# REGULATION (EEC) No 2660/75 OF THE COMMISSION

## of 20 October 1975

## on invitations to tender for the supply of butteroil bought on the Community market 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;

Having regard to Council Regulation (EEC) No 1541/75 (3) of 16 June 1975 laying down general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1975 food-aid programme, and in particular Article 7 thereof;

Whereas Council Regulation (EEC) No 1542/75 (4) of 16 June 1975 on the supply of milk fats as food aid to certain developing countries and international organizations under the 1975 food-aid programme lays down, *inter alia,* that 17 850 metric tons of butteroil obtained from butter held by intervention agencies should be made available to certain developing countries, and 16 000 metric tons to the World Food Programme, hereinafter referred to as WFP;

Whereas, in accordance with Article 2 (2) of Regulation (EEC) No 1541/75, supply may be ensured by means of butter or butter fats available on the Community market if the market situation is such that it is not possible to use products from public stocks; whereas such an operation must be carried out without disturbing the normal development of market prices;

Whereas the market situation in the Community is characterized by the existence of small quantities of butter in public storage and large-scale availabilities in the private sector; whereas, in this situation, certain supplies should be provided in the form of butter or butter fats available on the Community market; whereas under Article 5 of Regulation (EEC) No 1541/75, such operations should normally be effected by way of a tendering procedure;

Whereas the rules for such an invitation to tender should therefore be determined; whereas the procedure hitherto adopted for similar cases should in the main be followed;

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, in accordance with Regulation (EEC) No 1542/75, to supply butteroil in the form of butter fats which are of Community origin and not taken from public stocks to developing countries and to the WFP, the tendering procedure provided for in Article 5 of Regulation (EEC) No 1541/75 shall comply with the rules laid down in this Regulation.

*Article 2*

1. Intervention agencies shall invite tenders, indicating in particular:

— the quantity of butteroil to be delivered;

— the destination and means of delivery;

— the insurance arrangements for the goods to be transported;

— the time limit and address for the submission of tenders;

— period in which delivery is provided.

2. The invitation to tender shall be published in the *Official Journal of the European Communities* not less than 10 days before the time limit for the submission of tenders.

The intervention agency may also publish such invitation elsewhere.

*Article 3*

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

(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. 4.
(4) OJ No L 157, 19. 6. 1975, p. 6.

*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.

2. Where the invitation to tender covers 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 Community port chosen as port of loading ;

(c) the price, exclusive of taxes, at which the tenderer undertakes to make the supply in question in accordance with the terms laid down, expressed in the currency of the Member State to which the tender is addressed ; such price shall include the insurance costs for the transport of 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 certifiying the approval referred to in Article 3 ;

(b) an undertaking from the tenderer that he will abide by the conditions laid down in Article 8 ;

(c) proof that the surety referred to in Article 5 has been provided before the time limit for the submission of tenders.

6. No tender may be withdrawn.

*Article 5*

1. The surety for the tender shall be 40 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 some other form of surety which satisfies the criteria laid down by that Member State.

*Article 6*

1. 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 price shall be fixed, expressed in units of account, or a decision shall be taken to make no award.

2. For purposes of the decision referred to in paragraph 1 and for the award of the contract, the amounts of tenders submitted to the United Kingdom and Irish intervention agencies shall be considered, after conversion into units of account, to have been increased by the accession compensatory amount applicable to the quantities of butteroil in question in trade between the Community as originally constituted and Denmark on the one hand, and the new Member State concerned on the other.

The accession compensatory amount referred to in the preceding subparagraph, expressed in units of account, shall be calculated on the basis of a 99·9 % fat content of the butteroil.

*Article 7*

1. A tender shall be rejected if the price proposed, when converted into units of account and, where applicable, corrected in accordance with Article 6 (2), is higher than the maximum price fixed for the lot in question.

2. Without prejudice to paragraph 1, the successful tenderer shall be the one whose offer quotes the lowest price converted into units of account, and, where applicable, corrected in accordance with Article 6 (2).

If several intervention agencies have received offers in the same amount expressed in units of account and if those offers are the most favourable, the award shall be made by the intervention agency determined in accordance with the procedure referred to in Article 6 (1).

In the case where the intervention agency must take into consideration several offers showing the same price, the award shall be made by drawing lots.

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

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

5. The intervention agency shall inform the Commission immediately of the name and address of the successful tenderer.

*Article 8*

1. The successful tenderer shall, at the time and place laid down, deliver the relevant quantities of butteroil in accordance with the requirements concerning quality, packaging and marking laid down in the Annex to this Regulation. He shall, within the time prescribed, communicate to the intervention agency and to the recipient country or the WFP, as the case may be, the information required under the Regulation relating to the invitation to tender in question.

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

3. The successful 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 that purpose a list setting out the manufacturer's lot numbers comprising the supply and specifying the number of cartons corresponding thereto.

*Article 9*

1. The manufacture of the butteroil shall take place in the Member State where the tender was awarded.

2. At the time of the manufacture and packing of the butteroil, the competent agency of the Member State concerned shall ensure that :

— the butter fats used are of Community origin ;

— the quality and packaging conform to the provisions contained in the Annex ;

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

3. If, in conclusion of its investigations as aforesaid, the agency concerned considers that the required conditions have been fulfilled, before completion of the customs formalities referred to in Article 10 (1), it shall issue to the successful tenderer an attestation to the effect that the conditions referred to in paragraph 2 of this Article have been fulfilled.

*Article 10*

1. The customs export formalities shall be carried out in the Member State where the tender was awarded.

2. If export of the consignment of butteroil from the geographical territory of the Community is to be effected from a Member State other than that in which the export formalities were completed, the consignment shall be bonded immediately upon completion of those formalities and until it leaves the geographical territory of the Community.

Proof that the consignment has left the geographical territory of the Community may be furnished only by production of the control copy referred to in 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 deleting the references not required and inserting in the second indent one of the following statements :

'Butteroil destiné à être exporté au titre de l'aide alimentaire (règlement (CEE) n° 2660/75)',

'als Nahrungsmittelhilfe auszuführendes Butteroil (Verordnung (EWG) Nr. 2660/75)',

'Butteroil destinato ad essere esportato a titolo di aiuto alimentare (regolamento (CEE) n. 2660/75,'

'Butteroil bestemd om te worden uitgevoerd als voedselhulp (Verordening (EEG) Nr. 2660/75)',

'Butteroil intended for export as food aid (Regulation (EEC) No 2660/75)',

'Butteroil bestemt til eksport som fødevarehjælp (forordning (EØF) nr. 2660/75)'.

*Article 11*

1. In the case of deliveries to developing countries, a certificate of acceptance shall be given on delivery of the goods to the successful tenderer acting as agent for the Community by the consignee recipient designated by the recipient country at the port of loading or, where no such consignee is designated, by the representative of the intervention agency of the Member State where the tender was awarded.

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

*Article 12*

1. On production of the documents referred to :

— in Articles 9 (3) and 11 and of a customs document establishing that the product has left the geographical territory of the Community, in the case of export from the Member State where the export formalities were completed,

— in Articles 9 (3), 10 (2) and 11, if export from the geographical territory of the Community was effected from a Member State other than that in which the export formalities were completed,

the competent agency of the Member State where the tender was awarded shall pay the successful tenderer, within a fortnight from the day of production of the abovementioned supporting documents, the price referred to in Article 4 (3) (c).

(1) OJ No L 295, 24. 11. 1969, p. 14.

(2) OJ No L 66, 13. 3. 1973, p. 23.

2. If, for reasons not attributable to the successful tenderer, the period laid down for delivery in the invitation to tender must be extended or production of the proof referred to in Article 10 (2) is delayed, the abovementioned agency may permit, on submission of the attestation provided for in Article 9 (3), advances on the price referred to in Article 4 (3) (c).

However, such an advance may not exceed 80 % of the abovementioned price and shall be paid only if the successful tenderer provides, under the conditions laid down in Article 5 (2), a corresponding security.

3. In the case of deliveries to the WFP, the competent agency of the Member State where the tender was awarded shall pay the WFP, within 30 days from the receipt of the letter referred to in Article 11 (2), a contribution of 79 u.a. per metric ton of butteroil delivered towards the costs of forwarding and distribution of the butteroil.

*Article 13*

1. Except in cases of *force majeure,* the tendering surety provided for in Article 5 shall be released only :

(a) if the tenderer has not withdrawn his tender before the award of the contract and if he has supplied the intervention agency with the supporting documents referred to in either the first or second indent of Article 12 (1), as the case may be.

(b) if no award has been made.

2. The release of the surety shall take place immediately.

*Article 14*

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

The expenditure resulting from failure to deliver the butteroil through *force majeure* shall be defrayed by the competent agency of the Member State where the tender was awarded and shall be borne by the Community.

*Article 15*

In case of *force majeure,* the intervention agency concerned shall determine the measures which it considers necessary in view of the circumstances invoked.

*Article 16*

No refund or compensatory amount (monetary or accession) shall be applied to the butteroil referred to in this Regulation.

*Article 17*

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, 20 October 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 0·3 % (oleic acid),

amount of peroxide/kg: maximum 0·5 unit (in milliequivalents of oxygen per kg),

flavour: fresh,

smell: absence of smells unconnected with butteroil.

No use may be made of neutralizing agents, and in particular alkaline salts, in the manufacture of butteroil.

For certain deliveries, particular requirements may be fixed.

## 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 subjected 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 packages 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 the 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', with the addition of specific details for each particular 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.