REGULATION (EEC) No 750/75 OF THE COMMISSION

of 21 March 1975

concerning invitations to tender for the costs of manufacture and delivery of butteroil 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 Articles 6 (7) and 28 thereof ;

Whereas Council Regulation (EEC) No 3235/74 (3) of 17 December 1974 on the supply of butteroil as food aid to the countries of the Sahel, Ethiopia and Somalia under Regulation (EEC) No 530/74 provides for the placing at the disposal of those countries of 4 050 metric tons of butteroil to be drawn on the 4 400 metric tons reserve stock provided for in Council Regulation (EEC) No 530/74 (4) of 4 March 1974 laying down general rules for the supply of milk fats as food aid to certain developing countries and certain international organizations ; whereas, pursuant to Articles 2 and 3 of Regulation (EEC) No 3235/74, 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 Article 2 of Regulation (EEC) No 530/74, the costs of processing, packing and forwarding of the different supplies, to the cif stage or, where relevant, to the places of destination, shall in principle 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

When a decision is taken to supply butteroil in accordance with Regulation (EEC) No 3235/74 the invitation to tender referred to in Article 2 of Regulation (EEC) No 530/74 shall be undertaken according to the detailed rules laid down in this Regulation.

Article 2

1. The intervention agency concerned shall give notice of an invitation to tender indicating in particular :

— the location of the coldstore where the butter which is to be manufactured into butteroil is in stock ;

— the quantity of butteroil to be delivered ;

— the destination and means of delivery ;

— the insurance arrangements for the goods to be transported ;

— the closing date and address for the receipt of tenders ;

— the date on which delivery is to take place.

2. 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 the submission of tenders. Besides, the intervention agency may make other publications.

3. The intervention agency shall take the measures necessary to enable interested parties to examine at their own costs, before submitting a tender, samples from the butter.

Article 3

The invitation to tender shall be open to processing undertakings approved for this purpose by the Member State on whose territory the processing is to take place. Only those undertakings which can fulfil the obligations provided for in this Regulation may be approved.

(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. 3.
(4) OJ No L 65, 7. 3. 1974, p. 1.

Article 4

1. Tenders shall be submitted in writing and either handed in against a receipt to the intervention agency or sent by registered letter to the intervention agency. The intervention agency may also authorize the use of telex.

2. Where the invitation to tender is in respect of several lots no tender may be made for more than one lot.

3. The tender shall indicate :

(a) the name and address of the tenderer ;

(b) the coldstore or coldstores from where the tenderer wishes to have the butter collected, chosen from the coldstores 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 invitation to tender is made and to which the tenderer undertakes to make the delivery in question ; this amount shall include the purchase price of the butter in accordance with the conditions defined in Articles 9 and 13, the costs of processing, packing and transporting the butteroil as well as the insurance costs for the transport of the butter and the butteroil to the stage fixed for the delivery.

4. A tender shall be valid only if it relates to an entire lot put up for tender.

5. A tender shall be valid only if it is accompanied by :

(a) a document certifying the approval referred to in Article 3 ;

(b) an undertaking from the tenderer that he will respect the conditions laid down by Articles 6 (2) and 10 ;

(c) a declaration by the tenderer according to which he will forgo any claim regarding the quality and characteristics of any butter sold to him ;

(d) proof that the security referred to in Article 5 has been lodged before the final date for submission of offers.

6. The tender may not be withdrawn.

Article 5

1. The security required for the invitation to tender shall amount to 15 units of account per metric ton of butteroil.

2. It shall take the form, at the choice 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 this Member State.

Article 6

1. The intervention agency shall take the necessary measures to ensure that the successful tenderer can take delivery of the butter necessary for processing into butteroil from the warehouse indicated in his tender.

2. After leaving the warehouse the butter is submitted to the custom's or to an administrative control with the equivalent guarantees.

3. Butteroil delivered for the supply in question must be manufactured exclusively from the butter for which delivery was taken by the successful tenderer from the intervention agency.

Article 7

Taking account of the tenders received and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount shall be fixed or else a decision shall be taken to make no award.

Article 8

1. A tender shall be refused if the amount proposed is more than the maximum amount valid for the lot in question.

2. Without prejudice to the provisions of paragraph 1 the successful tenderer shall be the one whose offer quotes the lowest amount converted into units of account. Where several offers for the same amount expressed in units of account are taken into consideration, the award shall be made by drawing lots.

3. Each tenderer shall be immediately notified by the intervention agency of the result of his participation in the tendering procedure.

4. Rights and obligations arising from the award shall not be transferable.

Article 9

1. Purchase price of the butter is fixed at 195 units of account per 100 kg ex coldstore. For Benelux, this amount shall be multiplied by the factor 1·00725.

