COMMISSION REGULATION (EEC) No 2498/76

of 13 October 1976

concerning the issue of an invitation to tender to the World Food Programme for use as food aid of vitaminized skimmed-milk powder to be purchased on the Community market for certain third countries

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 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 1299/76 of 1 June 1976 on the supply of skimmed-milk powder as food aid to certain developing countries and international organizations under the 1976 programme (5), provides *inter alia* that 20 000 metric tons of skimmed-milk powder should be made available to the World Food Programme (WFP);

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 (6), provides *inter alia* that 10 000 metric tons of skimmed-milk powder should be made available to the WFP;

Whereas the WFP has requested the delivery of 3 777 metric tons of vitaminized skimmed-milk powder of which 3 128 metric tons remain to be delivered in pursuance of Regulation (EEC) No 1299/76 and 649 metric tons are to be delivered in pursuance of Regulation (EEC) No 2018/76;

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 addition 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 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 Regulations (EEC) No 1298/76, (EEC) No 1299/76 and (EEC) No 2018/76, for the costs of supplying to the WFP 3 777 metric tons of vitaminized skimmed-milk powder, divided into the following lots and for the following destinations:

— Lot A: 200 metric tons for India,

— Lot B 1: 700 metric tons for Pakistan,

— Lot B 2: 700 metric tons for Pakistan,

— Lot B 3: 700 metric tons for Pakistan,

— Lot B 4: 700 metric tons for Pakistan,

— Lot C: 777 metric tons for Pakistan.

2. The skimmed-milk powder shall meet:

— as to quality, the requirements set out in the Annex to this Regulation,

— as to packing, the requirements set out in Annex I to Commission Regulation (EEC) No 1108/68 of 27 July 1968 on detailed rules on application for

(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 146, 4. 6. 1976, p. 5.
(6) OJ No L 224, 16. 8. 1976, p. 2.

intervention for public storage of skimmed-milk powder (1), as last amended by Regulation (EEC) No 1457/76 (2).

3. The intervention agency concerned shall have printed on the bags, in letters at least 1 cm high, the following marking:

'Skimmed-milk powder enriched with vitamins A and D / Gift of the European Economic Community / World Food Programme action'.

This statement shall be followed by the name of the port of unloading which shall be communicated by the Commission to the intervention agency concerned.

4. In addition the successful tenderer shall supply 5 % empty bags identical to those containing the goods.

Article 2

1. The port of embarkation to be specified in the tender shall be chosen from among Community ports acessible for ocean-going ships having regular lines to the country of destination.

A tender may only indicate one port.

2. The delivery at the port of embarkation shall take place on a date fixed by the intervention agency concerned, which shall be after 28 November and before 15 December 1976.

3. The time limit for the submission of tenders shall be 26 October 1976 at 12 noon.

Article 3

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. 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.

3. The tender may only be submitted to the intervention agency of the Member State on whose territory the manufacture of the vitaminized skimmed-milk powder and its packaging, in accordance with Article 1 (2), take place.

4. A tender shall only be valid if it relates to the whole of a lot put up to tender. As regards lots B 1 to B 4 the tenderer shall specify for how many lots his tender is valid.

5. A tender shall indicate in particular:

(a) the name and address of the tenderer;

(b) the port or ports of embarkation, chosen from among ports specified in Article 2 (1);

(c) the price, exclusive of taxes, expressed in the currency of the Member State in which the tenderer undertakes to supply, in accordance with the specification laid down in the Annex, the entire quantity subject to the tender.

Such price shall be inclusive of transport insurance costs to the stage referred to in Article 7 for delivery.

6. A tender shall be valid only if 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.

7. No tender may be withdrawn.

Article 4

1. The tendering and delivery 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 miximum amount, 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 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 5.

(1) OJ No L 184, 29. 7. 1968, p. 34.
(2) OJ No L 145, 6. 6. 1975, p. 17.

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 tenderers' names and addresses.

Article 7

1. The tenderer shall, on the date fixed by the WFP, deliver at the port specified in the tender a quantity of skimmed-milk powder equal to the quantity there specified. Any schedule for instalment deliveries shall be agreed between the successful tenderer and the agent of the WFP.

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

Article 8

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 Article 1 (2).

2. If the goods are found to satisfy those requirements, as mentioned in Article 1 (2), the agency shall provide the successful tenderer with a certificate to that effect.

3. Upon delivery of the goods at the port of embarkation, the WFP agent shall hand to the successful tenderer, acting as agent for the Community, a letter of acceptance. This letter of acceptance shall state that the quantity of skimmed-milk powder in question as well as the empty bags specified in Article 1 (4), have been taken at the stage specified in Article 7.

Article 9

If the port of loading specified in the tender is situated in a Member State other than that in which the tender was submitted, the goods shall, on completion of the control specified in Article 8 (1), be placed under customs control with the object of ensuring that they are delivered 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 2498/76) to be shipped from the port of ....',

— 'Livraison de lait écrémé en poudre à titre d'aide alimentaire (règlement (CEE) n° 2498/76) destinée à être embarquée au port de ....',

— 'Lieferung von Magermilchpulver als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 2498/76) zur Verschiffung im Hafen von .... bestimmt',

— 'Fornitura di latte scremato in polvere a titolo di aiuto alimentare (regolamento (CEE) n. 2498/76) destinata ad essere imbarcata nel porto di ....',

— 'Levering van magere-melkpoeder als voedselhulp (Verordening (EEG) nr. 2498/76) bestemd om te worden verscheept in de haven van ....',

— 'Levering af skummetmælkspulver som fødevarehjælp (forordning (EØF) nr. 2498/76) bestemt til lastning i havnen i ....'.

Article 10

1. Except in cases of *force majeure*, the tendering and delivery 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 8 (2) and (3).

2. Release of the security shall take place immediately.

Article 11

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

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

Article 12

The amount referred to in Article 3 (5) (c) shall be paid only on production of the certificate provided for in Article 8 (2) and (3).

Article 13

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 at the place and in due time, the WFP having facilitated 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 14

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

Article 15

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, 13 October 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX

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