REGULATION (EEC) No 2072/74 OF THE COMMISSION

of 2 August 1974

concerning the invitation to tender for the costs of delivery, as food aid, of skimmed-milk powder to UNRWA

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 Regulation (EEC) No 662/74 (2), and in particular Article 7 (5) and Article 28 thereof;

Whereas Council Regulation (EEC) No 1827/74 (3) of 11 July 1974 concerning the supply of skimmed-milk powder as food aid to certain developing countries and certain international organizations makes provision for 1 600 metric tons of skimmed-milk powder held by intervention agencies to be made available to the United Nations Relief and Works Agency, hereinafter called 'UNRWA'; whereas UNRWA has requested delivery cif of that skimmed-milk powder;

Whereas under Article 5 of Regulation (EEC) No 1826/74 (4) of 11 July 1974 laying down general rules for the delivery of skimmed-milk powder as food aid to certain developing countries and certain international organizations, such supplies are as a rule to be put out to tender;

Whereas the procedure to be adopted for this purpose should in the main be taken over from that established by Commission Regulation (EEC) No 1885/73 (5) of 12 July 1973 concerning invitations to tender for the costs of delivery, as food aid, of skimmed-milk powder held by the intervention agencies;

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. Tenders shall be invited in accordance with the provisions of this Regulation for the costs of delivery to UNRWA of 1 600 metric tons of skimmed-milk powder bought-in under Article 7 (5) of Regulation (EEC) No 804/68, and held by the German intervention agency.

2. At the time it is withdrawn from stock, the skimmed-milk powder shall, as to quality and packing, satisfy the requirements laid down in Annex I to Commission Regulation (EEC) No 1108/68 (6) of 27 July 1968 on detailed rules of application for public storage of skimmed-milk powder, as last amended by Regulation (EEC) No 1636/74 (7).

3. Delivery shall be made cif. The skimmed-milk powder shall be divided into two lots:

— lot A: 950 metric tons, for delivery port of Beirut (Lebanon),

— lot B: 650 metric tons, for delivery port of Ashdod (Israel).

4. Loading shall take place by 10 September 1974 at the latest.

Article 2

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

2. The closing date for the submission of tenders shall be 20 August 1974 at 12 noon.

3. The intervention agency shall indicate in its notice the warehouses where the skimmed-milk powder assigned to each lot is held.

Article 3

1. Tenders, which shall be in writing, shall be submitted either by delivery by hand to the intervention agency against acknowledgement of receipt or by registered letter or telex addressed to the intervention agency.

2. No tender may relate to more than one lot.

3. The tender shall indicate:

(a) the name and address of the tenderer;

(b) the amount, expressed in German marks, for which the tenderer undertakes to deliver the skimmed-milk powder cif under the conditions laid down in Article 5 including the insurance costs covering the value of the goods;

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 85, 29. 3. 1974, p. 51.
(3) OJ No L 190, 13. 7. 1974, p. 22.
(4) OJ No L 190, 13. 7. 1974, p. 20.
(5) OJ No L 192, 13. 7. 1973, p. 31.
(6) OJ No L 184, 29. 7. 1968, p. 34.
(7) OJ No L 173, 28. 6. 1974, p. 60.

(c) the warehouses where the skimmed milk powder, assigned to each lot, is stocked;

(d) the port of embarkation, which may be any Community port.

4. The tender shall not be valid unless:

(a) it relates to the whole of a 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 4.

5. The tender may not be withdrawn.

Article 4

1. The security required for the invitation to tender shall be two units of account per metric ton of skimmed-milk powder.

2. It shall take the form, at the option of the Member State concerned, either of a cheque made out in favour of the intervention agency, or of a bank guarantee which satisfies the criteria laid down by the German Government.

Article 5

1. Delivery costs shall be the costs incurred up to the time when the goods are deposited on the quayside or on board lighters, if used, all costs subsequent to delivery, including costs of taking delivery, to be borne by the recipient.

2. Any demurrage costs at the port of unloading in respect of delays attributable to the recipient shall be chargeable to the latter. The rates and other details concerning such costs shall be laid down in the contract between the successful tenderer and the carrier and must have been previously agreed upon between the former and the delivery agent of the recipient.

3. Except in cases of *force majeure* every successful tenderer shall accept all financial liability devolving upon the Community by reason of failure to deliver the skimmed-milk powder at the place and by the time appointed, provided always that UNRWA has made it possible for the skimmed-milk powder to be so delivered. Costs incurred by reason of failure to deliver the skimmed-milk powder as a result of *force majeure* shall be borne by the German intervention agency.

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 alternatively a decision shall be taken to make no award.

Article 7

1. A tender shall be refused if the amount proposed, converted into units of account, is more than the maximum amount fixed for the lot in question.

2. Without prejudice to the provisions of paragraph 1, the successful tenderer shall for each lot be the one making the lowest offer. Where two or more valid offers specify amounts which when converted into units of account are identical, the award shall be made by drawing lots.

3. Each tenderer shall be immediately notified by the intervention agency of the result of his participation in the invitation to tender. The intervention agency concerned shall immediately inform the Commission of the name of the successful tenderer.

4. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 8

When the successful tenderer takes delivery of the skimmed-milk powder, he shall ensure that the quantity handed over corresponds to the quantity to be delivered.

Furthermore, he shall ensure that the packing of the skimmed-milk powder satisfies the requirements laid down in Article 1 (2).

Article 9

The German Government shall:

1. ensure that the successful tenderer shall:

(a) notify the recipient, as soon as possible after the goods have been loaded on board ship, of details of the ship, the loading date, the quantity and quality of the goods as recorded on shipment and the port of unloading;

(b) at least 10 clear days in advance, inform the recipient of the expected date of arrival at the port of ship's unloading;

(c) have included in the terms of the charter-party a provision stipulating that the ship's captain shall, at least 72 hours in advance, notify the recipient of the ship's probable date of arrival in port;

2. send to the Commission as soon as possible the information specified in paragraph 1 (a) and (b).

Article 10

1. The goods shall be regarded as delivered cif when they are deposited on the quayside in the port of unloading or on board lighters, if used.

2. On delivery in accordance with paragraph 1 UNRWA shall issue a certificate declaring that the skimmed-milk powder has been delivered.

Article 11

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

(a) the tender has not been accepted ;

(b) the tenderer
- has not withdrawn his tender before the decision awarding the tender,
- has furnished the certificate provided for in Article 10 (2).

2. The security shall be released immediately.

3. In cases of *force majeure* the intervention agency selling the skimmed-milk powder shall decide on the measures to be taken having regard to the circumstances invoked.

Article 12

The intervention agency shall pay to the successful tenderer the amount stated in his tender upon production of the certificate referred to in Article 10 (2).

Article 13

No refund or compensatory amount (whether monetary or accession) shall be applied in respect of the skimmed-milk powder to which this Regulation applies.

Article 14

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, 2 August 1974.

For the Commission

The President

François-Xavier ORTOLI