REGULATION (EEC) No 597/75 OF THE COMMISSION

of 6 March 1975

concerning invitations to tender for the costs of delivery of skimmed-milk powder in public storage as food aid to the countries of the Sahel and Ethiopia

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 465/75 (2), and in particular Article 7 (5) thereof ;

Whereas Council Regulation (EEC) No 3234/74 (3) of 17 December 1974 on the supply of skimmed-milk powder as food aid to the countries of the Sahel, Ethiopia and Somalia under Regulation (EEC) No 1826/74, provides for the supply to these countries of 5 000 metric tons of skimmed-milk powder to be drawn on the 6 000 metric tons reserve stock provided for in 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 ;

Whereas Council Regulation (EEC) No 3236/74 (5) of 17 December 1974 laying down general rules for the supply of skimmed-milk powder as food aid to the countries of the Sahel and Ethiopia, provides for the supply to these countries of 9 000 metric tons of skimmed-milk powder ;

Whereas, pursuant to the provisions of Regulations (EEC) No 3234/74 and (EEC) No 3236/74, the Community shall take in charge the delivery to the places of destination and shall pay in whole or in part directly to the recipient country the costs of forwarding from the cif stage in the form of a lump-sum contribution, where the supply agreement so provides ;

Whereas, pursuant to the provisions of the Regulations in question delivery costs shall as a general rule be determined by the tendering procedure ;

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. When it is decided to make deliveries of skimmed-milk powder in public storage, pursuant to Regulations (EEC) No 3234/74 and (EEC) No 3236/74, the tendering shall be made according to the rules set out in this Regulation.

2. At the time it is withdrawn from stock, the skimmed-milk powder shall, as to quality and packing, satisfy the requirements laid down in the Annex to this Regulation.

3. In addition the intervention agency shall supply 2 % of the number of bags, empty, identical to those containing the goods and to be delivered with the goods.

Article 2

1. The competent authority of the Member State concerned shall for each individual delivery issue an invitation to tender.

2. The intervention agency shall draw up a notice of invitation to tender which shall specify in particular :

— the location of the stored skimmed-milk powder,

— the quantity of skimmed-milk powder to be transported,

— the destination and terms of delivery,

— the terms concerning the insurance of the goods to be transported,

— the time limit within which, and the place where, tenders must be submitted,

— the date on which delivery must be made.

3. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 10 days before the closing date for tenders. Besides, the intervention agency may make other publications.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 52, 28. 2. 1975, p. 8.
(3) OJ No L 346, 24. 12. 1974, p. 2.
(4) OJ No L 190, 13. 7. 1974, p. 22.
(5) OJ No L 346, 24. 12. 1974, p. 4.

Article 3

1. Tenderers responding to an individual invitation to tender shall submit their tenders to the intervention agency, in writing, either by delivery by hand, against receipt, or by registered letter addressed to the intervention agency. The intervention agency may also authorize the use of telex.

2. Where the invitation to tender relates to several lots, each tender shall relate only to one lot.

3. The tender shall specify in particular :

(a) the name and address of the tenderer,

(b) the storage depot or depots from where the tenderer wishes to have the skimmed-milk powder collected, chosen from the storage depots listed in the notice of invitation to tender,

(c) the port of loading chosen from among Community ports,

(d) the amount tendered, exclusive of taxes, expressed in the currency of the Member State in which the tender takes place and to which the tenderer undertakes that he will effect delivery of the goods to which the invitation to tender refers in accordance with the stipulated conditions. Transport shall be achieved in such a way that the quality and packing should be safeguarded.

The amount tendered shall include the insurance costs of transport from the storage depot to the agreed stage of delivery.

4. The tender shall not be valid unless :

(a) it relates to the whole of a lot to which the invitation to tender relates,

(b) proof is furnished that before expiry of the time limit for submission of tenders, the tenderer has given the security fixed in Article 4.

5. The tender may not be withdrawn.

Article 4

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

2. It shall be paid, at the choice of the Member State concerned, either by a cheque made out to the intervention agency, or in the form of a guarantee meeting the criteria laid down by that Member State.

Article 5

In the light of the tenders received and in accordance with procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount expressed in units of account shall be fixed or the tendering procedure shall be cancelled.

Article 6

1. The tender shall be rejected if the amount proposed, converted into units of account, is more than the maximum amount valid for the delivery in question.

2. Without prejudice to 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 expressed in units of account are received by a given intervention agency, the award shall be made by drawing lots.

3. Each tenderer shall be immediately informed by the intervention agency of the result of his participation in the tender.

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

Article 7

When the successful tenderer takes delivery of the skimmed-milk powder, he shall ensure that the quantity handed over corresponds to the quantity to be delivered.

Furthermore, he shall ensure that the packing of the skimmed-milk powder satisfies the requirements laid down in the Annex to this Regulation.

Article 8

1. The intervention agencies shall immediately inform the Commission of the names of the undertakings entrusted with transportation and the means of transport used.

2. Within the prescribed time limits, the successful tenderer shall furnish to the intervention agency and to the recipient country the information required of him in the Regulations related to each individual tendering.

Article 9

1. Save in the case 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 certificate provided for in Article 10.

2. The security shall be relased 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 10

The intervention agency shall pay to the successful tenderer the amount stated in his tender on presentation of a certificate of delivery. This certificate shall be handed over, on delivery of the goods, to the successful tenderer acting as an agent of the Community, appointed by the recipient country or where no such agent is appointed, by the local representative of the selling intervention agency.

Article 11

Except in cases of *force majeure,* the successful tenderer shall accept all financial responsibility which would have been borne by the Community for non-delivery of the skimmed-milk powder to the place and by the time desired, the receiving countries having enabled delivery to be effected at the place and by the time desired. The costs resulting from a non-delivery of skimmed-milk powder following in case of *force majeure* shall be borne by the competent agency of the selling Member State.

Article 12

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

Article 13

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, 6 March 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX

Packing :

Containing a net weight of 25 kilogrammes and made up in one of the following ways :

(a) four Kraft paper bags of a strength representing at least 70 g/m^2,
one interposed tar-lined paper bag, of a strength representing at least 140 g/m^2,
one polyethylene inner bag at least 0·06 mm thick, welded or double bound ;

(b) one Kraft paper bag of a strength representing at least 70 g/m^2,
one Kraft paper bag with a polyethylene layer of a strength representing at least 80 g + 15 g/m^2,
three Kraft paper bags of a strength representing at least 70 g/m^2,
one polyethylene inner bag at least 0·06 mm thick, welded or double bound ;

(c) one Kraft paper outer bag of a strength representing at least 85 g/m^2,
one Kraft paper bag with a polyethylene layer of a strength representing at least 70 g + 15 g/m^2,
two Kraft paper bags of a strength representing at least 70 g/m^2,
one polyethylene inner bag at least 0·12 mm thick, welded or double bound.

Filling :

At the time of filling the bag of powder must be well compressed and the penetration of loose powder between the differrent folds and layers should be entirely avoided.