REGULATION (EEC) No 1911/73 OF THE COMMISSION

of 13 July 1973

concerning invitations to tender for the supply as food aid of skimmed-milk powder bought on the Community market

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 (1) of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by the Act (2) concerning the Conditions of Accession and the Adjustments to the Treaties, and in particular Article 7 (5) thereof;

Having regard to Council Regulation (EEC) No 2721/72 (3) of 19 December 1972 on the supply of skimmed-milk powder as food aid, and in particular Article 4 thereof;

Whereas Regulation (EEC) No 2721/72 provides in particular that, if available supplies in public stocks in the Community are insufficient, supplies may be ensured by the buying of skimmed-milk powder on the Community market and that in this case, the cost of this exercise shall be carried out in accordance with a tendering procedure;

Whereas, in determining the rules which, under this tendering procedure, should apply to such purchases and deliveries, it is essential to follow the rules laid down for similar cases up to the present time;

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 cases where, by virtue of Regulation (EEC) No 2721/72 it is decided to supply skimmed-milk powder as food aid, purchased on the Community market in accordance with Article 2 (2) of the aforesaid Regulation, the rules provided by this Regulation shall apply.

2. The skimmed-milk powder shall correspond to the quality set out in Annex 1 of Commission Regulation (EEC) No 1108/68 (4) of 27 July 1968, concerning the methods of application of public stocks of skimmed-milk powder, as last amended by Regulation (EEC) No 454/73 (5). For packaging and the description on packs, the requirements shall be fixed case by case. With each supply, there shall be a quantity of empty sacks representing 2 % of the number of sacks making up the shipment.

Article 2

Supply shall be made by a date fixed, whether at the fob or cif stage or at a determined place of destination, in accordance with agreements concluded with the benefiting countries or agencies

Article 3

1. For each individual supply, the competent agency of the Member States shall invite tenders at the same time.

2. The competent intervention agencies shall draw up a notice of invitation to tender, whose publication in the *Official Journal of the European Communities* shall be made at least ten days before the time limit fixed for the presentation of offers.

Article 4

1. Interested parties shall take part in the individual invitation to tender either by delivery by hand of a written offer to the intervention agency against receipt 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 relates to several lots, each tender shall only be for one lot.

3. The tender shall specify in particular:

(a) the name and address of the tenderer;

(b) the port of loading which shall be one of the ports of the EEC if sea transport is involved;

(c) the amount tendered, exclusive of taxes, expressed in the currency of the Member State in which the tender is submitted and to which the tenderer undertakes that he will deliver the quantity of skimmed-milk powder to which his tender refers, in accordance with the stipulated conditions.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 73, 27. 3. 1972, p. 14.
(3) OJ No L 291, 28. 12. 1972, p. 28.
(4) OJ No L 184, 29. 7. 1968, p. 34.
(5) OJ No L 53, 26. 2. 1973, p. 7.

The amount tendered shall include the insurance costs of transport to the agreed point of delivery.

4. The tender shall only be valid if :

(a) it is for all the lot to which the invitation to tender relates ;

(b) proof is furnished that before expiry of the time limit for submission of tenders, the tenderer has given the security fixed in Article 5.

5. The tender may not be withdrawn.

Article 5

1. The tendering security shall be 10 units of account per metric ton of skimmed-milk powder.

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

Article 6

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 expressed in units of account shall be fixed or the tendering procedure shall be cancelled.

Article 7

1. The tender shall be rejected if the amount proposed, converted into units of account, is higher than the maximum amount valid for the lot in question.

2. Without prejudice to paragraph 1, the successful tenderer shall be the one who submitted the lowest tender in terms of units of account. Where several tenders at the same proposed amount when converted into units of account, are to be taken into consideration by the same intervention agency, the contract shall be awarded by drawing lots. In the case where these tenders are made to different intervention agencies, the contract shall be awarded by the intervention agency determined in accordance with the procedure set out in Article 6.

3. Each tenderer shall be immediately informed by the intervention agency of the result of his participation in the tender.

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

Article 8

1. The successful tenderer shall, in accordance with the terms prescribed for each particular individual invitation to tender, deliver the skimmed-milk powder to which the tender relates, and which satisfies the requirements of quality and packing set out in Article 1 (2) of this Régulation.

2. The successful tenderer shall within the prescribed time limits, furnish to the recipient countries and to the intervention agency the information required in the notice of invitation to tender.

Article 9

1. The competent authority of the Member State in which the tender was accepted shall check that the quality and packaging of the skimmed-milk powder concerned satisfy the requirements of Article 1 (2).

2. If the skimmed-milk powder satisfies those requirements, that authorities shall, before the customs formalities referred to in Article 10 (1) are completed, issue a certificate to the successful tenderer to the effect that the conditions referred to in paragraph 1 of this Article are fulfilled.

3. Upon delivery being effected, proof thereof shall be furnished by a declaration from the recipient country or agency establishing that the lot, which had been put up for tender, was received within the prescribed time-limits.

Article 10

1. Export customs formalities shall be completed in the Member State in which the tender was accepted.

2. If the port specified in the tender is not in the Member State in which the export customs formalities were completed, the product shall, upon completion of the formalities, be placed under a customs control procedure which will ensure that it is shipped from the port named in the tender.

Proof of shipment can only be furnished by producing the control copy referred to in Article 1 of Regulation (EEC) No 2315/69.

Boxes Nos 101, 103 and 104 on the control copy shall be completed. Box No 104 shall be completed by deleting what is inapplicable and by inserting one of the following entries against the second indent :

— 'livraison . . . . (fob ou caf) de lait écrémé en poudre à titre d'aide alimentaire (Règlement (CEE) No . . ./73) destinée à être embarquée au port de . . . . . '

— 'Lieferung . . . . (fob oder cif) von Magermilchpulver als Nahrungsmittelhilfe (Verordnung (EWG) Nr. . . ./73) zur Verschiffung im Hafen von . . . . . bestimmt'

— 'Fornitura . . . . (fob o cif) di latte scremato in polvere a titolo di aiuto alimentare (regolamento (CEE) n. . . ./73) destinata ad essere imbarcata nel porto di . . . . . '

— 'levering . . . . (fob — cif) van magere melkpoeder als voedselhulp (verordening (EEG) nr. . . ./73) bestemd om te worden verscheept in de haven van . . . . . '

— 'levering . . . . (fob eller cif) af skummetmælkspulver som fødevarehjælp (forordning (EØF) nr. . . . ./73) bestemt til lastning i havnen i . . . . . .'

— 'delivery . . . . (fob or cif) as food aid of skimmed-milk powder (Regulation (EEC) No . . . ./73) to be shipped from the port of . . . . . .'.

Article 11

1. Except in the case of *force majeure,* the tendering security shall be released only if:

(a) the tender has not been accepted;

(b) if the tenderer

— has not withdrawn his tender before the award following the invitation to tender has been made;

— has furnished the certificates provided for in Article 9 (2) and (3).

2. The security shall be released immediately.

3. In the event of *force majeure,* the intervention agency shall determine the measures it considers necessary in the light of the circumstances invoked.

Article 12

1. The amount envisaged under Article 4 (3) (c) shall be paid only upon presentation of the certificates referred to in Article 9 (2) and (3).

2. The competent authority of the Member State in which the successful tender was lodged shall ensure that as soon as possible, payment shall be made;

(a) of the amount referred to in paragraph 1 to the successful tenderer;

(b) where appropriate:

— of a flat-rate contribution to the WFP, corresponding to the transport and distribution costs, fixed in the agreement underwritten with this organization.

— of the amount corresponding to the distribution costs incurred by the International Red Cross Committee to that body upon presentation of supporting documents.

Article 13

Save in cases of *force majeure,* when the World Food Programme or the International Red Cross Committee or the recipient country concerned have made it possible for delivery to be made at the time and place prescribed and the successful tenderer fails to make delivery at such time and place, the successful tenderer shall be liable to the Community for all the costs which the Community may have to incur by reason of the non-delivery. In cases of *force majeure,* the cost of non-delivery of the skimmed-milk powder shall be borne by the competent authority of the Member State in which the tender was made.

Article 14

No refund or monetary compensatory amount or compensatory amount provided for in the Act annexed to the Treaty of Accession shall be granted in respect of skimmed-milk powder delivered pursuant to this Regulation.

Article 15

This Regulation shall enter into force on the 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, 13 July 1973.

For the Commission

The President

François-Xavier ORTOLI