REGULATION (EEC) No 361/75 OF THE COMMISSION

of 12 February 1975

concerning the issue of an invitation to tender for the supply to UNICEF for use as food aid of skimmed-milk powder to be purchased on the Community market

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 662/74 (2), and in particular Article 7 (5) thereof;

Having regard to Council Regulation (EEC) No 1826/74 (3) of 11 July 1974 laying down the general rules for the supply of skimmed-milk powder as food aid to certain developing countries and international organizations, and in particular Article 6 thereof;

Whereas Council Regulation (EEC) No 1827/74 (4) of 11 July 1974 on the supply of skimmed-milk powder as food aid to certain developing countries and international organizations provides for the supply of 2 250 metric tons of skimmed-milk powder to UNICEF; whereas UNICEF has requested the supply of 1 980 metric tons of vitaminized skimmed-milk powder for various developing countries;

Whereas Article 2 (2) of Regulation (EEC) No 1826/74 provides that if there is not enough skimmed-milk powder available in public stocks with the characteristics necessary for the particular destination where this requires, in particular, the addition of vitamins, supplies shall be obtained by purchase on the Community market;

Whereas Article 5 of Regulation (EEC) No 1826/74 provides that for the purposes of the supply and shipment of skimmed-milk powder invitations to tender are to be issued;

Whereas the procedure to be adopted for this tendering should in the main be the procedure used hitherto in similar cases;

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. Tenders shall be invited in accordance with Regulation (EEC) No 1827/74 for the cost of supplying 1 980 metric tons of skimmed-milk powder to UNICEF.

2. The skimmed-milk powder shall meet the requirements as to quality and packaging set out in Annex II to this Regulation.

3. Delivery shall be made to the countries and in the manner specified in Annex I to this Regulation.

4. Loading shall take place as soon as possible and at all events by 30 April 1975.

Article 2

1. The intervention agencies shall frame a 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 4 March 1975, at 12 noon.

Article 3

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

2. The tender shall indicate *inter alia*:

(a) the name and address of the tenderer;

(b) the port or ports of loading, chosen from among Community ports;

(c) the price, exclusive of taxes, expressed in the currency of the Member State in which the tender is presented, at which the tenderer undertakes to supply, in accordance with the specifications laid down in the Annexes, the entire quantity of skimmed-milk powder to which the invitation to tender relates.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 85, 29. 3. 1974, p. 51.
(3) OJ No L 190, 13. 7. 1974, p. 20.
(4) OJ No L 190, 13. 7. 1974, p. 22.

Such price shall be inclusive of transport insurance costs to the stage stipulated in Annex I for delivery.

3. A tender shall be valid only if :

(a) it relates to the entire quantity put out to tender ;

(b) proof is given before expiry of the period set for the submission of tenders that the security referred to in Article 4 has been provided.

4. No tender may be withdrawn.

Article 4

1. The tendering security shall be 20 units of account per metric ton of skimmed-milk powder.

2. It shall take the form, at the discretion of the Member State concerned, either of a cheque made out in favour of the intervention agency, or of a bank guarantee which satisfies the criteria fixed by the Member State.

Article 5

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

Article 6

1. A tender shall be refused if the price proposed, converted into units of account, is more than the maximum price fixed for the purposes of the invitation to tender.

2. Subject as provided in paragraph 1, the successful tenderer shall be the one whose offer, converted into units of account, is the lowest. Where two or more valid offers specifying identical amounts, as converted into units of account, are received by a given intervention agency, the award shall be made by drawing lots. Where such offers are made to different intervention agencies, the award shall be made by the intervention agency selected in accordance with the procedure referred to in Article 5.

3. The intervention agency shall immediately inform each tenderer whether he has been awarded the contract.

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

Article 7

1. The successful tenderer, acting in accordance with the provisions of Article 1 (4) and the specifications of Annex I to this Regulation, shall deliver a quantity of skimmed-milk powder as specified in the contract awarded satisfying the requirements as to quality and packaging laid down in Annex II.

The successful tenderer shall also supply a further 5 % of empty bags identical to those containing the goods.

2. Delivery cif shall be completed when the goods are actually deposited on the quayside or on board a lighter.

Delivery at frontier shall be completed when the goods actually reach the frontier crossing points specified in Annex I.

Article 8

1. In the case of delivery cif, any demurrage costs at the port of unloading attributable to the recipient shall be borne by it. The rates and other details concerning such costs shall be laid down in the contract between the Community agent and the carrier and must have been previously agreed upon by that agent and the recipient's delivery agent.

2. In the case of delivery at frontier, costs arising by reason of any delay attributable to the recipient in taking delivery of the goods shall be borne by it.

Article 9

1. The intervention agency concerned shall as soon as possible notify the recipient body of the name of the vessel, the date of loading, the quantity and the quality of the goods as recorded at time of loading, the port of unloading, and where delivery is made 'free frontier', the frontier point and the methods of transportation used for bringing the goods to the frontier point.

2. In the case of delivery cif, the successful tenderer shall inform the recipient at least 10 clear days in advance of the expected date of arrival of the ship in the port of unloading. The successful tenderer shall have included in the terms of the charter-party a provision stipulating that the ship's captain shall inform the recipient at least 72 hours in advance of the ship's probable date of arrival in port.

3. In the case of delivery at frontier, the successful tender shall inform the recipient forthwith of the expected date of arrival of the goods at the port of loading and shall notify it at least 10 clear days in advance of the probable date of arrival at the frontier crossing point.

Article 10

1. The competent agency of the Member State in which the contract is awarded shall check that the skimmed-milk powder in question satisfies the requirements as to quality and packaging laid down in Annex II.

2. If the goods are found to satisfy those requirements, the agency shall, before completion of the customs formalities referred to in Article 11 (1), provide the successful tenderer with a certificate to that effect.

3. On delivery of the quantity to the recipient country in question, the recipient shall issue a certificate stating that delivery of that quantity of skimmed-milk powder has been taken at the stage specified in Annex I.

Article 11

1. Customs export formalities shall be carried out in the Member State in which the award of contract is made.

2. If the port of loading specified in the tender is situated in a Member State other than that in which the customs export formalities are carried out, the goods shall, on completion of such formalities, be placed under customs control with the object of ensuring that they are loaded at the port specified in the tender.

Proof of loading can be furnished only by production of the control copy referred to in Article 1 of Regulation (EEC) No 2315/69.

Sections 101, 103 and 104 of 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 :

— 'delivery of skimmed-milk powder as food aid (Regulation (EEC) No 4361/75) to be shipped from the port of . . .' ;

— 'livraison de lait écrémé en poudre à titre d'aide alimentaire (règlement (CEE) nº 4361/75) destinée à être embarquée au port de . . .' ;

— 'Lieferung von Magermilchpulver als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 4361/75) Verschiffung im Hafen von . . . bestimmt' ;

— 'Fornitura di latte scremato in polvere a titolo di aiuto alimentare (regolamento (CEE) n. 4361/75) destinata ad essere imbarcata nel porto di . . .' ;

— 'levering van magere-melkpoeder als voedselhulp (Verordening (EEG) nr. 4361/75) bestemd om te worden verscheept in de haven van . . .' ;

— 'levering af skummetmælkspulver som fødevarehjælp (forordning (EØF) nr. 4361/75) bestemt til lastning i havnen i . . .'.

Article 12

1. Except in cases of *force majeure*, the tendering security shall be released only if :

(a) the tender has not been accepted ;

(b) the tenderer :

— has not withdrawn his tender before the contract is awarded,

— has furnished the certificates provided for in Article 10 (2) and (3).

2. Release of the security shall take place immediately.

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

Article 13

The amount referred to in Article 3 (2) (c) shall be paid only on production of the certificates provided for in Article 10 (2) and (3).

Article 14

Except in cases of *force majeure*, the successful tenderer shall accept all financial liability devolving upon the Community by reason of failure to load the skimmed-milk powder by the date specified in Article 1 (4).

Costs incurred by reason of failure to deliver the skimmed-milk powder as a result of *force majeure* shall be borne by the competent agency of the Member State in which the award of contract is made.

Article 15

No refund or compensatory amount (whether monetary or accession) shall be applicable in respect of skimmed-milk powder supplied under this Regulation.

Article 16

This Regulation shall enter into force on the 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 February 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX I

Recipient country	Quantity to be supplied (metric tons)	Delivery stage	Markings on the packaging in
Burma	160	cif Rangoon	English
Ethiopia	950	475 metric tons : cif Assab	English
		475 metric tons : cif Massawa	
Niger	300	delivered frontier Malanville	French
Khmer Republic	120	cif Singapore	French
Upper Volta	200	delivered frontier Leraba	French
Republic of Vietnam	250	cif Saigon	French

ANNEX II

I. Skimmed-milk powder requirements

(a) fat content :	1·5 % maximum
(b) water content :	4·0 % maximum
(c) total acidity in lactic acid :	0·15 % maximum (18° Dornic)
(d) test for neutralization agents :	negative
(e) authorized additives :	none
(f) phosphatase test :	negative
(g) solubility :	0·5 ml maximum (99 % minimum)
(h) degree of purity :	disc B (15·0 mg minimum)
(i) germ content :	50 000 per g maximum
(k) colon bacillus titer :	negative in 0·1 g
(l) taste and smell :	clean
(m) appearance :	white or slightly yellowish colour, free from impurities or coloured particles
(n) vitamin enrichment	(aa) vitamin A — 5 000 i.u. per 100 g (bb) vitamin D — 500 i.u. per 100 g.

II. Packing

(a) New bags of a net weight content of 25 kg (5 % empty bags).

(b) Composition :

— four Kraft paper bags of a strength representing at least 70 g/m² ;
— one interposed tar-lined paper bag, of a strength representing at least 140 g/m² ;
— one polyethylene inner bag at least 0·08 mm thick, double bound.

(c) Marking to appear on the packaging in French or English according to the country of destination (see Annex I) :

'LAIT ÉCRÉMÉ EN POUDRE / DON DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE / ACTION DU FONDS DES NATIONS UNIES POUR L'ENFANCE (UNICEF).'

'SKIMMED-MILK POWDER / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY / ACTION OF THE UNITED NATIONS CHILDREN'S FUND (UNICEF).'