REGULATION (EEC) No 2247/75 OF THE COMMISSION

of 29 August 1975

on the terms of invitations to tender for the costs of manufacture and delivery of butteroil as food aid to certain developing countries and to the World Food Programme

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 740/75 (2), and in particular Articles 6 (7) and 28 thereof;

Whereas Council Regulation (EEC) No 1542/75 (3) of 16 June 1975 on the supply of milk fats as food aid to certain developing countries and to certain international organizations under the 1975 food-aid programme provides *inter alia* that 17 850 metric tons of butteroil processed from butter held by the intervention agencies are to be made available to certain developing countries and 16 000 metric tons to the World Food Programme, hereinafter called 'the WFP';

Whereas under Article 5 of Council Regulation (EEC) No 1541/75 (4) of 16 June 1975 laying down general rules for the supply of milk fats as food aid to certain developing countries and to certain international organizations under the 1975 food-aid programme, the costs of processing, packaging and transport in respect of each supply are in principle to be put out to tender;

Whereas the detailed rules to be adopted for such tenders should in the main be those used hitherto in similar cases;

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

Where it is decided to supply butteroil to developing countries and to the WFP in accordance with Regulation (EEC) No 1542/75, invitations to tender as provided for in Article 5 of Regulation (EEC) No 1541/75 shall be organized in accordance with the detailed rules laid down in this Regulation.

Article 2

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

— the location of the coldstore or stores where the butter for the manufacture of the butteroil is held,

— the quantity of butteroil to be delivered,

— the destination and means of delivery,

— the insurance arrangements for the goods to be transported,

— the closing date and address for the submission 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. The intervention agency may also publish such notice elsewhere.

3. The intervention agency shall take the measures necessary to enable prospective tenders to examine at their own expense, before submitting a tender, samples of the butter.

Article 3

The invitation to tender shall be open only to processing undertakings approved for this purpose by the Member State on whose territory the processing is to take place. Only those undertakings capable of meeting the obligations provided for in this Regulation may be approved.

Article 4

1. Tenders shall be submitted in writing and either delivered to the intervention agency against acknowledgement of receipt or sent by registered letter to the intervention agency. The intervention agency may also authorize the use of telex.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 74, 22. 3. 1975, p. 1.
(3) OJ No L 157, 19. 6. 1975, p. 6.
(4) OJ No L 157, 19. 6. 1975, p. 4.

2. Where the invitation to tender is in respect of several lots no tender may relate to more than one lot.

3. The tender shall indicate :

(a) the name and address of the tenderer ;

(b) the coldstore or stores from which the tenderer wishes to take delivery of the butter, chosen from the list of such stores in the notice of invitation to tender ;

(c) the port of loading chosen from among Community ports ;

(d) the price, exclusive of taxes, at which the tenderer undertakes to make the supply in question, expressed in the currency of the Member State in which the invitation to tender is held ; such price shall include the purchase price of the butter in accordance with the terms laid down in Articles 9 and 13, the costs of processing, packing and transporting the butteroil and the insurance costs for the transport of the butter and the butteroil up to the prescribed point of delivery.

4. A tender shall be valid only if it relates to an entire lot put up for tender.

5. A tender shall be valid only if it is accompanied by :

(a) a document certifying the approval referred to in Article 3 ;

(b) an undertaking from the tenderer that he will abide by the conditions laid down in Articles 6 (3) and 10 ;

(c) a declaration whereby the tenderer agrees to forgo any claim as to the quality or characteristics of any butter sold to him ;

(d) proof that the security for tender referred to in Article 5 has been given before the expiry of the period for the submission of tenders.

6. No tender may be withdrawn.

Article 5

1. The security required for the invitation to tender shall be 15 units of account per metric ton of butteroil.

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 such Member State.

Article 6

1. The intervention agency shall make the necessary arrangements to enable the successful tenderer to take delivery at the coldstore indicated in his tender of the butter required for processing into butteroil.

2. On leaving the coldstore the butter shall be placed under customs control or under an administrative control offering equivalent safeguards.

3. Butteroil delivered for the supply in question must be manufactured exclusively from the butter delivered for this purpose to the successful tenderer by the intervention agency.

Article 7

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 a decision shall be taken to make no award.

Article 8

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

2. Without prejudice to the provisions of paragraph 1, the successful tenderer shall be the one whose offer quotes the lowest price converted into units of account. Where two or more valid offers specify the same price expressed in units of account, the award shall be made by drawing lots.

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

4. Rights and obligations arising from the award shall not be transferable.

Article 9

1. Purchase price of the butter shall be 210 units of account per 100 kilogrammes ex coldstore.

2. Subject to the provisions of Article 13 the successful tenderer shall pay for the butter supplied to him within 90 days following the date fixed by the intervention agency for the loading of the butteroil.

Article 10

1. The successful tenderer shall, on the date and at the place fixed, deliver the relevant quantities of butteroil, which shall satisfy the conditions of quality, packaging and marking laid down in the Annex to this Regulation. He shall furnish within the periods prescribed, to the intervention agency and, as the case may be, to the recipient country or to the WFP, the information required in the Regulation relating to the particular invitation to tender in question.