2. Subject to the provisions of Article 13 the successful tenderer shall pay for the butter for which he takes delivery within 90 days following the date fixed by the intervention agency for the loading of the butteroil.

Article 10

The successful tenderer shall, by the date and at the place fixed, deliver the quantities of butteroil concerned, which shall satisfy the conditions of quality packaging and marking provided in the Annex to this Regulation.

He shall communicate to the intervention agency and to the recipient country the information required in the Regulations related to each individual tendering.

Article 11

Where the processing of the butter into butteroil takes place in the Member State selling the butter, the following provisions shall apply :

1. In respect of the manufacture and packing of the butteroil, the competent agency of the Member State shall ensure that :
   — the quality and packing conform to Article 3 (b) of Regulation (EEC) No 530/74, following the certificates provided in the Annex concerning the packing,
   — the requirements of Article 6 (3) are satisfied.
2. If the agency concerned considers that the relevant conditions have been fulfilled, they shall issue a certificate of the fact to the successful tenderer.

Article 12

Where the processing of the butter or the removal of the butteroil from the geographical territory of the Community takes place in a Member State other than that which is selling the butter, the proof that the butter has been processed in accordance with the conditions laid down by Article 11 (1) and/or that removal from the geographical territory of the Community has taken place must be provided by the production of the copy of the control document envisaged in Article 1 of Commission Regulation (EEC) No 2315/69 [1] of 19 November 1969 concerning the use of Community transit documents arising from the application of Community measures following the control of use and/or destination of goods.

Boxes, 101, 103 and 104 in the control copy shall be completed. Box 104 shall be completed by striking out the unnecessary references and inserting under the second indent one of the following phrases :

1. If the butter is to be processed in another Member State :

   'Butter destined :

   (a) to be processed into butteroil, and then

   (b) exported as food aid (Regulation (EEC) No 3235/74)'.

'Beurre destiné :

(a) à être transformé en butteroil,

(b) puis à être exporté au titre de l'aide alimentaire (règlement (CEE) nº 3235/74'.

'Butter bestimmt :

(a) zur Verarbeitung zu butteroil,

(b) alsdann zur Ausfuhr als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 3235/73'.

'Burro destinato :

(a) ad essere trasformato in butteroil,

(b) ad essere esportato a titolo di aiuto alimentare (Regolamento (CEE) n. 3235/74)'.

'Boter bestemd :

(a) om te worden verwerkt tot butteroil,

(b) om nadien te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. 3235/74)'.

'Smør bestemt til :

(a) fremstilling af butteroil

(b) herefter eksport som fødevarehjælp (forordning (EØF) nr. 3235/74)'.

Where the export control referred to under (b) is completed in a Member State other than that where the processing referred to under (a) takes place, the customs office which verifies the processing referred to under (a) shall send the control copy to the export office of the Member State selling the butter, indicating that it has only verified the processing referred to under (a) and shall deliver to the interested party, a control copy as referred to in Article 1 of Regulation (EEC) No 2315/69 with boxes 101, 103, 104 and 106 completed ; box 103 shall include the net weight of butteroil resulting from the processing under (a) ; box 104 shall include one of the references indicated under 2 below ; box 106 shall include :

— the control copy number provided by the export office of the Member State selling the butter as well as the name of that office ;
— the weight of butter used to produce the butteroil indicated in box 103.

The customs office which verifies the destination of the butteroil under (b) shall endorse the control copy provided by the office which verifies the processing referred to under (a) and shall send this copy via the aforesaid office to the export office of the Member State selling the butter.

[1] OJ No L 295, 24. 11. 1969, p. 14.

2. If the butter is processed into butteroil in the Member State selling the butter and is to leave the geographical territory of the Community from another Member State :

'Butteroil destined to be exported as food aid (Regulation (EEC) No 3235/74)'.

'Butteroil destiné à être exporté au titre de l'aide alimentaire (règlement (CEE) nº 3235/74)'.

'Als Nahrungsmittelhilfe auszuführendes butteroil (Verordnung (EWG) Nr. 3235/74)'.

'Butteroil destinato ad essere esportato a titolo di aiuto alimentare (regolamento (CEE) n. 3235/74)'.

'Butteroil bestemd om te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. 3235/74)'.

'Butteroil bestemt til eksport som fødevarehjælp (forordning (EØF) nr. 3235/74)'.

The customs office which verifies the destination shall endorse the control copy and shall send this copy to the export office of the Member State selling the butter.

