# REGULATION (EEC) No 3253/75 OF THE COMMISSION

## of 12 December 1975

## on the sale by tender of skimmed-milk powder for processing into compound feedingstuffs

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 7 (5) and 28 thereof;

Whereas under Council Regulation (EEC) No 2808/75 (3) of 29 October 1975 laying down special measures for the disposal, with a view to its incorporation in compound feedingstuffs, of skimmed-milk powder held in public storage, skimmed-milk powder held by intervention agencies and put into storage before 1 April 1974 may be sold at a reduced price; whereas approximately 50 % of the quantity in question is to be sold for use in the Community in the form of compound feedingstuffs; whereas in view of the magnitude of public stocks this provision should be applied; whereas, in order to ensure equal access to all purchasers, the sale should be by tender;

Whereas, in order to ensure that the measure is effective, a minimum skimmed-milk powder content should be fixed for the compound feedingstuffs; whereas this measure concerns more particularly compound feedingstuffs for calves, which feedingstuffs may be defined by reference to Commission Regulation (EEC) No 990/72 (4) of 15 May 1972 on detailed rules for granting aid for skimmed-milk processed into compound feedingstuffs and for skimmed-milk powder for use as feed, as last amended by Regulation (EEC) No 453/73 (5);

Whereas a system of supervision should be set up to ensure that the skimmed-milk powder is not diverted from its destination; whereas such supervision should operate from the time of removal from storage until processing into compound feedingstuffs; whereas the provision of security and the use of distinctive packaging will assist in achieving this aim;

Whereas, in order to ensure that manufacture is subject to supervision, provision should be made for the compound feedingstuffs to be manufactured in an undertaking approved by the Member State concerned;

Whereas, where processing takes place in a Member State other than the Member State of sale, provision should be made, for the purpose of verifying destination, for the use of the control copy provided for by Commission Regulation (EEC) No 2315/69 (6) 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 last amended by Regulation (EEC) No 690/73 (7);

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*

1. There shall be put up for sale, on the terms hereinafter set out, skimmed-milk powder bought in pursuant to Article 7 (1) of Regulation (EEC) No 804/68 and taken into storage after 30 September 1973 and before 1 November 1973.

2. The skimmed-milk powder put up for sale pursuant to this Regulation shall be for use as compound feedingstuffs as defined in Article 4 of Regulation (EEC) No 990/72 with a skimmed-milk powder content of at least 50 %.

*Article 2*

The skimmed-milk powder shall be sold by tender.

*Article 3*

1. The selling intervention agency shall issue an invitation to tender indicating in particular:

(a) the quantities of skimmed-milk powder put up for sale for the use referred to in Article 1 (2);

(b) the location of the depot or depots in which these quantities are stored;

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 74, 22. 3. 1975, p. 1.
(3) OJ No L 280, 31. 10. 1975, p. 2.
(4) OJ No L 115, 17. 5. 1972, p. 1.
(5) OJ No L 53, 26. 2. 1973, p. 4.
(6) OJ No L 295, 24. 11. 1969, p. 14.
(7) OJ No L 66, 13. 3. 1973, p. 23.

(c) the closing date and address for the submission of tenders.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 20 days before the closing date for the submission of tenders. The intervention agency may also publish such notice elsewhere.

3. The first closing date for the submission of tenders shall be 6 January 1976, at 12 noon.

4. As regards the quantities not awarded on the first invitation to tender, a new closing date for the submission of tenders shall be fixed subsequently.

*Article 4*

The selling intervention agency shall take the necessary measures to enable prospective tenderers to examine at their own expense, before submitting a tender, samples of the skimmed-milk powder for sale.

*Article 5*

1. A tenderer may not take part in the invitation to tender unless he gives a written undertaking that he will, within two months from the day on which he takes delivery in accordance with Article 14 (2), have the entire quantity of skimmed-milk powder awarded to him processed into compound feedingstuffs as defined in Article 1 (2) in an undertaking approved by the Member State in whose territory the processing is carried out.

2. Approval for the purposes of the proceding paragraph may be granted only in respect of undertakings capable of processing at least 15 metric tons of skimmed-milk powder per day.

*Article 6*

1. Tenders, which shall be in writing, shall be submitted to the intervention agency either by hand against acknowledgement of receipt or by registered letter addressed to the intervention agency. Intervention agencies may also authorize the use of telex.

Each tender shall be submitted to the intervention agency of the Member State on whose territory the processing specified in Article 5 (1) is to be carried out.

Where that intervention agency is not the selling intervention agency, it shall :

— check that the tenders comply with the provisions of paragraphs 2 to 5 hereinafter and shall reject tenders not validly submitted ;

— send to the Commission immediately on expiry of the time limit specified in Article 3 (3) a list of the tenders validly submitted, indicating the amounts offered ;

— after the Commission has fixed a minimum price, forward to the selling agency, with a view to the award of contracts in accordance with Article 10 (2) (3) and (4), those tenders indicating an amount equal to or exceeding that price, together with the corresponding supporting documents as specified in paragraph 4 (a) and (b).

2. Every tender shall indicate :

(a) the name and address of the tenderer ;

(b) the quantity to which the tender relates ;

(c) the price offered per metric ton, exclusive of internal taxes, ex-storage depot, expressed in the currency of the Member State in which the invitation to tender is held ;

(d) the depot in which the skimmed-milk powder is stored.

A tender relating to two or more storage depots shall be regarded as comprising a number of separate tenders equal to the number of depots mentioned.

3. A tender shall not be valid unless it relates to a quantity of at least 40 metric tons.

However, if the quantity available in a given storage depot is less than the above quantity, the quantity there available shall constitute the minimum quantity for tender.

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

(a) the written undertaking referred to in Article 5, specifying the undertaking in which processing is to be carried out ;

(b) declaration whereby the tenderer agrees to forego any claim as to the quality and characteristics of any skimmed-milk powder sold to him ;

(c) proof that, before expiry of the period set for the submission of tenders, the tenderer has lodged the security for tender referred to in Article 7.

5. A tender may stipulate that it is not to be regarded as having been submitted unless a contract is awarded in respect of the entire quantity indicated therein.

A tender may stipulate that it is not to be regarded as having been submitted unless a contract is awarded in respect of a specific quantity indicated therein.

6. No tender may be withdrawn.

*Article 7*

1. The security for tender shall be made out in favour of the intervention agency to which the tender is submitted. It shall be 10 units of account per metric ton.

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 guarantee satisfying criteria laid down by that Member State.

3. Except in the event of *force majeure*, the security for tender shall be released only in respect of that quantity :

(a) in respect of which the tenderer

— has not withdrawn his tender before the award of contracts,

and

— has, within the time prescribed, paid the amount corresponding to his tender and lodged the processing security provided for in Article 13,

or

(b) in respect of which the tender has been refused.

*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 minimum selling price shall be fixed, or a decision shall be taken to make no award.

*Article 9*

At the same time as the minimum selling price is fixed and under the same procedure, the processing security required under Article 13 shall be fixed per 100 kilogrammes by reference to the difference between the market price of skimmed-milk powder and the minimum price fixed.

*Article 10*

1. A tender shall be refused if the price offered is lower than the minimum price fixed.

2. Subject as provided in paragraph 1, the contract shall be awarded to the tenderer offering the highest price.

If the quantity available in the storage depot in question is not exhausted by this award, contracts shall be awarded to other tenderers in descending order of tender until the quantity outstanding has been accounted for.

3. Where acceptance of a tender would result in a contract being awarded for more skimmed-milk powder than is available at the storage depot in question, then a contract shall be awarded to the tenderer concerned only in respect of the quantity available.

4. Where acceptance of two or more tenders offering the same price would result in contracts being awarded in excess of the quantity still available, the award shall be made by drawing lots.

*Article 11*

Rights and obligations arising in connection with the invitation to tender shall not be transferable.

*Article 12*

1. Every tenderer shall immediately be notified by the selling intervention agency of the result of his tender. Where appropriate the selling agency shall at the same time notify such result to the intervention agency to which the tender was originally submitted.

