REGULATION (EEC) No 3354/75 OF THE COMMISSION

of 23 December 1975

on the sale by invitation to tender of skimmed-milk powder at a reduced price for processing into compound feedingstuffs for pigs or poultry

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 1285/70 (3) of 29 June 1970 laying down a special measure for the disposal of skimmed-milk powder bought in by intervention agencies, skimmed milk held in public storage which cannot be marketed on normal terms during a milk year may be sold at a reduced price if it is intended as feed for pigs or poultry; whereas in view of the extent of public stocks and the restricted marketing possibilities, this provision should be applied; whereas in order to ensure equal access to all purchasers a tendering procedure should be followed;

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; whereas, in addition to the provision of security, accounting supervision during processing of the said products, completed by on-the-spot supervision, and the use of distinctive packages will assist in achieving this aim; whereas the definition of compound feedingstuffs for pigs or poultry should be based in the main on the provisions laid down in Commission Regulation (EEC) No 1285/69 (4) of 3 July 1969 on provisions for the standing invitation to tender for skimmed-milk powder intended for processing into compound feedingstuffs for pigs or poultry and held by intervention agencies, as last amended by Regulation (EEC) No 1479/70 (5);

Whereas provision should be made for the manufacture of compound feedingstuffs in an undertaking approved by the Member State concerned to avoid any deflection taking place during processing;

Whereas, in the case of processing taking place in a Member State other than the selling Member State, provision should be made, for the purpose of verifying use and/or 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 skimmed-milk powder must be sold at a relatively low price; whereas the aid provided for in Article 10 of Regulation (EEC) No 804/68 should not be granted in respect of compound feedingstuffs produced from skimmed-milk powder sold under this measure; whereas, therefore, Commission Regulation (EEC) No 532/75 (8) of 28 February 1975 concerning the recovery on exportation of aids granted in respect of skimmed-milk powder for use as feed and in respect of skimmed-milk processed into compound feedingstuffs should not be applied to any exports or such compound feedingstuffs;

Whereas with regard to the compensatory amounts fixed pursuant to Council Regulation (EEC) No 974/71 (9) of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States, as last amended by Regulation (EEC) No 475/75 (10), the value of the products should be taken into account;

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 144, 2. 7. 1970, p. 1.
(4) OJ No L 162, 4. 7. 1969, p. 22.
(5) OJ No L 163, 25. 7. 1970, p. 10.
(6) OJ No L 295, 24. 11. 1969, p. 14.
(7) OJ No L 66, 13. 3. 1973, p. 23.
(8) OJ No L 56, 3. 3. 1975, p. 20.
(9) OJ No L 106, 12. 5. 1971, p. 1.
(10) OJ No L 52, 28. 2. 1975, p. 28.

HAS ADOPTED THIS REGULATION :

Article 1

1. Skimmed-milk powder bought in pursuant to Article 7 (1) of Regulation (EEC) No 804/68 and taken into storage before 1 June 1973 shall be sold under the conditions described hereinafter.

2. The skimmed-milk powder sold pursuant to this Regulation shall be incorporated, at the exclusion of skimmed milk or skimmed-milk powder of other origins, in compound feedingstuffs for pigs or poultry.

3. Compound feedingstuffs within the meaning of this Regulation shall be :

(a) products containing as a percentage of the total weight :

either

(aa) — not less than 2 % but not more than 10 % of skimmed-milk powder,

— at least 2 % of fish meal still having a strong smell,

— at least 30 % of grinded cereals,

and

— at least 4 % cellulose included that contained in the grinded cereals mentioned in the preceding dash,

or

(bb) — not less than 2 % but not more than 10 % skimmed-milk powder,

— at least 2 % of fish meal still having a strong smell,

— at least 50 % grinded cereals

and

— at least 2 % cellulose included that contained in the grinded cereals mentioned in the preceding dash,

or

(cc) — not less than 2 % but not more than 10 % skimmed-milk powder,

— at least 50 % of grinded cereals denaturated by adding 400 g non-deodorized fish oil per 100 kg cereals or grinded cereals,

— at least 2 % cellulose included that contained in the grinded cereals mentioned in the preceding dash, and

either

— 0·05 % of a mixture containing 4/5 of tartrazine yellow (E 102) and 1/5 patent blue V (E 131)

or

0·01 % cochineal red A (E 124)

or

0·02 % patent blue V (E 131);

or

(b) skimmed-milk powder denatured by adding per 100 kg skimmed-milk powder at least

either

(aa) — 35 kg fish meal still having a strong smell, and

— 200 g iron carbonate or sulphate iron, and

either

— 1·5 kg activated carbon,

or

100 g of a mixture containing 4/5 of tartrazine yellow (E 102) and 1/5 of patent blue V (E 131)

or

20 g cochineal red A (E 124),

or

40 g patent blue V (E 131),

or

(bb) — 40 kg fish meal still having a strong smell, and

— 300 g iron carbonate or iron sulphate,

or

(cc) — 4·5 kg non-deodorized fish oil or fish liver oil and

— 300 g iron carbonate or iron sulphate.

4. The grinded cereal mentioned in paragraph 3 has to contain at least 40 % particles having a size lower than 315 microns.

The fish meal mentioned in paragraph 3 has to contain at least 25 % particles of a size lower than 80 microns.

The iron salts have to contain at least 30 % of particles of a size lower than 80 microns.

The colouring matters have to contain the following percentages of the pure product :

at least 30 % for cochineal red A (E 124); at least 25 % for the other colouring matters. Colouring matters have to contain at least 30 % of particles having a size lower than 80 microns.

The acidity of fish oil calculated in oleic acid has to be equal to at least 10 %.

The products added to the skimmed-milk powder according to paragraph 3 have to be uniformly distributed ; as regards, in particular, the activated carbon, the iron salts and the colouring matters, two samples of 50 g each, taken at random in a lot of 25 kg must give — by chemical determination — the same results within the limits of errors admitted by the used analysis method.

Article 2

The skimmed-milk powder shall be sold under a tendering procedure.

Article 3

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

(a) the quantities of skimmed-milk powder for sale ;

(b) the location of the warehouse or warehouses in which these quantities are stored ;

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

2. The 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.

In addition, each intervention agency may publish it elsewhere.

3. The first closing date for the submission of tenders shall be 13 January 1976 at 12 noon.

4. In respect of quantities not awarded under the first invitation to tender, a new closing date may be fixed for submission of tenders.

Article 4

The selling intervention agency shall take the necessary measures to enable those concerned, before tendering, to examine at their own expense 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 to have all the skimmed-milk powder awarded processed into compound feedingstuffs for pigs or poultry within the meaning of Article 1 (3), before 15 March 1976, in an undertaking approved by the Member State on whose territory the processing is carried out.

2. The approval referred to in paragraph 1 may be granted only in respect of an undertaking with capacity for processing under this Regulation, not less than 15 metric tons of skimmed-milk powder per day.

Article 6

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

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

In the case of tenders transmitted to an intervention agency other than the selling intervention agency, the agency receiving these tenders :

— shall check that they comply with the provisions of paragraphs 2 to 5 hereafter and shall refuse tenders not acceptable,

— shall forward without delay to the Commission, after expiry of the time limit specified in Article 3 (3), the list of the tenders acceptable indicating the amounts offered,

— shall transmit to the selling agency, after the Commission has fixed the minimum price, the tenders indicating an amount equal or exceeding it as well as the corresponding supporting documents specified in paragraph 4 under (a) and (b) in order to award the contract in accordance with Article 10 (2) (3) and (4).

2. The 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 tons, exclusive of internal taxes, ex warehouse in which the skimmed-milk powder is held, expressed in the currency of the Member State in which the invitation to tender is opened ;

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

A tender relating to several warehouses shall be considered to comprise as many tenders as there are warehouses 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 warehouse is less than the minimum quantity, the available quantity shall constitute the minimum quantity for tender.

4. A tender shall not be valid unless :

(a) it is accompanied by the written undertaking referred to in Article 5 with the name of the undertaking in which processing is to take place ;

(b) the tenderer includes a declaration to the effect that he agrees to forego any claim as to the quality and characteristics of any skimmed-milk powder sold to him ;

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

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

6. The tender may not be withdrawn.

Article 7

1. The tendering security shall be furnished to the intervention agency the tender is transmitted to. It shall be 10 units of account per metric ton.

2. It shall take the form, according to the preference of the Member State, either of a cheque made out to the intervention agency, or of a guarantee satisfying criteria laid down by the Member State concerned.

3. Except in the event of *force majeure,* the tendering security shall be released only for the quantity ;

(a) in respect of which the tenderer :

— has not withdrawn the tender before the award of the contract,
and

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

or

(b) in respect of which the tender has not been accepted.

Article 8

In the light of the tenders received 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 may 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 kg 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 rejected if the price offered is lower than the minimum price fixed.

2. Without prejudice to paragraph 1, the contract shall be awarded to the tenderer offering the highest price.

If the quantity available in the warehouse in question is not exhausted by this award, the contract for the remaining quantity shall be awarded to the other tenderers according to the price offered, starting with the highest price.

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

4. Where acceptance of several tenders offering the same price would lead to 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 intervention agency of the result of his tender.

Should it so happen, the selling intervention agency communicates this result simultaneously to the intervention agency the tender was transmitted to.

2. The successful tenderer, before taking delivery in accordance with Article 14 (2), shall pay the intervention agency an amount corresponding to his tender for the quantity of which he intends to take delivery.

Should it so happen, the selling intervention agency receiving the payment, shall confirm it forthwith to the intervention agency the tender was transmitted to and shall specify the amount and the quantities in question.

Article 13

1. Before taking delivery of each quantity of skimmed-milk powder, the successful tenderer shall in accordance with Article 7 (2) give the processing security fixed according to Article 9 to the competent authority of the Member State on whose territory the processing referred to in Article 5 (1) takes place.

2. In cases where the security is provided in a Member State other than the selling Member State, the competent authority which receives the security shall forward without delay to the selling intervention agency an attestation as to the amount of the security provided, 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 the payment provided for in Article 12 (2) has been made and the processing security has been given and, in the case provided for in Article 13 (2), after receipt of the attestation specified in that paragraph, the intervention agency shall issue a removal permit showing :

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

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

(c) the time limit for taking delivery of the skimmed-milk powder.

2. The 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). Delivery of the skimmed-milk powder may be taken in stages, a minimum quantity of 10 metric tons being taken at each stage.

Except in the event of *force majeure,* if the successful tenderer has not taken delivery of the skimmed-milk powder within the time prescribed, the sale shall be cancelled in respect of the quantities remaining.

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 :

'Lait écrémé en poudre destiné à la transformation en aliments composés pour porcs ou volaille (règlement (CEE) nº 3354/75)',

'Zur Verarbeitung zu Mischfutter für Schweine oder Geflügel bestimmtes Magermilchpulver (Verordnung (EWG) Nr. 3354/75)',

'Latte scremato in polvere destinato alla trasformazione in alimenti composti per suini e pollame (regolamento (CEE) n. 3354/75)',

'Magere-melkpoeder bestemd voor verwerking tot mengvoeder voor varkens en pluimvee (Verordening (EEG) nr. 3354/75)',

'Skimmed-milk powder for processing into compound feedingstuffs for pigs and poultry (Regulation (EEC) No 3354/75)',

'Skummetmælkspulver bestemt til forarbejdning til foderblandinger til svin og fjerkræ (forordning (EØF) nr. 3354/75)'.

Article 16

1. From the time of its removal from store until the processing referred to in Article 5 (1), the skimmed-milk powder shall be subject to customs or equivalent administrative control.

2. The competent authority of the Member State on whose territory the processing into compound feedingstuffs takes place shall exercise physical supervision of this operation by completing the accounting supervision by on-the-spot supervision which could be carried out by means of unexpected inspections.

The additional costs resulting from such supervision shall be borne by the successful tenderer. They shall be fixed at a standard rate of 2 units of account per metric ton of skimmed-milk powder and may not be less than 30 units of account per day of supervision.

Article 17

1. Proof of the prescribed use of the skimmed-milk powder shall be furnished as follows :

(a) if processing into compound feedingstuffs takes place on the territory of the Member State of sale : by a corresponding attestation issued by the body responsible for the supervision laid down in Article 16 (2) ;

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

Box Nos 101, 103 and 104 on the control copy shall be completed. Box No 104 shall be completed by deletion of what does not apply and insertion under the second indent of one of the statements listed in Article 15.

2. Except in the event of *force majeure,* the processing security referred to in Article 13 (1) shall be released only for 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 determine the measures necessary in view of the circumstances invoked.

Article 19

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

Article 20

1. In respect of skimmed-milk powder sold under this Regulation, the compensatory amounts fixed pursuant to Regulation (EEC) No 974/71 shall be multiplied by a coefficient to be determined in accordance with the procedure laid down in Article 8 and at the same time as the minimum selling price, account being taken of the difference between that price and the market price of the skimmed-milk powder.

2. The aid provided for in Article 10 of Regulation (EEC) No 804/68 shall not be granted for skimmed-milk powder incorporated in the compound feedingstuffs produced pursuant to this Regulation.

3. Regulation (EEC) No 532/75 shall not apply to the compound feedingstuffs specified in paragraph 2.

Article 21

This Regulation shall enter into force on the third day following its publication if 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, 23 December 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission