REGULATION (EEC) No 2597/75 OF THE COMMISSION

of 9 October 1975

concerning an invitation to tender for the costs of manufacture and delivery of butteroil as food aid 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 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, under the 1975 food-aid programme, to certain developing countries and to certain international organizations, provides for 3 000 metric tons of butteroil obtained from butter held by intervention agencies to be made available to the United Nations Relief and Works Agency, hereinafter called 'UNRWA' ; whereas UNRWA has requested delivery of that butteroil ;

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, under the 1975 food-aid programme to certain developing countries and to certain international organizations, such supplies are 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 2247/75 (5) of 29 August 1975 on the terms of invitations to tender for the costs of manufacture and delivery of butteroil, under the food-aid programme to certain developing countries and to the World Food Programme ;

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

(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.
(5) OJ No L 229, 30. 8. 1975, p. 60.

HAS ADOPTED THIS REGULATION :

Article 1

1. Tenders shall be invited in accordance with the provisions of this Regulation for the supply to UNRWA of 3 000 metric tons of butteroil produced from butter bought in under Article 6 (1) of Regulation (EEC) No 804/68.

2. Delivery shall be made cif, following Article 11 (1) (2). The butteroil shall be divided into seven lots :

— lot A : 450 metric tons, for delivery port of Beirut (Lebanon),
— lot B : 450 metric tons, for delivery port of Beirut (Lebanon),
— lot C : 450 metric tons, for delivery port of Beirut (Lebanon),
— lot D : 450 metric tons, for delivery port of Beirut (Lebanon),
— lot E : 400 metric tons, port of Ashdod (Israel),
— lot F : 400 metric tons, port of Ashdod (Israel),
— lot G : 400 metric tons, port of Ashdod (Israel),

3. Loading shall take place by 20 December 1975 at the latest.

Article 2

1. The invitation to tender provided for in Article 1 shall be organized by the German intervention agency, as regards Lots A to D, and by the Dutch intervention agency as regards lots E to G.

These intervention agencies shall draw up the notice of invitation to tender, which shall be published in the *Official Journal of the European Communities* not less than 10 days before the closing date for the submission of tenders.

2. The closing date for the submission of tenders shall be 28 October 1975 at 12 noon.

3. The intervention agencies concerned shall indicate in their notice the coldstores where the butter for the manufacture of the butteroil is held and shall take the measures necessary to enable prospective tenderers 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 which can fulfil the obligations provided for in this Regulation may be approved.

Article 4

1. Tenders, which shall be in writing, shall be submitted either by delivery by hand to the intervention agency concerned 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, for which the tenderer undertakes to deliver the butteroil cif port of Beirut or Ashdod as the case may be, expressed in the currency of the Member State in the location of the invitation to tender. This amount shall include the purchase price of the butter on the terms laid down in Article 10 (1), the costs of transporting the butter, of processing, packing and delivering the butteroil on the terms laid down in Article 6 and the cost of insuring the goods to their full value ;

(c) the coldstore or coldstores chosen from the list of such stores assigned to each lot, at which the tenderer wishes to take delivery of the butter ;

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

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

5. A tender shall not be valid unless accompanied by :

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

(b) an undertaking from the tenderer that he will fulfil the obligations laid down in Articles 7 (3) and 11 ;

(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 before expiry of the period set for the submission of tenders the security referred to in Article 5 has been lodged.

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 intervention agency 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 Member State in question.

Article 6

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 receipient 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 acting as agent of the Community and the delivery agent of the recipient.

Article 7

1. The intervention agency concerned shall take all measures necessary to ensure that the successful tenderer can take delivery of the butter necessary for processing into butteroil from the coldstore indicated in his tender.

2. Immediately 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 butter of which delivery was taken for this purpose by the successful tenderer from the intervention agency in question.

Article 8

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 9

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 10

1. The purchase price of the butter shall be 210 units of account per 100 kg ex coldstore.

2. Subject to the provisions of Article 14 the successful tenderer shall pay for the butter of which he takes delivery within 45 days following the final date fixed in Article 1 (3) for loading.

Article 11

1. Every successful tenderer shall, by the relevant date as specified in Article 1 (3), deliver cif Beirut or Ashdod as the case may be the prescribed quantity of butteroil meeting the requirements as to quality, packaging and labelling laid down in the Annex to this Regulation.

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. Every successful tenderer shall submit to any quantitative control carried out by UNRWA. He shall for this purpose furnish a list of the lots constituting each supply.

Article 12

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 of the Member State shall carry out checks to ensure that :

   — the quality and packing conform to Article 6 (b) of Regulation (EEC) No 1541/75,

   — the requirements of Article 7 (3) of this Regulation are complied with.

2. If on concluding these checks the agency concerned finds that the relevant conditions have been fulfilled, it shall issue to the successful tenderer a certificate to this effect.

Article 13

If the butteroil is processed in and/or leaves the geographical territory of the Community from a Member State other than that of sale, proof that processing has been carried out in accordance with the conditions referred to in subparagraph (1) of Article 12 and/or that the butteroil has left the geographical territory of the Community shall be furnished by production of the control copy provided for in Article 1 of Commission Regulation (EEC) No 2315/69 [1] of 19 November 1969 concerning the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods, as last amended by Regulation (EEC) No 690/73 [2].

Sections 101, 103 and 104 in the control copy shall be completed. Section 104 shall be completed by deleting as necessary and entering against the second indent one of the following endorsements :

1. If the Butter is to be processed in a Member State other than that of sale :

   '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)'

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

'Boter bestemd :

(a) om te worden verwerkt tot butteroil ;

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

'Butter to be :

(a) processed into butteroil, and subsequently ;

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

'Smør bestemt til :

(a) fremstilling af butteroil ;

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

Where verification that the butteroil has been exported as specified in (b) is to take place in a Member State other than that where processing as specified in (a) takes place, the customs office which verifies such processing shall return the control copy to the customs office of departure, indicating that it has only verified that the goods have been processed as specified in (a), and shall issue to the person concerned for the butteroil so obtained one or more control copies as referred to in Article 1 of Regulation (EEC) No 2315/69, with sections 101, 103, 104 and 106 completed ; in section 103 there shall be entered the net weight of the butteroil after processing in accordance with (a) ; section 104 shall contain one of the endorsements set out at point 2 below ; in section 106 there shall be entered :

— the number of the control copy from the customs office of departure and the name of that office,

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

The customs office which verifies that delivery as specified in (b) has taken place shall endorse the control copy from the office which verified that the goods had been processed as specified in (a) and shall return this copy via this latter office to the 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 from another Member State :

'Butteroil destiné à être exporté au titre d'aide alimentaire (règlement (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 to be exported as food aid (Regulation (EEC) No 1541/75)'

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

The customs office which verified delivery shall endorse the control copy and return it to the office of departure in the Member State of sale.

Article 14

1. Upon presentation :

— of the documents referred to in subparagraph (2) of Article 12 and in Article 15 and of a customs document establishing that the butteroil has left the geographical territory of the Community where the butteroil has been processed in or left the geographical territory of the Community from the Member State of sale,

— of the document referred to in subparagraph (1) of Article 13 and in Article 15, where processing has taken place in a Member State other than that of sale,

— of the documents referred to in subparagraph (2) of Article 12, in subparagraph (2) of Article 13 and in Article 15, where processing has taken place in the Member State of sale and the butteroil has left the geographical territory of the Community from another Member State,

the competent agency of the Member State of sale shall release each successful tenderer from his obligation to pay the purchase price of the butter supplied to him, provided that the amount in respect of which such release is given does not exceed that for which the tenderer undertook to supply the butteroil, and shall within 15 days reckoned from the day on which the abovementioned supporting documents are produced pay to him an amount equal to the difference, where this is in favour of the tenderer, between the aforesaid two amounts.

2. Furthermore, the competent agency of the Member State of sale shall, within a period not exceeding 60 days, pay to UNRWA a lump-sum contribution towards the cost of transporting the goods from the ports of destination and of distribution of 20 units of account per metric ton of butteroil delivered.

Article 15

On delivery in accordance with Article 11, UNRWA shall issue a certificate declaring that the lot concerned has been delivered within the period prescribed.

Article 16

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 butteroil at the place and by the time appointed, provided always that UNRWA has made it possible for the butteroil to be so delivered. Costs incurred by reason of failure to deliver the butteroil as a result of *force majeure* shall be borne by the competent agency of the Member State of sale and by the Community.

Article 17

1. Except in cases of *force majeure*, the security required under Article 5 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 documents required under the first, second or third indent as the case may be of Article 14 (1) ;

2. Release of the security shall take place immediately.

Article 18

In cases of *force majeure* the intervention agency selling the butter shall decide on the measures to be taken having regard to the circumstances invoked.

Article 19

No refund or compensatory amount (whether monetary or accession) shall be applied in respect of the butter or butteroil to which this Regulation applies.

Article 20

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, 9 October 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX

I. Quality requirements for butteroil

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

Compositional characteristics : moisture content and non-milk fat constituents : maximum 0·2 %.

Fats : minimum 99·8 %.

Free fatty acids : maximum 0·5 % (oleic acid).

Peroxide/kg : maximum 1 unit (in milliequivalents of oxygen per kg).

Flavour : fresh.

Smell : no foreign odours.

II. Packaging of butteroil

1. The butteroil is to be packed in bunged metal drums coated inside with an alimentary varnish, of 190 kg net weight, fully filled and, hermetically sealed in an atmosphere of nitrogen. The drums should be strong enough to withstand a long sea journey. Their composition must not be such as to be harmful to human health or to cause a change in the colour, taste or odour of their contents.

   Each drum must be fully leak-tight.

2. A label to be affixed to each drum must bear the following particulars :

   (a) the description 'butteroil',

   (b) the words :

   — 'Don de la Communauté économique européenne' ;

   — 'Action Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine',

   (c) net weight,

   (d) month and year of manufacture,

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

   (f) the manufacturer's lot number,

   (g) the port of destination.