COMMISSION REGULATION (EEC) No 2359/76

of 29 September 1976

concerning the issue of an invitation to tender for the supply to the Republic of Uruguay for use as food aid of vitaminized 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 of 27 June 1968 on the common organization of the market in milk and milk products [1], as last amended by Regulation (EEC) No 559/76 [2], and in particular Article 7 (5) thereof,

Having regard to Council Regulation (EEC) No 1298/76 of 1 June 1976 laying down general rules for the supply of skimmed-milk powder, as food aid, to certain developing countries and certain international organizations under the 1976 programme [3], as amended by Regulation (EEC) No 2017/76 [4], and in particular Article 6 thereof,

Whereas Council Regulation (EEC) No 2018/76 of 27 July 1976 on the additional supply of skimmed-milk powder as food aid to certain developing countries, international organizations and non-governmental organizations under the 1976 programme [5] provides *inter alia* that 300 metric tons of skimmed-milk powder shall be made available to the Republic of Uruguay; whereas this country has requested the delivery of 300 metric tons of vitaminized skimmed-milk powder;

Whereas Article 2 (2) of Regulation (EEC) No 1298/76 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 additon of vitamins, supplies shall be obtained by purchase on the Community market;

Whereas Article 5 of Regulation (EEC) No 1298/76 provides that for the purpose 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 Regulations (EEC) No 1298/76 and (EEC) No 2018/76 for the costs of supplying to the Republic of Uruguay a lot of 300 metric tons of vitaminized skimmed-milk powder.

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

3. The successful tenderer shall deliver, as a supplement, 5 % empty bags similar to those containing the goods.

Article 2

1. Delivery shall be effected at a port to be designated in the tender, chosen among Community ports, accessible for ocean-going ships and having a regular line to the country of destination.

2. Delivery at the port of embarkation shall take place on a date fixed by the intervention agency concerned, and which must be after 1 and before 10 November 1976.

3. The time limit for the submission of tenders expires on 12 Ocotber 1976 at 12 noon.

Article 3

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.

Article 4

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.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 67, 15. 3. 1976, p. 9.
(3) OJ No L 146, 4. 6. 1976, p. 3.
(4) OJ No L 224, 16. 8. 1976, p. 1.
(5) OJ No L 224, 16. 8. 1976, p. 2.

2. The tender shall indicate *inter alia*:

(a) the name and address of the tenderer;

(b) 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 to the port of shipment referred to in Article 2 (1), in accordance with the specifications laid down in the Annexes, the entire quantity of the lot put out to tender.

Such price shall be inclusive of transport insurance costs to the stage for delivery.

3. A tender shall be valid only if:

(a) it relates to the entire lot 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 5 has been provided.

4. No tender may be withdrawn.

Article 5

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 6

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

Article 7

1. A tender shall be refused if the price proposed, converted into units of account, is more than the maximum price fixed for the lot in question.

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 6.

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.

5. The intervention agencies shall immediately communicate to the Commission the tenderer's name and address.

Article 8

1. The successful tenderer shall, on the date fixed by the recipient country, deliver at the port designated in the tender and the quantity of skimmed-milk powder meeting the requirements as regards quality and packaging laid down in the Annex to this Regulation. Any schedule for instalment deliveries shall be fixed by the recipient country's agent in agreement with the successful tenderer.

2. The goods shall be regarded as delivered when they are deposited at the place of exportation at the point designated by the recipient country or its agent.

Article 9

Upon delivery of the goods at the port of embarkation, the recipient country's agent shall hand to the successful tenderer acting as agent for the Community a letter of acceptance.

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 the Annex.

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

3. On delivery the recipient country shall issue a certificate stating that delivery of that quantity of skimmed milk as well as the empty bags referred to in Article 1 (3) have been taken at the stage specified in Article 2 (1).

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 Commission Regulation (EEC) No 2315/69 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 [1], as amended by Regulation (EEC) No 690/73 [2].

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 2359/76 to be shipped from the port of ....';

— 'Livraison de lait écrémé en poudre à titre d'aide alimentaire (règlement (CEE) n° 2359/76) destinée à être embarquée au port de ....';

— 'Lieferung von Magermilchpulver als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 2359/76) zur Verschiffung im Hafen von ... bestimmt';

— 'Fornitura di latte scremato in polvere a titolo di aiuto alimentare (regolamento (CEE) n. 2359/76) destinata ad essere imbarcata nel porto di ...';

— 'Levering van magere-melkpoeder als voedselhulp Verordening (EEG) nr. 2359/76) bestemd om te worden verscheept in de haven ...';

— 'Levering af skummetmælkspulver som fødevarehjælp (forodning (EØF) nr. 2359/76) 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.

Article 13

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

Article 14

The amount referred to in Article 4 (2) (b) shall be paid only on production of the certificate provided for in Article 10 (2) and (3).

Article 15

Except in cases of *force majeure*, the successful tenderer shall accept all financial liability developing upon the Community by reason of failure to load the skimmed-milk powder at the place and in due time, the recipient country having effected the delivery at the place and by the time appointed.

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 concerned.

Article 16

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

Article 17

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, 29 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

[1] OJ No L 295, 24. 11. 1969, p. 14.
[2] OJ No L 66, 13. 3. 1973, p. 23.

ANNEX

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 maximum)
(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 or one Kraft paper bag with polyethylene layer, of a strength representing at least 70 g + 15 g/m² ;

— one polyethylene inner bag at least 0·08 mm thick double bound.

(c) The packaging of the skimmed-milk powder shall bear, in letters at least 1 cm high the following inscription :

'Lait écrémé en poudre enrichi en vitamines A et D — Don de la Communauté économique européenne à la république d'Uruguay — À distribuer gratuitement.'