2. Every successful tenderer shall, before taking delivery of any quantity in accordance with Article 14 (2), pay to the selling intervention agency an amount corresponding to his tender in respect of that quantity.

Where appropriate the selling agency shall forthwith notify such payment to the intervention agency to which the tender was originally submitted, indicating the amount thereof and the quantities concerned.

*Article 13*

1. Before taking delivery of any quantity of skimmed-milk powder every successful tenderer shall in accordance with Article 7 (2) lodge with the competent authority of the Member State in whose territory the processing referred to in Article 5 (1) is to take place the processing security fixed in accordance with Article 9.

2. Where the security is lodged in a Member State other than that of sale, the competent authority which receives the security shall forward without delay to the selling intervention agency a declaration stating *inter alia* the amount of the security provided and the quantities of skimmed-milk powder involved and confirming approval of the undertaking in which the processing referred to in Article 5 (1) is to be carried out.

*Article 14*

1. When payment has been made in accordance with Article 12 (2) and the processing security has been lodged and, in the case specified in Article 13 (2), after receipt of the declaration referred to in that paragraph, the selling intervention agency shall issue a removal voucher showing :

(a) the quantity in respect of which these conditions have been fulfilled ;

(b) the depot in which that quantity is stored ;

(c) the final date for delivery of the skimmed-milk powder concerned.

2. Every successful tenderer shall take delivery of the skimmed-milk powder awarded to him within 45 days of receiving the notification provided for in Article 12 (1). He may take delivery in instalments of not less than 10 metric tons each.

Except in the event of *force majeure,* if a successful tenderer has not taken delivery within the time prescribed of all the skimmed-milk powder awarded to him, the contract shall be cancelled in respect of that quantity still outstanding.

*Article 15*

The skimmed-milk powder shall be delivered by the intervention agency in packages marked in letters at least 1 cm high as follows :

'Skimmed-milk powder for processing into compound animal feedingstuffs (Regulation (EEC) No 3253/75)',

'Lait écrémé en poudre destiné à la transformation en aliments composés pour animaux (règlement (CEE) n° 3253/75)',

'Zur Verarbeitung zu Mischfutter bestimmtes Magermilchpulver (Verordnung (EWG) Nr. 3253/75)',

'Latte scremato in polvere destinato alla trasformazione in alimenti composti per animali (regolamento (CEE) n. 3253/75)',

'Magere-melkpoeder bestemd voor verwerking tot mengvoeder (Verordening (EEG) nr. 3253/75)',

'Skummetmælkspulver bestemt til forarbejdning til foderblandinger (forordning (EØF) nr. 3253/75)',

*Article 16*

From the time of its removal from store until the processing referred to in Article 5 (1), the skimmed-milk powder shall be placed and remain under customs control or under an administrative control offering equivalent safeguards.

*Article 17*

1. Proof that the skimmed-milk powder has been processed as prescribed shall be furnished as follows :

(a) if the processing into compound feedingstuffs is carried out in the territory of the Member State of sale : by a certificate issued by the body responsible for the control referred to in Article 16 ;

(b) if the processing into compound feedingstuffs is carried out in the territory of a Member State other than that of sale : by production of the control copy specified in Article 1 of Regulation (EEC) No 2315/69.

Sections 101, 103, 104 and 106 on the control copy shall be completed. Section 104 shall be completed by deletion of the items not applicable and by insertion against the second indent of one of the endorsements specified in Article 15.

Section 106 shall indicate the date on which the successful tenderer took delivery of the skimmed-milk powder.

2. Except in the event of *force majeure,* the processing security referred to in Article 13 (1) shall be released only in respect of those quantities in respect of which the proof specified in paragraph 1 has been furnished.

The security shall be released at once.

*Article 18*

In the event of *force majeure,* the competent authority shall take such action as it considers necessary having regard to the circumstances invoked.

*Article 19*

Member States shall inform the Commission by the Tuesday of each week of the quantities of skimmed-milk powder released from storage pursuant to this Regulation during the preceding week.

*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, 12 December 1975.

*For the Commission*

P. J. LARDINOIS

*Member of the Commission*