REGULATION (EEC) No 279/75 OF THE COMMISSION

of 4 February 1975

laying down detailed rules for the application of the system of tendering for export refunds on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community ;

Having regard to Council Regulation No 120/67/EEC (1) of 13 June 1967 on the common organization of the market in cereals, as last amended by Regulation (EEC) No 85/75 (2) ;

Having regard to Council Regulation No 139/67/EEC (3) of 21 June 1967 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds, as last amended by Regulation (EEC) No 87/75 (4), and, in particular Article 4a (2) thereof ;

Whereas Article 4a of Regulation No 139/67/EEC provides that export refunds may in appropriate cases be fixed by means of an invitation to tender relating to a specified quantity ;

Whereas detailed rules for such a tendering procedure should be laid down ;

Whereas, in order to ensure equal treatment for all interested parties in the Community, invitations to tender must be organized in accordance with uniform principles ; whereas to this end publication in the *Official Journal of the European Communities* of a decision concerning the opening of an invitation to tender should be accompanied by a notice of invitation to tender ;

Whereas the purpose of fixing an export refund by means of an invitation to tender is to permit better management of the market ; whereas to this end it is essential that tenders include the information necessary for their assessment and are accompanied by certain formal undertakings ;

Whereas a maximum export refund should be fixed ; whereas this method enables contracts to be awarded in respect of all the quantities concerned ;

Whereas there may be market situations in which it is clear from an examination of the economic aspects of the proposed exports that instead of fixing a refund the Commission should take no action on the tenders ;

Whereas, in order to ensure that exportation is affected under the licence issued for the purposes of the invitation to tender, a security for tender should be required, such security to be forfeit if the tender is withdrawn ;

Whereas procedures should be laid down as to the communication to tenderers of the outcome of the invitation to tender and also as to the issue of the licence necessary for the export of the quantities awarded ;

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

HAS ADOPTED THIS REGULATION :

Article 1

1. A decision to open an invitation to tender under Article 4a (1) of Regulation No 139/67/EEC shall be adopted in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC.

Such decision shall specify the terms of the invitation to tender. Such terms must guarantee equal access for all persons established within the Community and may as an exceptional measure prescribe a special period of validity for export licences issued in connection with the invitation concerned.

2. The opening of the invitation to tender shall be accompanied by a notice of invitation to tender prepared by the Commission. This notice shall include *inter alia* particulars of the total quantity in respect of which a maximum export refund may be fixed under Article 5 (1) hereof, of the various dates for the submission of tenders and of the competent authorities of Member States to which such tenders must be addressed. Between the publication of the said notice and the first date fixed for the submission of tenders, a period of at least 15 days must be allowed. The notice shall also indicate the closing date for the submission of tenders.

(1) OJ No 117, 19. 6. 1967, p. 2269/67.
(2) OJ No L 11, 16. 1. 1975, p. 1.
(3) OJ No 125, 26. 6. 1967, p. 2453/67.
(4) OJ No L 11, 16. 1. 1975, p. 3.

3. Both the decisions referred to in paragraph 1 and the notice of invitation to tender referred to in paragraph 2 shall be published in the *Official Journal of the European Communities.*

Article 2

1. Tenders, which shall be in writing, may either be delivered personally to the competent authority against a receipt or may be sent to such authority by registered letter, telex or telegram.

2. The tender shall indicate :

(a) the invitation to which the tender relates ;

(b) the name and address of the tenderer ;

(c) the nature and quantity of the product to be exported ;

(d) the amount of the export refund proposed per metric ton, in the currency of the Member State of the abovementioned authority.

3. A tender shall be valid only if :

(a) before expiry of the time limit for the submission of tenders proof is furnished that the tenderer has lodged the security required for the invitation to tender ;

(b) it is accompanied by a written undertaking to lodge, within two days following receipt of notification pursuant to Article 6 of the award of a contract, an application for an export licence in respect of the quantity awarded, together with an application for advance fixing of an export refund equal to that indicated in the tender.

4. 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 considered.

5. Once a tender has been submitted it may not be withdrawn, and the provisions of Article 5 (3) of Regulation (EEC) No 1373/70 shall not apply in respect of an application for a licence or certificate lodged under paragraph 3 (b) hereof.

Article 3

1. No tender shall be considered unless appropriate security is lodged.

The amount of such security shall be fixed in the Regulation relating to the opening of the relevant invitation to tender.

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

Each Member State shall notify the Commission of the criteria prescribed by it for the purposes of the preceding paragraph and the Commission shall in turn inform the other Member States thereof.

Article 4

1. Tenders shall be examined in private session by the competent authorities of the Member States. Persons present at the examination shall be sworn to secrecy.

2. The tenders shall be communicated in an anonymous form and without delay to the Commission.

Article 5

1. On the basis of the tenders submitted, the Commission, acting under the procedure laid down in Article 26 of Regulation No 120/67/EEC, shall decide either to fix a maximum export refund, having regard in particular to the criteria laid down in Articles 2 and 3 of Regulation No 139/67/EEC, or to make no award.

2. If a maximum export refund is fixed a contract shall be awarded to any tenderer whose tender indicates a rate of refund equal to or less than the maximum.

Article 6

The competent authority of the Member State concerned shall, as soon as the Commission has reached a decision under Article 5 (1) hereof, notify in writing all tenderers of the outcome of their participation in the invitation to tender.

Article 7

1. Except in cases of *force majeure,* the security required under Article 3 shall be released only in respect of such quantity as to which the tenderer is able to furnish proof of exportation under an export licence issued pursuant to Article 8, or as to which his tender has been refused. The security shall be released immediately.

2. In the case of *force majeure* the provisions of Article 18 of Regulation (EEC) No 1373/70 shall apply.

Article 8

1. The award of a contract shall entitle the party concerned to be issued, on expiry of the period specified in Article 2 (3) (b), with an export licence for the quantity to which such award relates.

2. By way of derogation from Article 3 of Regulation (EEC) No 1373/70, it may be provided that the rights under an export licence issued pursuant to the preceding paragraph shall not be transferable.

Article 9

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, 4 February 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission