COMMISSION REGULATION (EEC) No 1128/76

of 14 May 1976

on a standing invitation to tender for the mobilization of Community white sugar for UNRWA as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar (1), as last amended by Regulation (EEC) No 3058/75 (2), and in particular Articles 17, 19 and 34 thereof,

Having regard to Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA as food aid (3), and in particular Article 1 (3) and (4) thereof,

Whereas Article 1 (1) of Regulation (EEC) No 1034/76 provides for the supply to the United Nations Relief and Works Agency for Palestine Refugees, hereinafter referred to as 'UNRWA', for the 1975/76 sugar marketing year, of 6 153 metric tons of white sugar produced and in free circulation within the Community; whereas in view of its destination, that white sugar should be of Grade I as defined in Commission Regulation (EEC) No 1280/71 of 18 June 1971 laying down detailed rules for the buying-in of sugar by intervention agencies (4), as last amended by Regulation (EEC) No 2799/75 (5);

Whereas Article 2 of Regulation (EEC) No 1034/76 lays down that the Community is to defray the cost of the sugar delivered to the port of unloading;

Whereas, for the mobilization of the goods by tendering procedure, the rules laid down under the common organization of the market in sugar governing invitations to tender should be followed as appropriate;

Whereas Commission Regulation (EEC) No 1380/75 of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (6), as last amended by Regulation (EEC) No 1040/76 (7), lays down that no monetary compensatory amount is to apply to products which are the subject of Community food aid operations and are exported to non-member countries, where those products are mobilized on the Community market;

Whereas it should be laid down that export refunds and levies are not applicable to this invitation to tender;

Whereas tenders may be submitted by tenderers established in different Member States of the Community and may relate to sugar to be mobilized in those Member States; whereas, in view of the situation regarding Member States' currencies and in order to ensure that the tenders are more closely comparable, account should be taken of the incidence upon each tender of the situation regarding the currency of the Member State where the customs export formalities will be completed;

Whereas the Monetary Committee will be consulted; whereas, owing to the urgency of the matter, the proposed measures should be adopted under the conditions laid down in Article 3 (2) of Council Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy (8), as last amended by Regulation (EEC) No 2543/73 (9) thereof;

Whereas, in order to clarify the legal situation regarding the invitations to tender previously issued in respect of sugar, the invitations to tender referred to in Article 16 of this Regulation should be closed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. Member States shall issue a standing invitation to tender for the supply to UNRWA, as Community food aid, of a total of 6 153 metric tons of white sugar produced and in free circulation within the Community and, during the period of validity of the standing invitation, they shall organize partial tenderings each week.

The said quantity shall be divided into two lots, A and B.

(1) OJ No L 359, 31. 12. 1974, p. 1.
(2) OJ No L 306, 26. 11. 1975, p. 3.
(3) OJ No L 118, 5. 5. 1976, p. 1.
(4) OJ No L 133, 19. 6. 1971, p. 34.
(5) OJ No L 279, 30. 10. 1975, p. 7.
(6) OJ No L 139, 30. 5. 1975, p. 37.
(7) OJ No L 118, 5. 5. 1976, p. 12.
(8) OJ No 106, 30. 12. 1962, p. 2553/62.
(9) OJ No L 263, 19. 9. 1973, p. 1.

2. The standing invitation shall relate to the price of each of the lots, A and B, delivered at the port of unloading on quayside or lighter. The composition of the lots shall be as stated in the Annex. The sugar must be of Grade 1 as defined in Article 11 (1) of Regulation (EEC) No 1280/71.

3. No export levy or refund shall apply in respect of the quantity referred to in paragraph 1.

Article 2

Partial tenderings during the period of validity of the standing invitation shall be organized in accordance with Regulation (EEC) No 1034/76 and with the following provisions.

Article 3

The standing invitation to tender shall remain open until the date of the partial tendering at which contracts are awarded for the relevant lots, or, as the case may be, for the remaining lot. The standing invitation shall thereupon automatically be closed on that date.

Article 4

1. For the first partial tendering tenders may be submitted from the day of publication of the standing invitation to tender in the *Official Journal of the European Communities* until 19 May 1976 at 10.00 hours.

2. For subsequent partial tenderings tenders may be submitted :

(a) from the first working day following the end of the preceding partial tendering,

(b) until Wednesday of the following week at 10.00 hours.

3. Notwithstanding paragraph 2 (b), the time limits for tenders due by :

(a) Wednesday 2 June 1976 shall be deferred to Thursday 3 June 1976 at 10.00 hours,

(b) Wednesday 14 and 21 July 1976 shall be brought forward to Tuesday 13 and 20 July 1976 respectively at 10.00 hours.

4. The time limits set in this Article shall be :

(a) brought forward by one hour in Ireland and the United Kingdom in the period during which summer time does not apply in those Member States ;

(b) deferred by one hour in the other Member States when they apply summer time.

Article 5

1. Member States shall draw up a notice of invitation to tender. That notice shall be published in the *Official Journal of the European Communities.* Member States may also arrange for it to be published elsewhere.

2. The said notice shall be published only for the purpose of issuing the standing invitation to tender. The notice may be amended during the period of validity of the standing invitation. It shall be amended if the terms of the invitation to tender are amended during that period of validity.

3. The notice shall indicate in particular the terms of the invitation to tender.

Article 6

1. Tenderers shall either deliver written tenders to the competent authority of the Member State in question against a receipt, or address tenders to the competent authority by registered letter, telex or telegram.

2. Tenders shall state :

(a) the reference number of the invitation to tender ;

(b) the reference number of the lot ;

(c) the name and address of the tenderer ;

(d) the price proposed for the lot in question expressed in the currency of the Member State referred to in (e) ;

(e) the Member State in which the tenderer, in the event of his being successful, intends to complete the customs formalities for the export of the sugar.

3. A tender shall be valid only if :

(a) it relates to the price referred to in Article 1 (2) ;

(b) proof is furnished before the time limit for the submission of tenders that the security for tender referred to in Article 7 has been provided ;

(c) it includes a declaration by the tenderer that, if awarded the contract, he will deliver the sugar in accordance with the provisions of this Regulation and export it from the Member State referred to in paragraph 2 (e).

4. A tender which is not submitted in accordance with the provisions of this Article, or which contains terms other than those indicated in the notice of invitation to tender, shall be rejected.

5. Once a tender has been submitted it may not be withdrawn.

Article 7

1. The security required for the tender shall be 180 120 units of account for lot A and 66 000 units of account for lot B.

2. The security shall be provided, at the tenderer's choice, either in cash or in the form of a guarantee by an establishment complying with the criteria laid down by the Member State in which the tender is submitted.

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

(a) the successful tenderer has delivered the sugar at the port of unloading on quayside or lighter, in accordance with the prescribed terms, and after production of copy No 1 of the export licence duly endorsed and with the quantity duly entered by the competent authority of the Member State referred to in Article 6 (2) (e) ;

(b) the tender is not accepted.

4. In cases of *force majeure,* the competent authority shall decide upon the measures necessary in the light of the circumstances invoked by the tenderer.

5. In the case referred to in paragraph 3 (a), the security shall be released when final payment is made as provided for in Article 10 (1) ; in the case referred to in paragraph 3 (b) the security shall be released immediately.

Article 8

1. Tenders shall be examined in private session by the competent authority. Subject to paragraph 2, persons present at the examination shall be sworn to secrecy.

2. The tenders shall be communicated without names attached to the Commission without delay.

3. In order that the tenders may be directly comparable, each one shall be adjusted, where necessary, by the monetary compensatory amount applicable to exports from the Member State referred to in Article 6 (2) (e) on the closing date for the submission of tenders. Such adjustment shall be made by :

— increasing the price in the case of tenders specifying a Member State whose currency has depreciated,

— reducing the price in the case of tenders specifying a Member State whose currency has appreciated.

The rates, thus corrected, used for converting those offers into units of account shall be :

— in the case of currencies held at any given moment within a band of 2·25 %, the central rate,

— in all other cases, the average spot exchange rate during a week ending on the Tuesday immediately preceding the final date for the submission of tenders.

Article 9

1. The price shall be for delivery on quayside or on lighter at the port of unloading for the destination appropriate to the lot specified in the Annex.

2. The sugar shall be supplied in new jute sacks with an inner polyethylene lining :

(a) either of a minimum weight of 450 grammes and net content of 50 kilogrammes, or

(b) of a minimum weight of 700 grammes and a net content of 100 kilogrammes.

The sacks shall be clearly and indelibly marked on the outside :

'White sugar — Gift of the European Economic Community to UNRWA — For the benefit of Palestine refugees'.

3. The sugar in question shall have been produced and put into free circulation in the Community.

4. The sugar must be delivered to the ports and by the date specified in the Annex. For the purposes of this paragraph delivery shall be considered as having been effected when the ship has entered the specified port of destination with the goods still on board.

If a contract is not awarded for either of the lots of sugar at the first partial tendering, the date of delivery of that lot shall be postponed for a period equal to that running from the first partial tendering until the partial tendering at which a contract for that lot is awarded.

5. Sampling and analysis shall be carried out by experts approved by the authorities of the Member State referred to in Article 15 (1). All costs of weighing, sampling and quality control at the time of loading shall be paid by that Member State. That State shall exact from the successful tenderer fixed charges in respect of the said costs of 4 503 units of account for lot A and 1 650 units of account for lot B, which charges the tenderer should therefore include in his tender. The successful tenderer shall pay the appropriate fixed charge at the time of export to the Member State referred to in Article 15 (1).

Article 10

1. Without prejudice to Article 15 (2), the competent authority of the exporting Member State shall make a provisional payment to the successful tenderer equal to 90 % of the price quoted in his tender, on presentation by the tenderer of proof that the lot of sugar in question has been delivered within the meaning of Article 9 (4) at the specified port of destination. This proof shall consist of a certificate from a specialized international control and surveillance agency approved by UNRWA.

In addition, the tenderer shall submit one copy of the shipping document to the authority referred to in the first subparagraph. Final payment shall be made as soon as the said authority has received the documents drawn up by UNRWA certifying that the sugar has been delivered on quayside at the stipulated port of unloading and in accordance with the conditions laid down. Those documents shall be sent directly by UNRWA to the said authority as soon as possible.

2. If the export formalities in respect of the sugar are completed in a Member State other than that in which the contract was awarded to the successful tenderer, the competent authority of the exporting Member State shall immediately inform the authority which awarded the contract of the final payment referred to in paragraph 1, for purposes of application of Article 7.

Article 11

The maximum price for supplying each lot of sugar shall be fixed after examination of the tenders, in accordance with the procedure laid down in Article 36 of Regulation (EEC) No 3330/74.

However, a decision may be taken to make no award in respect of a partial tendering.

Article 12

1. Except where a decision is taken to make no award in respect of a partial tendering and without prejudice to paragraph 2, the contract shall be awarded to the tenderer whose tender, when converted into units of account, is the lowest for the lot in question after taking into account the adjustment referred to in Article 8 (3).

2. Where there is more than one acceptable tender at the same price for the same lot, the successful tenderer shall be chosen by drawing lots.

Article 13

1. The successful tenderer shall have :

(a) the right to receive from the Member State where the tender was submitted an export licence in respect of the relevant quantity specifying that the monetary compensatory amounts on exports to non-member countries do not apply and bearing the endorsement 'Supplies to UNRWA for export from ... (exporting Member State indicated in the tender) without levy or refund (Regulation (EEC) No 1128/76)' ;

(b) without prejudice to the other provisions of this Regulation, the right to receive payment of the price quoted in the tender for the lot in question ;

(c) the obligation to apply to the Member State referred to in (a) for the abovementioned licence for the sugar in question and to deliver it in accordance with the terms of the notice of invitation to tender.

2. The rights and obligations arising from the award of the contract shall not be transferable.

Article 14

1. The competent authorities shall immediately notify all tenderers of the outcome of their tenders and shall also send a statement of award to the successful tenderer.

2. The statement of award shall specify at least :

(a) the reference number of the invitation to tender ;

(b) the reference number of the lot ;

(c) the price accepted expressed in the currency of the exporting Member State.

Article 15

1. The successful tenderer shall be responsible for all operations arising from the award of a contract pursuant to this Regulation, and must in particular inform the competent authority of the exporting Member State and UNRWA as soon as possible :

(a) of the name of the ship and the date of loading,

(b) the expected date of arrival of the ship at the port of unloading.

The said authority must communicate that information to the Commission as quickly as possible and, where applicable, to the authority which awarded the tender.

2. Without prejudice to Article 7 (3) the price accepted shall be reduced by :

(a) 0·60 unit of account per 100 kilogrammes of sugar if the sugar is of Grade 2 as defined in Regulation (EEC) No 793/72 [1] ;

(b) 0·10 unit of account per 100 kilogrammes of sugar per day if the sugar is delivered after the prescribed date, except where late delivery is recognized as due to *force majeure* by the competent authority which awarded the tender.

3. If the sugar is of a grade lower than that stipulated in paragraph 2 (a) it shall be rejected at tenderer's risk.

Article 16

The invitations to tender mentioned in Regulations (EEC) No 1734/70 [2], (EEC) No 258/71 [3], (EEC) No 1101/73 [4], (EEC) No 1977/73 [5], (EEC) No 2141/73 [6], (EEC) No 314/75 [7], (EEC) No 557/75 [8] and (EEC) No 558/75 [9] are hereby closed.

Article 17

This Regulation shall enter into force on 15 May 1976.

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[1] OJ No L 94, 21. 4. 1972, p. 1.
[2] OJ No L 191, 27. 8. 1970, p. 30.
[3] OJ No L 29, 5. 2. 1971, p. 29.
[4] OJ No L 112, 28. 4. 1973, p. 20.
[5] OJ No L 201, 21. 7. 1973, p. 26.
[6] OJ No L 216, 4. 8. 1973, p. 12.
[7] OJ No L 35, 8. 2. 1975, p. 11.
[8] OJ No L 59, 5. 3. 1975, p. 8.
[9] OJ No L 59, 5. 3. 1975, p. 16.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 May 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX

Lot	Port of loading	Quantity (metric tons)	Quality	Port of unloading	Latest date for delivery (1)
A	Community ports	4 503	Grade 1	Lattakia (Syria)	30 June 1976
B	Community ports	1 650	Grade 1	Ashdod (Israel)	30 June 1976

(1) Without prejudice to the second subparagraph of Article 9 (4) of this Regulation.