COMMISSION REGULATION (EEC) No 252/77

of 2 February 1977

concerning the issue of an invitation to tender for the supply to Honduras, 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 1299/76 of 1 June 1976 on the supply of skimmed-milk powder under the 1976 food-aid programme to certain developing countries and international organizations [5], provides, *inter alia,* for the supply to Honduras of 800 tonnes of skimmed-milk powder;

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,* for 200 tonnes of skimmed-milk powder to be made available to Honduras; whereas this country has requested the supply of 1 000 tonnes of vitaminized skimmed-milk powder;

Whereas Article 2 (2) of Regulation (EEC) No 1298/76 provides that if there is 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 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, (EEC) No 1299/76 and (EEC) No 2018/76 for the costs of supplying to Honduras of 1 000 tonnes of vitaminized skimmed-milk powder bought on the Community market and divided into two lots of 500 tonnes.

2. Delivery shall be effected at the port of unloading of Puerto Cortes.

3. Loading shall take place as soon as possible and not later than 31 March 1977.

4. 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 of application for public storage of skimmed-milk powder [7], as last amended by Regulation (EEC) No 1457/75 [8].

5. The successful tenderer shall deliver, as a supplement, 5 % empty bags similar to those containing the goods. He shall undertake to have these bags mentioned on the bill of loading.

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

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

'Leche desnatada en polvo con vitaminas 'A' y vitaminas 'D' / Donación de la comunidad economica europea al Honduras / Destinado a la distribución gratuita'.

Article 2

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. The closing date for the submission of tenders shall be 22 February 1977 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 is only valid if it covers the total quantity of a lot offered for tender. The tenderer shall specify in his tender for how many lots 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 the currency of the Member State in which the tender is presented, 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 of the stage referred to in Article 1 (2) for delivery.

4. 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.

5. No tender may be withdrawn.

Article 4

1. The tendering and delivery security shall be 20 units of account per tonne 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, 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.

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 inform the Commission of the successful tenderer's name and address.

Article 7

1. The successful tenderer shall deliver a quantity of skimmed-milk powder satisfying the requirements as to quality and packaging referred to in Article 1 (4).

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

3. The country of destination shall bear all expenditure incurred after delivery of the goods, including unloading costs (such as unstowing, hoisting and acceptance) as well as possible lighter costs.

Article 8

Any demurrage costs or dispatch money shall be payable by or to 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 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.

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. 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. 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 referred to in Article 1 (4).

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

3. On delivery the country of destination shall issue a certificate proving taking delivery of the goods, stating that delivery of that quantity of skimmed-milk powder as well as the empty bags referred to in Article 1 (5) have been taken at the stage specified in Article 1 (2).

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 252/77) to be shipped from the port of ...',

— 'Livraison de lait écrémé en poudre à titre d'aide alimentaire (règlement (CEE) n° 252/77) destinée à être embarquée au port de ...',

— 'Lieferung von Magermilchpulver als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 252/77) zur Verschiffung im Hafen von ... bestimmt',

— 'Fornitura di latte scremato in polvere a titolo di aiuto alimentare (regolamento (CEE) n. 252/77) destinata ad essere imbarcata nel porto di ...,'

— 'Levering van magere-melkpoeder als voedselhulp (Verordening (EEG) nr. 252/77) bestemd om te worden verscheept in de haven van ...,'

— 'Levering af skummetmælkspulver som fødevarehjælp (forordning (EØF) nr. 252/77) bestemt til lastning i havnen i ...'.

Article 12

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 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.

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

Article 14

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

2. If, owing to circumstances beyond the control of the undertaking responsible for the delivery, the submission of the attestation of delivery referred to in Article 10 (3) is delayed, the competent agency may, on production of the supporting documents, grant and advance.

Such an advance may, however, not exceed 80 % of the sum agreed for the delivery and shall be paid only subject to the undertaking concerned lodging a security for the skimmed-milk powder shipped, in accordance with the conditions laid down in Article 1 (4), (5) and (6), and having left the geographical territory of the Community, and if the undertaking furnished a security for the sum of the advance, raised by 10 %.

Article 15

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 by the date specified in Article 1 (3).

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 in which the award of contract is made.

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, 2 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

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 minimum
(bb) vitamin D :	500 i.u. per 100 g minimum