Article 13

Upon presentation of the documents referred to :

— in Articles 11 (2) and 15 and of a customs document proving that the product has been removed from the geographical territory of the Community where the processing of the butter and the removal of the butteroil have taken place in the selling Member State,

— in Articles 12 (1) and 15, where the processing into butteroil takes place in a Member State other than that selling the butter,

— in Articles 11 (2), 12 (2) and 15, where the processing of butter into butteroil is completed in the territory of the Member State selling the butter and where the removal from the geographical territory of the Community takes place from another Member State,

the competent agency of the selling Member State shall cancel, up to the amount indicated in the tender, the obligation of the successful tenderer to pay the purchase price of the butter of which delivery was taken, and shall pay to him, within 15 days calculated from the day of the presentation of the certifying documents envisaged above, the difference between the two amounts, if this difference is to the advantage of the successful tenderer.

Article 14

1. Except in the case of *force majeure*, the security required for the invitation to tender envisaged in Article 5, shall only be released :

(a) if the tenderer has not withdrawn his tender before the contract is awarded and if the documents referred to in the first, second or third indent of Article 13, as appropriate have been supplied to the intervention agency ;

(b) if no award is made.

2. The security shall be released immediately.

3. In cases of *force majeure*, the intervention agency selling the butter shall determine the measures necessary in view of the circumstances invoked.

Article 15

A certificate of delivery shall be handed over on delivery of the goods to the successful tenderer acting as an agent of the Community appointed by the receiving country or where no such an agent is appointed by the local representative of the intervention agency of the selling Member State.

Article 16

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

Article 17

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 butteroil 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 butteroil following a case of *force majeure* shall be borne by the competent agency of the selling Member State.

Article 18

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

Article 19

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, 21 March 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX

I. Quality requirements for butteroil

Characteristics of the product : concentrated milk fat with a minimum pure fat content of 99·8 %.

Composition characteristics :

moisture content and non-milk fat constituents : maximum 0·2 % ;
fats : minimum 99·8 % ;
free fatty acids : maximum 0·5 % (oleic acid) ;
amount of peroxide/kg : maximum one unit (in milliequivalents of oxygen per kg) flavour : fresh ;
smell : absence of smells unconnected with butteroil.

II. Packaging of butteroil

1. The butteroil is to be packed in metal canisters fully filled and hermetically sealed in an atmosphere of nitrogen.

   The canisters should be strong enough to withstand a long sea journey and transportation by land in a tropical climate.

   The cylindrical or cubiform metal canister must pass the following test :

   — *5 kg canister :* when filled to 95 % of its nominal capacity with water at 20° C, it must not leak after dropping from a height of 86 cm on to the edge of the top or of the bottom. Number of samples necessary : 20 (10 on the bottom and 10 on the lid).

   — *for 20 kg canisters,* the same but from a height of 60 cm.

   The conformity of the metal canister used with the standards defined above must have been verified by a packaging institute approved by the Member State concerned, delivering an appropriate certificate.

2. The metal canisters are packed in cartons containing :

   — either four 5 kg canisters, or

   — one 20 kg canister.

   The cardboard used in the manufacture of the cartons shall be water-resistant. After 24 hours immersion in water, its rupture index (Mullen index) shall be not less than 15 kg/cm^2. Its rupture index (Mullen index) shall be not less than 29 kg/cm^2 for the cardboard of the carton and not less than 13 kg/cm^2 for the cardboard which separates the 5 kg canisters. The carton shall be firmly sealed with adhesive applied to the entire surface area of the upper and lower flaps. The sealing of the carton shall be reinforced by a self-adhesive band or a hoop made of plastic or any other suitable material.

   The sealed carton containing either a 20 kg metal canister or four 5 kg canisters filled to 95 % of their capacity with water must resist three falls from a height of 1·20 m on three different edges belonging to different axes.

   The conformity of the cardboard cartons used with the standards defined above must be verified by a packaging institute approved by the Member State concerned, delivering an appropriate certificate.

3. *Markings on the packaging :*

   The metal canister shall have stamped upon it the following information in the language or languages specified in the Regulation of the individual invitation to tender :

   (a) the description : 'Butteroil' ;

   (b) the words : 'Gift of the European Economic Community' (with the possible addition of 'Supplied by the World Food Programme') ;

(c) the net weight ;

(d) the month and year of manufacture ;

(e) the name of the processing undertaking — in the form of a code number.

In addition to the above, the following must be marked on the two sides of each carton : the manufacturer's lot number and the number of cartons making up the lot.

III. **Special provisions**

As regards certain special destinations for projects concerning supplies in view of milk reconstitution, special measures shall possibly be fixed in the Regulation of the individual invitation to tender.