2. Delivery shall be deemed to have taken place when the goods are deposited in the port of shipment at a point designated, as the case may be, by the recipient country or by the WFP or their respective representatives.

3. The tenderer shall submit to all quantity controls effected at the port by the representative of the recipient country or of the WFP. He shall supply for this purpose a list setting out the manufacturer's lot numbers comprising the supply and specifying the number of cartons corresponding thereto.

Article 11

Where the processing of the butter into butteroil takes place in the Member State of sale, the following provisions shall apply :

1. At the time of the manufacture and packing of the butteroil, the competent agency in the Member State where such operations take place shall ensure that :

— Article 6 (3) is complied with,

— the quality and packing conform to the provisions contained in the Annex,

— the packings used conform to the type of packings specified in the certificate referred to in the Annex issued by the approved packaging institute ;

2. If on conclusion of its investigations as aforesaid the agency concerned considers that the relevant conditions have been fulfilled, it shall issue a certificate to that effect to the successful tenderer.

Article 12

Where the processing of the butter or the removal of the butteroil from the geographical territory of the Community takes place in a Member State other than that of sale, proof that the butter has been processed in accordance with the requirements of Article 11 (1) and/or that removal from the geographical territory of the Community has taken place shall be furnished by production of the control copy referred to Article 1 of Commission Regulation (EEC) No 2315/69 (1) of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods, as amended by Regulation (EEC) No 690/73 (2).

Sections 101, 103 and 104 of the control copy shall be completed. Section 104 shall be completed by striking out the references not required and inserting in the second indent one of the following phrases :

1. If the butter is to be processed in another Member State :

'Butter to be :

(a) processed into butteroil, and subsequently

(b) exported as food aid (Regulation (EEC) No 1541/75)'.

'Beurre destiné :

(a) à être transformé en butteroil,

(b) puis à être exporté au titre de l'aide alimentaire (règlement (CEE) n° 1541/75)'.

'Butter bestimmt :

(a) zur Verarbeitung zu Butteroil,

(b) alsdann zur Ausfuhr als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 1541/75)'.

'Burro destinato :

(a) ad essere trasformato in butteroil,

(b) ad essere esportato a titolo di aiuto alimentare (Regolamento (CEE) N. 1541/75)'.

'Boter bestemd :

(a) om te worden verwerkt tot butteroil,

(b) om nadien te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. 1541/75)'.

'Smør bestemt til :

(a) fremstilling af butteroil

(b) herefter eksport som fødevarehjælp (forordning (EØF) nr. 1541/75)'.

Where verification of exportation as referred to in (b) is carried out in a Member State other than the one in which processing as referred to in (a) took place, the customs office which verifies the said processing shall return the control copy to the customs office of departure in the Member State of sale, indicating that it has only verified the processing and shall issue to the person concerned a control copy referred to in Article 1 of Regulation (EEC) No 2315/69 with sections 101, 103, 104 and 106 completed. Section 103 shall specify the net weight of butteroil after processing ; section 104 shall contain one of the endorsements set out in subparagraph 2 below ; section 106 shall specify :

— the number of the control copy from the customs office of departure in the Member State of sale and the name of that office,

(1) OJ No L 295, 24. 11. 1969, p. 14.
(2) OJ No L 66, 13. 3. 1973, p. 23.

— the weight of the butter used to produce the quantity of butteroil specified in section 103.

The customs office which verifies that exportation as specified in (b) has taken place shall endorse the control copy supplied by the office which verified processing and shall return this copy via this latter office to the customs office of departure in the Member State of sale.

2. If the butter is processed into butteroil in the Member State of sale and is to leave the geographical territory of the Community via another Member State :

'Butteroil to be exported as food aid (Regulation (EEC) No 1541/75)',

'Butteroil destiné à être exporté au titre de l'aide alimentaire (reglement (CEE) nº 1541/75)',

'Als Nahrungsmittelhilfe auszuführendes Butteroil (Verordnung (EWG) Nr. 1541/75)',

'Butteroil destinato ad essere esportato a titolo di aiuto alimentare (regolamento (CEE) N. 1541/75)',

'Butteroil bestemd om te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. 1541/75)',

'Butteroil bestemt til eksport som fødevarehjælp (forordning (EØF) nr. 1541/75)'.

The customs office which verifies exportation shall endorse the control copy and shall return this copy to the customs office of departure in the Member State of sale.

Article 13

1. Upon presentation of the documents referred to :

— in Articles 11 (2) and 15 and of a customs document establishing that the product has been removed from the geographical territory of the Community, where the processing of the butter and the removal of the butteroil both took place in the Member State of sale,

— in Articles 12 (1) and 15, where the processing into butteroil took place in a Member State other than that of sale,

— in Articles 11 (2), 12 (2) and 15, where the processing of butter into butteroil was carried out in the territory of the Member State of sale and where the removal from the geographical territory of the Community took place in another Member State,

the competent agency of the Member State of sale shall release the tenderer, in respect of an amount equal to the price indicated in the tender, from his obligation to pay the purchase price of the butter supplied to him, and shall pay to him, within 15 days from the day of the presentation of the abovementioned supporting documents, the difference between these two prices, where this is in the favour of the tenderer.

2. In the case of deliveries to the WFP, the competent agency of the Member State shall pay to the WFP within 30 days from the receipt of the letter referred to in Article 15 (2) a flat-rate contribution of 79 units of account per metric ton of butteroil delivered towards the cost of transport and distribution thereof.

Article 14

1. Except in the case of *force majeure,* the security for the tender provided for in Article 5 shall be released only :

(a) if the tenderer has not withdrawn his tender before the contract is awarded and if the documents required under the first, second or third indent of Article 13 (1) as the case may be have been produced to the intervention agency ;

(b) if no award is made.

2. The security shall be released immediately.

3. In cases of *force majeure,* the intervention agency selling the butter shall take such action as it considers necessary having regard to the circumstances invoked.

Article 15

1. In the case of deliveries to developing countries, on delivery of the goods, a certificate of acceptance shall be given to the tenderer acting as agent for the Community by the recipient appointed by the receiving country at the specified place of destination or, where no such agent is appointed, by the representative of the intervention agency of the Member State of sale.

2. In the case of deliveries to the WFP, on delivery of the goods at the port of embarkation the representative of the WFP shall give the tenderer acting as agent for the Community a letter certifying that the WFP has taken delivery thereof.

Article 16

The intervention agencies shall immediately inform the Commission of the names of the undertakings responsible for transportation and of the means of transport used.

Article 17

Except in cases of *force majeure,* the tenderer shall bear all financial liabilities which would have been borne by the Community by reason of non-delivery of the butteroil to the place and by the time appointed, provided always that the receiving country or the WFP permitted delivery to be effected to the place and by the time specified.

The costs resulting from a failure to deliver butteroil resulting from a case of *force majeure* shall be assumed by the competent agency of the Member State of sale and be borne by the Community.

Article 18

No refund or compensatory amount (whether monetary or accession) shall be applicable in respect of butteroil supplied under this Regulation.

Article 19

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, 29 August 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX

I. Quality requirements for butteroil

Characteristics of the product : concentrated milk fat with a minimum pure fat content of 99·8 %.

Composition characteristics :

moisture content and non-milk fat constituents : maximum 0·2 %,

fats : minimum 99·8 %,

free fatty acids : maximum 0·5 % (oleic acid),

amount of peroxide/kg : maximum one unit (in milliequivalents of oxygen per kg),

flavour : fresh,

smell : absence of smells unconnected with butteroil.

For certain deliveries, special requirements may be specified.

II. Packaging of butteroil

1. The butteroil is to be packed in metal canisters fully filled and hermetically sealed in an atmosphere of nitrogen.

   The metal canisters are packed in cartons containing :

   — either four 5 kg canisters, or

   — one 20 kg canister.

The complete packaging should be strong enough to withstand a long sea journey and transportation by land in a tropical climate.

Closed cartons, as prepared for delivery, containing either one 20 kg metal canister or four 5 kg canisters 95 % full of water, must be able to resist :

(a) three falls from a height of one metre on three different edges relating to different axes ; this test, for which five complete packagings are to be used, must be effected in accordance with ISO standard No 2248. After the tests :

   — the metal canisters may be crushed out of shape but no leakage must occur after elimination of the vacuum ;

   — the cartons may be damaged and show small tears in the seams and sealed flaps but seams must not be completely torn and flaps must not have come unstuck or be torn off ;

   — the damage must not be such as to endanger the safe transport of the canister(s) in the carton ;

(b) a compression test in accordance with ISO standard Nos 2872 and 2874. For this test, each complete packaging is placed separately, in the normal transportation position, between the plates of the press.

   During the test, the relative speed of the plates is 10 mm/minute.

   The criteria of approval is that, after applying a pressure of 3 500 kg/m^2 over the base area, the entire packaging (metal canisters and carton) may get slightly out of shape but must keep its entirety. Five complete packagings must be tested.

   Before the tests, the complete filled packagings are subject to the following treatment in accordance with ISO standard No 2233 : storage for 48 hours at 25 °C with a relative humidity of 90 %.

   The conformity of the cardboard carton with the standards defined above must have been verified by a packaging institute approved by the Member State concerned which shall issue the appropriate certificate and test report together with a description of the technical characteristics of the packaging material.

2. *Markings on the packaging:*

The metal canister shall have stamped upon it the following information in the language or languages specified in the Regulation of the individual invitation to tender:

(a) the description: 'Butteroil';

(b) the words: 'Gift of the European Economic Community (together with appropriate markings for each individual delivery);

(c) the net weight;

(d) the month and year of manufacture;

(e) the name of the processing undertaking — in the form of a code number.

In addition to the above, the following must be marked on the two sides of each carton: the manufacturer's lot number and the number of cartons making up the lot.