REGULATION (EEC) No 2557/74 OF THE COMMISSION

of 4 October 1974

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

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 a certain quantity of skimmed-milk powder held by intervention agencies to be made available to the developing countries concerned;

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. Where it is decided to supply skimmed-milk powder to the developing countries listed in the Annex to Regulation (EEC) No 1827/74, the invitation to tender referred to in Article 5 of Regulation (EEC) No 1826/74 shall be organized in accordance with the detailed rules laid down in this Regulation.

2. The skimmed-milk powder to be delivered is bought-in under Article 7 (5) of Regulation (EEC) No 804/68.

3. At the time it is withdrawn from stock, the skimmed-milk powder shall, as to quality and packing, satisfy the requirements laid down in Annex I to Commission Regulation (EEC) No 1108/68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].

Article 2

1. The intervention agency concerned shall give notice of an invitation to tender indicating in particular:

— the location of the store or stores where the skimmed-milk powder is held;

— the quantity of skimmed-milk powder to be delivered;

— the indication of the ports in the Community where delivery can take place;

— the closing date and address for the receipt of tenders;

— the date on which delivery is to take place.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 10 days before the closing date for the submission of tenders.

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 addressed to the intervention agency. The intervention agency may also authorize the use of telex for presentation of tenders.

2. Where the invitation to tender is in respect of two or more lots no tender may be made for more than one lot.

3. The tender shall indicate:

(a) the name and address of the tenderer;

(b) the amount expressed in the currency of the Member State where the invitation to tender takes place for which the tenderer undertakes to deliver

(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.

the skimmed-milk powder including the insurance costs covering the value of the goods ;

(c) the warehouses from which the skimmed-milk powder, assigned to each lot, shall be taken ;

(d) the port of embarkation, chosen from among the ports of the Community accessible to ocean-going ships eventually indicated in the notice of invitation to tender concerned ;

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 this Member State.

Article 5

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 6

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 7

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 (3).

Article 8

Every successful tenderer shall on the date fixed by the intervention agency deliver at the port specified in the tender a quantity of skimmed-milk powder equal to the quantity there specified. Any schedule for instalment deliveries shall be agreed between the successful tenderer and the agent of the recipient country.

The goods shall be regarded as delivered when they are deposited in the port of shipment at a point designated by the recipient country or its agent easily accessible to the ship.

Article 9

On delivery of the goods at the port of embarkation, the receiving agent appointed by the recipient country, or where no such agent is appointed the intervention agency of the Member State on whose territory embarkation takes place, shall issue to the successful tenderer as agent for the Community a certificate of delivery.

Article 10

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 the recipient country has made it possible for the skimmed-milk powder to be so delivered.

Any demurrage costs resulting from such delays shall be chargeable to the successful tenderer only if the rates and other details concerning such costs have been previously agreed upon between the successful tenderer and the recipient country. Other costs resulting from such delays shall be chargeable to the successful tenderer only if they have been incurred by the recipient country with the agreement of the competent intervention agency.

Costs incurred by reasons of failure to deliver the skimmed-milk powder as a result of *force majeure* shall be borne by the competent agency of the Member State concerned.

If the recipient country is unable to load the skimmed-milk powder on the dates fixed and if the successful tenderer is unable to obtain payment from the recipient country of the resulting costs, the competent agency of the Member State concerned shall take

all measures necessary to ensure that such costs are not borne by the successful tenderer.

Article 11

1. Except in cases of *force majeure,* the security required under Article 4 shall be released only in the following circumstances :

(a) if the tender has been refused,

(b) if the tenderer has not withdrawn his tender before the contract is awarded and has produced to the intervention agency the certificate of delivery mentioned in Article 9.

2. Release of the security shall take place immediately.

3. In case of *force majeure* the intervention agency shall adopt the measures which appear warranted by the circumstances invoked.

Article 12

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

Article 13

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 October 1974.

For the Commission

The President

François-Xavier ORTOLI