COMMISSION REGULATION (EEC) No 2713/76

of 9 November 1976

concerning an invitation to tender for the costs of delivery of skimmed-milk powder as food aid to India

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,

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 (3), provides *inter alia* for 5 000 metric tons of skimmed-milk powder to be made available to India ; whereas this country has made a request of delivery of the abovementioned quantity ;

Whereas under Article 5 of 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 (4), as last amended by Regulation (EEC) No 2017/76 (5), invitations to tender must be issued for the delivery costs in respect of these quantities ;

Whereas the tendering procedure should essentially be that laid down 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. In accordance with the provisions of Regulations (EEC) No 1298/76 and (EEC) No 1299/76, tenders shall be invited for the costs of delivery of 5 000 metric tons of skimmed-milk powder for India and divided into the following lots :

— lot A 1 : 1 000 metric tons to be delivered to the unloading port of Calcutta,

— lot A 2 : 1 000 metric tons to be delivered to the port of unloading of Calcutta,

— lot B 1 : 1 000 metric tons to be delivered to the port of unloading of Bombay,

— lot B 2 : 1 000 metric tons to be delivered to the port of unloading of Bombay,

— lot B 3 : 1 000 metric tons to be delivered to the port of unloading of Bombay.

2. The skimmed-milk powder shall meet the requirements for quality and packing set out in the Annex to Commission Regulation (EEC) No 1108/68 of 27 July 1968 on detailed rules of application for public storage of skimmed-milk powder (6), as last amended by Regulation (EEC) No 1457/75 (7).

3. The skimmed-milk powder shall be taken from the German intervention agency.

4. The intervention agency shall supply 2 % extra empty bags identical to those containing the goods. The tenderer undertakes to have these bags mentioned on the bill of lading.

5. Loading shall take place :

— as regard to lots A 1 and A 2 : not later than 15 January 1977 ;

— as regard to lots B 1, B 2 and B 3 : after 1 and before 15 March 1977.

6. The packing of the skimmed-milk powder shall bear the following in letters at least one centimetre high :

'Skimmed-milk powder non-enriched / Gift of the European Economic Community to the Republic of India'.

Article 2

1. The German intervention agency 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.

(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. 5.
(4) OJ No L 146, 4. 6. 1976, p. 3.
(5) OJ No L 224, 16. 8. 1976, p. 1.
(6) OJ No L 184, 29. 7. 1968, p. 24.
(7) OJ No L 145, 6. 6. 1975, p. 17.

2. The closing date for the submission of tenders shall be 23 November 1976 at 12 noon.

Article 3

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.

2. A tender shall be valid only if it relates to the entire quantity of a lot put out to tender.

A tender shall relate only to the lots designated by the same capital letter. The tenderer shall make precise in his tender for how many lots — under these conditions — it is valid.

3. The tender shall indicate *inter alia :*

(a) the name and address of the tenderer ;

(b) the port or ports of loading, chosen from among Community ports ;

(c) the price, exclusive of taxes, expressed in German marks, at which the tenderer undertakes to supply, in accordance with the specifications, the entire quantity which is the subject of his tender.

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

4. A tender shall be valid only if the 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.

5. The tender may not be withdrawn.

Article 4

1. The tendering and delivery security shall be two 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 maximum price, 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 are received, the award shall be made by drawing lots.

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 German intervention agency shall immediately inform the Commission of the successful tenderer's name and address.

Article 7

1. The successful tenderer shall deliver the skimmed-milk powder satisfying the requirements as to quality and packing referred to in Article 1 (2).

2. Delivery at the port of unloading shall be considered as completed when the goods are actually deposited in the hold of the ship at the port of unloading.

3. The country of destination shall bear all expenditure incurred after delivery including unloading costs (as unstowing, hoisting, acceptance) as well as eventual lighterage.

Article 8

Any demurrage costs or dispatch money at the port of unloading shall be borne or at the benefice of the recipient country. The rates and other details concerning such costs shall be laid down in the contract between the successful tenderer and the carrier and must have been previously agreed upon by the successful tenderer acting as Community agent and the country of destination's agent.

Article 9

1. The intervention agency concerned shall as soon as possible after the putting on board of the goods, notify the country of destination of the name of the vessel, the date of loading, the quantity and the quality of the goods as recorded at the time of loading and the port of unloading.

2. The successful tenderer shall inform the country of destination at least 10 clear days in advance of the expected date of arrival of the ship in the port of unloading.

3. The successful tenderer shall have included in the terms of the charter-party a provision stipulating that the ship's captain shall inform the country of destination at least 72 hours in advance of the ship's probable date of arrival in port.

Article 10

1. At the time of taking over, the successful tenderer shall check that the quantity of skimmed-milk powder collected satisfies the quantity to be supplied.

Moreover, he shall check that the packing of the skimmed-milk powder satisfies the requirements fixed in Article 1 (2).

2. On delivery effected within the meaning of Article 7 (2), the country of destination shall issue a certificate proving taking delivery of that quantity of skimmed-milk powder at the stage specified in Article 1 (1).

Article 11

1. Except in cases of *force majeure,* the tendering and delivery security shall be released only if :

(a) the tender has not been awarded ;

(b) the tenderer :

— has not withdrawn his tender before the contract is awarded,

— has furnished the certificates provided for in Article 10 (2).

2. Release of the security shall take place immediately.

Article 12

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

Article 13

The amount referred to in Article 3 (3) (c) shall be paid only on production of the certificates provided for in Article 10 (2).

Article 14

Except in cases for *force majeure,* the successful tenderer shall accept all financial liability devolving upon the Community by reason of failure to load the skimmed-milk powder by the date specified in Article 1 (5).

Costs incurred by reason of failure to deliver the skimmed-milk powder as a result of *force majeure* shall be borne by the German intervention agency.

Article 15

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

Article 16

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, 9 November 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission