 1. à être transformé en butteroil,
2. puis à être livré fob au PAM au titre du règlement (CEE) no 2537/72'

'Butter bestimmt 1. zur Verarbeitung zu butteroil,
2. alsdann zur Lieferung fob an das WEP gemäß Verordnung (EWG) Nr. 2537/72'

'Burro destinato 1. ad essere trasformato in butteroil,
2. ad essere poi consegnato fob al PAM a titolo del regolamento (CEE) n. 2537/72'

'Boter bestemd 1. om te worden verwerkt tot butteroil,
2. om nadien fob te worden geleverd aan het WVP krachtens Verordening (EEG) nr. 2537/72'

'Butter 1. for processing into butteroil and
2. for subsequent delivery fob to the WFP under Regulation (EEC) No 2537/72.'

Where the control of the destination indicated in 2 is carried out in a Member State other than that in which the processing indicated in 1 is effected, the customs office under whose control the processing indicated in 1 is effected shall return the control copy to the customs office of departure with a note to the effect that it has merely controlled the processing indicated in 1 and issue to the interested party the control copy referred to in Article 1 of Regulation (EEC) No 2315/69 with Sections 101, 103, 104 and 106 duly completed. Section 104 shall include one of the endorsements set out under (b) below; section 106 shall indicate the number of the control copy from the office of departure and the name of this office. The customs office which controls the destination indicated in 2 shall endorse the control copy from the office which controlled the processing indicated in 1 and return this copy through that office to the office of departure in the selling Member State.

(b) where the butter processed into butteroil is to be delivered fob in another Member State:

'Butteroil destiné à la livraison fob au PAM, au titre du règlement (CEE) no 2537/72'

'Zur Lieferung fob an das WEP bestimmtes butteroil gemäß Verordnung (EWG) Nr. 2537/72'

'Butteroil destinato ala consegna fob al PAM, in virtù del regolamento (CEE) n. 2537/72'

'Butteroil bestemd voor levering fob aan het WVP, overeenkomstig Verordening (EEG) nr. 2537/72'

'Butter for delivery fob to the WFP under Regulation (EEC) No 2537/72.'

Article 13

1. On production of the documentary evidence referred to:

- in Article 11 (2) and (3), where the butter is processed and delivery fob effected in the selling Member State;
- in Article 11 (2) and Article 12 (b), where the butter is processed in the selling Member State and delivery fob is effected in another Member State;
- in Article 12 (a), where the butter is processed into butteroil in a Member State other than the selling Member State,

the appropriate agency of the Member State in which the butter is processed into butteroil shall cancel the tenderer's obligation to pay the purchase price of the butter up to the amount indicated in the tender and shall, within 15 days of production of the documentary evidence indicated above, pay him the difference between these two sums, if the difference is in favour of the tenderer.

Where the obligation is cancelled in a Member State other than the selling Member State, the appropriate agency of the first Member State shall immediately inform the appropriate agency of the selling Member State of the sum affected by the cancellation.

2. Furthermore, the appropriate agency of the Member State on whose territory processing took place shall, within a maximum period of 60 days, transfer to the WFP a sum of 87·5 units of account per metric ton of butteroil delivered, representing a contribution towards the cost of forwarding and distributing the butteroil.

Article 14

Except in cases of *force majeure*, the tenderer shall assume responsibility for any financial consequences which failure to deliver the butteroil at the time and place specified might have for the Community, delivery at the time and place specified having been made possible by the WFP. Where the butteroil is not delivered for reasons of *force majeure*, the resultant costs shall be borne by the appropriate agency of the Member State in which processing took place.

Article 15

1. Except in cases of *force majeure*, the tendering deposit provided for in Article 5 shall be released only:

(a) if the tenderer has not withdrawn his tender before a decision on the award of contracts has been taken if he has supplied the intervention agency with the documentary evidence indicated in the first, second or third indent, as the case may be, of Article 13 (1);

(b) if the tender is not taken into consideration.

2. The deposit shall be released immediately.

3. In cases of *force majeure*, the selling intervention agency shall determine the measures judged to be necessary in view of the circumstances invoked.

Article 16

No refund or compensatory amount shall be applied to the butter or butteroil covered by this Regulation.

Article 17

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, 4 December 1972.

For the Commission
The President
S. L. MANSHOLT