REGULATION (EEC) No 1709/75 OF THE COMMISSION

of 3 July 1975

on a standing invitation to tender to determine export refunds on white sugar destined for Iran and Morocco within the framework of multiannual contracts

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 3330/74 (1) of 19 December 1974 on the common organization of the market in sugar, and in particular Articles 12 (2), 19 (4) and 34 thereof;

Whereas in particular due to the price situation on the world market and the production prospects for the coming years a standing invitation to tender to determine export refunds on white sugar should already be opened now;

Whereas it is necessary to guarantee as far as possible that the production of sugar within the limits of quotas can be marketed constantly under the best conditions for the Community; whereas the conclusion of delivery contracts as to the said sugar between Community operators and third countries in respect of several marketing years appears to be an efficient measure to meet this aim; whereas Iran and Morocco seem currently prepared to conclude such contracts; whereas the Community should therefore assist in order to make such operations possible and to establish conditions to ensure equal competition among the interested parties; whereas the tender procedure supplies the best appropriate provisions to meet these demands;

Whereas the general rules for the tender procedure to determine export refunds on sugar have been adopted by Council Regulation (EEC) No 766/68 (2) of 18 June 1968 laying down general rules for granting export refunds on sugar, as last amended by Regulation (EEC) No 1102/75 (3);

Whereas, taking into account the characteristic of the operation, special detailed rules should be provided under this Regulation, and the detailed rules provided for in Commission Regulation (EEC) No 394/70 (4) of 2 March 1970 laying down detailed rules for export refunds on sugar shall not be applied; whereas, in addition, it is necessary to provide appropriate provisions for the export licences issued pursuant to the standing invitation to tender as well as for the securities related thereto and to derogate from Commission Regulation (EEC) No 2637/70 (5) of 23 December 1970 on special detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, as last amended by Regulation (EEC) No 1435/75 (6);

Whereas the Management Committee for Sugar has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Member States shall issue a standing invitation to tender to determine the export levies on white sugar destined for Iran and Morocco, hereafter called 'destination countries', and, during the period of validity of this standing invitation to tender they shall issue weekly partial invitations to tender.

2. The standing invitation to tender shall relate to the refund on export to destination countries within the framework of a multiannual contract as defined in Article 12, hereafter called 'multiannual contract', of white sugar produced within the maximum quota.

This export must not exeed 200 000 metric tons of white sugar per sugar marketing year concerned. The total tonnage for export under a multiannual contract shall be divided into equal portions to be exported in each marketing year covered by this contract.

Article 2

1. The standing and partial invitations to tender shall be conducted in accordance with the provisions laid down in Regulation (EEC) No 766/68 and the present Regulation. The provisions of Regulation (EEC) No 394/70 shall not apply.

2. The standing invitation to tender remains open until a date to be determined in due course.

(1) OJ No L 359, 31. 12. 1974, p. 1.
(2) OJ No L 143, 25. 6. 1968, p. 6.
(3) OJ No L 110, 30. 4. 1975, p. 1.
(4) OJ No L 50, 4. 3. 1970, p. 1.
(5) OJ No L 283, 29. 12. 1970, p. 15.
(6) OJ No L 142, 4. 6. 1975, p. 9.

Article 3

1. The Member States shall draw up a notice of a standing invitation to tender. Such notice shall be published in the *Official Journal of the European Communities*. Member States may also publish the notice, or have it published, elsewhere.

2. The notice shall indicate in particular the terms of the invitation.

3. The notice shall be published only for the purpose of opening the standing invitation to tender. It may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation are modified.

Article 4

1. The period during which tenders may be submitted in response to the first partial invitation :

(a) shall begin on the day on which the standing invitation to tender is published in the *Official Journal of the European Communities*, and

(b) shall expire on 16 July 1975 at 9 a.m.

2. The period during which tenders may be submitted in response to the second and subsequent partial invitations :

(a) shall begin on the first working day following the day on which the preceding period comes to an end, and

(b) shall expire on the Wednesday of the following week at 9 a.m.

3. By derogation from Article 1 (1), there will be no partial tenders on Wednesday 13 August and Wednesday 20 August 1975.

4. During the period of summer time in Italy, the time limits laid down in the preceding paragraphs shall be extended by one hour in that Member State. Outside the periods of summer time in Ireland and in the United Kingdom, the time limits laid down in the preceding paragraphs shall be brought forward by one hour in those Member States.

Article 5

1. Tenderers must either lodge a tender in writing, against a receipt, with the competent authority of the Member State chosen by the tenderer, or address the tender to that authority by registered letter.

2. The tender must indicate :

(a) the invitation to which the tender relates,

(b) the name and address of the tenderer,

(c) the total tonnage of white sugar corresponding to that shown in the contract to be exported during the period of validity of the contract and the division of this tonnage into equal portions among the sugar marketing years covered by the said contract,

(d) the amount of refund per 100 kilogrammes of white sugar, expressed in the currency of the Member State where the offer is made, proposed for export of the total tonnage referred to in (c),

(e) the destination countries referred to in the multiannual contract.

3. A tender shall only be valid if :

(a) the total tonnage of sugar proposed for export has been divided into equal portions in respect of each sugar marketing year covered by the contract,

(b) the tonnage of sugar provided for export in each of the marketing years covered by the contract is not less than 10 000 metric tons,

(c) proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security for tender required by Article 6,

(d) It includes a declaration by the tenderer that if his tender is successful he will apply for export licences in respect of the quantity of white sugar proposed for export in each of the marketing years covered by the multiannual contract,

(e) it is accompanied, where the tender is successful and :

— where the tenderer exports himself the sugar in question of which he is not the producer, by a certified copy of the multiannual contract in addition to a certified copy of the purchase contract of the sugar produced within the maximum quota,

— where the tenderer exports himself the sugar of which he is the producer, a certified copy of the multiannual contract,

— where the tenderer does not himself export the sugar, a certified copy of the multiannual contract and of the delivery contract referred to in Article 13 and if he is not the producer of the sugar in question, a certified copy of the purchase contract of the sugar produced within the maximum quota.

Where the multiannual contract is not worked out in the official language or in one of the other official languages of the Member State whose competent agency has received the offer, the certified copy of this contract shall be accompanied by a reliable translation into the official or one of the official languages of this Member State.

4. A tender may stipulate that it is to be regarded as having been submitted only if the contract awarded relates to the entire quantity and the quantity provided for each year as indicated in the tender or to a specific part thereof.

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

6. Once submitted a tender may not be withdrawn.

Article 6

1. The security required for the invitation to tender shall be 0·10 unit of account per 100 kilogrammes of white sugar, in respect of the total tonnage to be exported provided for in the multiannual contract.

2. The tenderer may lodge the security either in cash or in the form of a guarantee by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. Except in cases of *force majeure*, the security required for the invitation to tender shall be released only :

(a) if the tenderer :

— has not withdrawn his tender, and

— if his tender is successful has applied within the time limit specified in Article 11 (b) for the export licences in respect of each marketing year covered by the contract, or

(b) in respect of the quantity of which no award has been made.

The security shall be released forthwith.

4. In a case of *force majeure*, the competent authority of the Member State concerned shall determine the measures necessary in view of the circumstances invoked by the party concerned.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. Subject as provided in paragraph 2, persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders shall be communicated to the Commission without delay and in such manner that the names of the tenderers are not disclosed.

Article 8

1. After examining the tenders received a maximum quantity may be fixed under a partial invitation to tender. It may, where necessary, be decided to make no award.

2. In order to achieve comparability between tenders and for the award of contracts by Member States, the amount proposed for the refund, expressed in a national currency shall be converted into units of account by applying the relevant conversion rate applicable for purposes of the common agricultural policy.

Article 9

1. Except where a decision is taken to make no award under a partial invitation to tender, then, subject as provided in paragraphs 2 and 3, a contract shall be awarded to every tenderer whose tender does not exceed the maximal amount of the export refund.

2. For each partial invitation to tender, after a maximum quantity has been fixed, the contract is awarded to the tender which quotes the lowest export refund. If the maximum quantity is not fully used up by that tender, awards shall be made to those applicants whose tenders quote the next lowest export refund until the maximum quantity has been accounted for.

3. Where, however, awards under the provisions of paragraph 2 would lead to the maximum quantity being exceeded as a result, taking a particular tender into consideration, an award shall be made to that tenderer in respect only of the tonnage which would allow the maximum tonnage to be accounted for. Where tenders quote the same refund and whose aggregate tonnage exceeds the maximum tonnage awards will be made by dividing the maximum tonnage either in proportion to the quantities shown in such tenders or between the succesful tenderers up to a maximum tonnage to be determined.

Article 10

1. The competent authority of the Member State concerned shall immediately notify all applicants of the result of their participation in the invitation to tender. In addition, that authority shall also send successful tenderers a statement of award.

2. Statement of awards shall *inter alia* indicate :

(a) the invitation to which the tender relates,

(b) the total tonnage of white sugar to be exported during the period of validity of the multiannual contract and the division of this tonnage per marketing year covered by this contract,

(c) the export refund per 100 kilogrammes of white sugar on the total tonnage referred to in (b),

(d) the destination country,

(e) the period of validity of the multiannual contract entered into.

Article 11

Every successful tenderer shall have :

(a) the right to be issued, in respect of the tonnages of white sugar to be exported under the terms of the contract, with export licences issued under the conditions of this Regulation,

(b) the obligation to apply within 10 days following the day of forwarding the statements referred to in Article 10 for the licences referred to in (a) in respect of the export of each of the sugar quantities provided for each of the marketing years covered by the multiannual contract.

(c) the obligation to export or to have exported with the refund specified in the offer the total tonnage of sugar in question to the destination country concerned.

Article 12

For the purpose of this Regulation a multiannual contract is a contract concluded between a Community exporter and the competent Government authorities in the destination country for export of a total tonnage of white sugar from the Community to this country during a fixed period and divided among each of the marketing years covered by the said contract. The contract must not cover less than three years nor more than five. The contract shall apply the first time to the 1975/76 marketing year.

This contract shall in particular indicate :

(a) the total tonnage and the tonnage to be exported to the destination country each marketing year covered by the contract,

(b) the price of the sugar and the clause of adjustment of this price in relation to the price fixed by the Community.

In addition the contract shall specify the obligation for the exporter concerned to export to the destination country the tonnage of white Community sugar provided for each of the marketing years covered by the contract.

Article 13

For the purpose of this Regulation a delivery contract is a contract concluded between a successful tenderer having right to the issue of export licences referred to in Article 11 (a) and an exporter who is contracting party to a multiannual contract in order to ensure the delivery of the sugar necessary for fulfilling the latter contract.

Article 14

1. Requests for export licences as well as these licences shall specify in box 13 the country of destination ; these licences compel exportation to such a country.

2. Export licences regarding sugar to be exported under the heading of the 1975/76 marketing year shall be issued on 1 October 1975 and are valid until the following 30 September 1976.

3. The export licences regarding the sugar to be exported during the second marketing year covered by the contract and during succeeding years shall be issued on the first day of the marketing year in question and shall be valid until the 30 September following the end of the marketing year in question.

4. By way of derogation from the first indent of Article 33 (1) (c) of Regulation (EEC) No 2637/70 the security for licences issued for export of :

(a) the tonnage of sugar under the heading of the first marketing year covered by the multiannual contract shall amount to 0·01 unit of account per 100 kilogrammes of white sugar,

(b) the tonnage of sugar still to be exported in accordance with the multiannual contract shall amount to 0·3 unit of account per 100 kilogrammes of white sugar.

5. The security referred to in paragraph 4 (a) shall only be released for the quantities in respect of which proof of importation to the destination country has been furnished.

If the multiannual contract covers less than five marketing years the security referred to in paragraph 4 (b) shall only be released when proof of importation to the destination country, in respect of the remaining quantities, has been furnished.

If the multiannual contract covers five marketing years the security referred to in paragraph 4 (b) will only be released :

(a) as far as the quantities for exportation under the heading of the second marketing year covered by the multiannual contract are concerned, in respect of those quantities for which proof of importation to the destination country has been furnished,

(b) as far as the quantity for exportation under the heading of the remaining three marketing years is concerned, after the proof of importation to the destination country of this quantity as a whole has been furnished.

The proof of importation to the destination country shall be furnished in the same way as refunds varied according to the destination.

6. Except in case of *force majeure* and where a successful tenderer has not, in respect of a marketing year covered by the multiannual contract, fulfilled his obligations derived from the award of tender provisions may be adopted according to which :

— the securities referred to in paragraph 4 are to be forfeit,

— the rights derived from the award of tender shall be cancelled.

Article 15

The provisions of Article 33*bis* of Regulation (EEC) No 2637/70 shall not apply to white sugar exported in accordance with this Regulation.

Article 16

1. Member States shall take all the measures required to ensure supervision and particularly to ensure the conformity of the contracts mentioned in Articles 12 and 13 and which are necessary for the proper application of the requirements of this Regulation.

2. The Member States issuing the export licences shall inform the Commission, after each marketing year covered by the contract and where necessary, at the request of the latter of the position regarding exports carried out under this Regulation. The Commission shall pass on such information to other Member States.

Article 17

This Regulation shall enter into force on 4 July 1975.

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

Done at Brussels, 3 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission