REGULATION (EEC) No 2101/75 OF THE COMMISSION

of 11 August 1975

on a standing invitation to tender in order to determine a levy and/or refund on exports of white sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 3330/74 [1] of 19 December 1974 on the common organization of the market in sugar, and in particular Articles 12 (2), 17 (5), 19 (4) and 34 thereof;

Having regard to Council Regulation (EEC) No 608/72 [2] of 23 March 1972 laying down rules to be applied in the case of considerable price rises on the world sugar market, and in particular Article 1 (1) thereof;

Whereas, in view of the present state and foreseeable development of the Community and world sugar markets, a standing invitation to tender should be issued for the exportation of sugar; whereas, having regard to the possible fluctuations in world prices for sugar, the invitation to tender must provide for the determination of an export levy and/or export refund;

Whereas the general rules governing invitations to tender for the purpose of determining export refunds for sugar were laid down by Council Regulation (EEC) No 766/68 [3] of 18 June 1968 laying down general rules for granting export refunds on sugar, as last amended by Regulation (EEC) No 1102/75 [4];

Whereas, in view of the specific nature of the transactions in question, special detailed rules of application should be laid down in this Regulation and those provided for in Commission Regulation (EEC) No 394/70 [5] of 2 March 1970 on detailed rules for granting export refunds on sugar should not be applied; whereas, for the same reasons, appropriate provisions should be laid down with regard to export licences in connection with the standing invitation to tender and there should be a derogation from Commission Regulation (EEC) No 2637/70 [6] 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 1807/75 [7];

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

Member States shall issue a standing invitation to tender to determine an export levy and/or export refund on white sugar, and, during the period of validity of the standing invitation, they shall issue weekly partial invitations to tender.

Article 2

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

2. The standing invitation to tender shall remain open until a date to be determined subsequently.

Article 3

1. The Member States shall draw up a notice of 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 to tender.

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 to tender:

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

(b) shall end on 27 August 1975 at 10.00 hours.

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(1) OJ No L 359, 31. 12. 1974, p. 1.
(2) OJ No L 75, 28. 3. 1972, p. 5.
(3) OJ No L 143, 25. 6. 1968, p. 6.
(4) OJ No L 110, 30. 4. 1975, p. 1.
(5) OJ No L 50, 4. 3. 1970, p. 1.
(6) OJ No L 283, 29. 12. 1970, p. 15.
(7) OJ No L 184, 15. 7. 1975, p. 33.

2. The periods 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 end of the previous period ;

(b) shall end at 10.00 hours on the Wednesday of the following week.

3. By way of derogation from paragraph 2 (b), the period or periods for the submission of tenders which would otherwise end :

(a) on Wednesday 19 November 1975, shall end on Tuesday 18 November 1975 at 10.00 hours ;

(b) on Wednesday 24 December 1975 and Wednesday 31 December 1975, shall end on Wednesday 7 January 1976 at 10.00 hours.

4. During the period in which Summer Time applies in Italy, the time limits laid down in the previous paragraphs shall be regarded as extended by one hour in that Member State. During the periods in which Summer Time does not apply in the United Kingdom and in Ireland, the above time limits shall be regarded as brought forward by one hour in those Member States.

Article 5

1. Tenders, which must be in writing, shall either be delivered by hand to the competent authority of a Member State or addressed to that authority by registered letter, telex or telegram.

2. The tender must indicate :

(a) the invitation to which the tender relates ;

(b) the name and address of the tenderer ;

(c) the quantity of white sugar to be exported ;

(d) the amount of the export levy or, where applicable, of the export refund, per 100 kilogrammes of white sugar, expressed in the currency of the Member State where the tender is submitted.

Additional information may be required.

3. A tender shall be valid only if :

(a) the quantity of white sugar to be exported is not less than 250 metric tons ;

(b) 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 ;

(c) it includes a declaration by the tenderer that if his tender is successful he will within the period laid down in Article 12 (b) apply for an export licence in respect of the quantity of white sugar to be exported.

4. A tender may stipulate that it is to be regarded as having been submitted only if :

(a) the minimum export levy or, where applicable, the maximum export refund, is fixed on the day of expiry of the period for the submission of the tenders in question ;

(b) the contract awarded relates to all or a specific part of the quantity tendered for.

5. A tender which is not submitted in accordance with the provisions of this Regulation, 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 for tender shall be 1·00 unit of account per 100 kilogrammes of white sugar to be exported.

2. The tenderer may provide the security either in cash or in the form of a guarantee furnished 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 for the tender shall be released only :

(a) if a successful tenderer has within the period laid down in Article 12 (b) applied for an export licence,

or

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

4. In case of *force majeure,* the competent authority of the Member State concerned shall take such action as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. Subject to 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 the tenders received in respect of a partial invitation to tender have been examined, a maximum quantity may be fixed for that partial invitation.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 9

1. Account being taken of the current state and foreseeable development of the Community sugar market and of the world sugar market, there shall be fixed either :

— a minimum export levy, or

— a maximum export refund.

2. Subject as provided in Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender indicates a rate of levy equal to or greater than such minimum levy.

Subject as provided in Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender indicates a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

Article 10

1. Where a maximum quantity has been fixed for a partial invitation to tender :

— if a minimum levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest levy. If the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of tender until the entire maximum quantity has been accounted for ;

— if a maximum refund is fixed, contracts shall be awarded in accordance with the first indent ; if after such awards a quantity is still outstanding, or if there are no tenders quoting a levy, contracts shall be awarded, in ascending order of tender until the entire maximum quantity has been accounted for, to tenderers quoting a refund.

2. However, where an award to a particular tenderer in accordance with the provisions of paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the maximum quantity being exceeded, then the quantity available shall be awarded as follows :

— by being divided among the tenderers concerned in proportion to the quantities tendered for by them ; or

— by being apportioned among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them ; or

— by the drawing of lots.

Article 11

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 send successful tenderers a statement of award.

2. The statement of award shall indicate :

(a) the invitation to which the tender relates ;

(b) the quantity of white sugar to be exported ;

(c) the export levy to be charged, or where applicable the export refund to be granted, per 100 kilogrammes of white sugar of the quantity referred to in (b).

Article 12

Every successful tenderer shall have :

(a) the right to be issued, in respect of the quantity awarded, with an export licence indicating as appropriate the export levy or the export refund quoted in the tender ;

(b) the obligation to apply, within 10 days following the day of expiry of the period for the submission of tenders, for an export licence for that quantity ; Article 5 (3) of Regulation (EEC) No 193/75 [1] shall not apply in such cases.

Article 13

1. Article 33a of Regulation (EEC) No 2637/70 shall not apply to white sugar to be exported in accordance with this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth month following that during which the award in respect of that partial invitation to tender was made.

However :

(a) export licences issued before 1 October 1975

— may be used only from that date ;

— shall be valid only until 31 December 1975 ;

(b) export licences issued in connection with an award made after 30 April 1976 shall be valid only until 30 September 1976.

3. 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 the export of sugar covered by this Regulation shall amount to 6·00 units of account per 100 kilogrammes of sugar.

Article 14

This Regulation shall enter into force on 12 August 1975.

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[1] OJ No L 25, 31. 1. 1975, p. 10.

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

Done at Brussels, 11 August 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission