COMMISSION REGULATION (EEC) No 422/76

of 25 February 1976

on the invitation to tender for the costs of delivery of skimmed-milk powder as food aid to Somalia

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 740/75 [2], and in particular Articles 7 (5) and 28 thereof,

Whereas Council Regulation (EEC) No 713/75 of 18 March 1975 laying down the general rules for the supply of skimmed-milk powder as food aid to Somalia [3], provides for a reserve of 2 000 metric tons of skimmed-milk powder to be delivered following the evolution of the needs of Somalia; whereas this country has applied for the supply cif of 1 000 metric tons of skimmed-milk powder;

Whereas Article 5 of Regulation (EEC) No 713/75 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 the provisions of Regulation (EEC) No 713/75 for the costs of delivery to Somalia of a lot of 1 000 metric tons of skimmed-milk powder which has been subject to the intervention measures specified in Article 7 of Regulation (EEC) No 804/68, divided into two lots of 500 metric tons.

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

2. The skimmed-milk powder shall, as to quality and packing, satisfy the provisions laid down in Annex I to Commission Regulation (EEC) No 1108/68 of 27 July 1968 on detailed rules of application for public storage of skimmed-milk powder [4], as last amended by Regulation (EEC) No 1457/75 [5].

The Belgian intervention agency has the following words in letters at least one centimetre high applied on the packing:

'Skimmed-milk powder — gift of the European Economic Community to the Somali Democratic Republic — to be distributed free of charge'.

3. The intervention agency shall supply a further 5 % empty bags identical to those containing the goods. The successful tenderer undertakes to have these bags mentioned on the bill of lading.

4. Delivery shall be made cif Mogadishu (Somalia) according to Article 5 (1).

5. Loading shall take place:

for lot A (500 metric tons): after 1 and before 15 April 1976,

for lot B (500 metric tons): after 1 and before 15 May 1976.

Article 2

1. The Belgian intervention agency shall draw up the 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. The closing date for the submission of tenders shall be 16 March 1976 at 12 noon.

3. The intervention agency shall indicate in its notice of invitation the warehouses where the skimmed-milk powder is held.

Article 3

1. Tenders, which shall be in writing, shall be submitted either by delivery by hand to the intervention agency against acknowledgement of receipt or by registered letter addressed to the intervention agency. Each tender may only relate to one lot.

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 74, 22. 3. 1975, p. 1.
[3] OJ No L 71, 20. 3. 1975, p. 4.
[4] OJ No L 184, 29. 7. 1968, p. 34.
[5] OJ No L 145, 6. 6. 1975, p. 17.

2. The tender shall indicate :

(a) the name and address of the tenderer ;

(b) the amount of bid exclusive of tax, expressed in Belgian francs, for which the tenderer undertakes to deliver the skimmed-milk powder cif under the conditions laid down in Article 5 including the insurance costs covering the value of the goods ;

(c) the port of embarkation which may be any Community port.

3. The tender shall not be valid unless :

(a) it relates to the whole of the lot to which the invitation to tender relates ;

(b) proof is furnished that before expiry of the time limit for the submission of tenders, the tenderer has given the security fixed in Article 4.

4. The tender may not be withdrawn.

Article 4

1. The security required for the invitation to tender shall be two units of account per metric ton of skimmed-milk powder.

2. It shall take the form, at the option of the Member State concerned, either of a cheque made out in favour of the country of destination, or of a bank guarantee which satisfies the criteria laid down by that Member State.

Article 5

1. Delivery costs shall be the costs incurred up to the time when the goods are deposited on the quayside or on board lighters, if used, all costs subsequent to delivery, including costs of taking delivery, to be borne by the country of destination.

2. Any demurrage costs at the port of unloading in respect of delays attributable to the country of destination shall be chargeable to the latter. 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 between the former and the delivery agent of the country of destination.

3. Except in cases of *force majeure* every successful tenderer shall accept all financial liability devolving upon the Community by reason of failure to deliver the skimmed-milk powder at the place and by the time appointed, provided always that the country of destination has made it possible for the skimmed-milk powder to be so delivered. Costs incurred by reason of failure to deliver the skimmed-milk powder as a result of *force majeure* shall be borne by the Belgian intervention agency.

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 amount proposed, converted into units of account, is more than the maximum amount fixed for the lot in question.

2. Without prejudice to the provisions of paragraph 1, the successful tenderer shall for each lot be the one making the lowest offer.

Where two or more valid offers specify amounts which when converted into units of account are identical, 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 invitation to tender. The intervention agency concerned shall immediately inform the Commission of the name of the successful tenderer.

4. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 8

When the successful tenderer takes delivery of the skimmed-milk powder, he shall ensure that the quantity handed over corresponds to the quantity to be delivered.

Furthermore, he shall ensure that the packing of the skimmed-milk powder satisfies the requirements laid down in Article 1 (2).

Article 9

The Belgian Government shall :

1. ensure that the successful tenderer shall :

(a) notify the country of destination, as soon as possible after the goods have been loaded on board ship, of details of the ship, the loading date, the quantity and quality of the goods as recorded on shipment and the port of unloading ;

(b) at least 10 clear days in advance, inform the country of destination of the expected date of arrival at the port of ship's unloading ;

(c) have included in the terms of the charter-party a provision stipulating that the ship's captain shall, at least 72 hours in advance, notify the country of destination of the ship's probable date of arrival in port ;

2. send to the Commission as soon as possible the information specified in paragraph 1 (a) and (b).

Article 10

1. The goods shall be regarded as delivered cif when they are deposited on the quayside in the port of unloading or on board lighters, if used.

2. On cif delivery in accordance with paragraph 1 the country of destination shall issue a certificate declaring that the skimmed-milk powder has been delivered.

Article 11

1. Save in the case 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 decision awarding the tender,

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

2. The security shall be released immediately.

Article 12

In cases of *force majeure* the intervention agency selling the skimmed-milk powder shall decide on the measures to be taken having regard to the circumstances invoked and shall inform the Commission thereof.

Article 13

The intervention agency shall pay to the successful tenderer the amount stated in his tender upon production of the certificate referred to in Article 10 (2).

Article 14

No refund or compensatory amount (whether monetary or accession) shall be applied in respect of the skimmed-milk powder to which this Regulation applies.

Article 15

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, 25 February 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission