COMMISSION REGULATION (EEC) No 254/77

of 4 February 1977

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 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 10 000 tonnes of skimmed-milk powder should be made available to the WFP;

Whereas the WFP has requested the delivery of 646 tonnes of vitaminized skimmed-milk powder for certain third countries;

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 the provisions of Regulations (EEC) No 1298/76 and (EEC) No 2018/76, for the costs of supplying to the WFP 646 tonnes of vitaminized skimmed-milk powder to be purchased on the Community market, divided into lots and for the destinations listed in Annex I to this Regulation.

2. The skimmed-milk powder shall meet:

— as to quality, the requirements set out in Annex II 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 intervention for public storage of skimmed-milk powder [6], as last amended by Regulation (EEC) No 1457/76 [7].

3. The packing of the skimmed-milk powder shall bear in letters at least 1 cm high, the relevant marking as listed in Annex I.

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 accessible for ocean-going ships having regular lines to the country of destination.

[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.
[6] OJ No L 184, 29. 7. 1968, p. 34.
[7] OJ No L 145, 6. 6. 1975, p. 17.

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 15 and before 31 March 1977.

3. The time limit for the submission of tenders shall be 22 February 1977 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.

5. A tender shall indicate in particular:

(a) the name and address of the tenderer;

(b) the port 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 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 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.

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 254/77) to be shipped from the port of ...'

— 'Livraison de lait écrémé en poudre à titre d'aide alimentaire (règlement (CEE) n° 254/77) destinée à être embarquée au port de ...',

— 'Lieferung von Magermilchpulver als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 254/77) zur Verschiffung im Hafen von ... bestimmt',

— 'Fornitura di latte scremato in polvere a titolo di ainto alimentare (regolamento (CEE) n. 254/77) destinata ad essere imbarcata nel porto di ...',

— 'Levering van magere-melkpoeder als voedselhulp (Verordening (EEG) nr. 254/77) bestemd om te worden verscheept in de haven van ...',

— 'Levering af skummetmælkspulver som fødevarehjælp (forordning (EØF) nr. 254/77) 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.

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

The intervention agency concerned shall pay to the WFP within 30 days after acceptance of each delivery of skimmed-milk powder, a flat-rate contribution of 80 units of account per tonne of skimmed-milk powder delivered towards the costs of transporting and distributing such skimmed-milk powder.

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

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, 4 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX I

Lot	Total quntity of lot (in tonnes)	Partial quantities (in tonnes)	Recipient country	Marking on the packaging
A	282	15	Mali	Lait écrémé en poudre enrichi de vitamines A et D / Don de la Communauté économique européenne / Action du programme alimentaire mondial / Abidjan pour Mopti
		45	Mali	Lait écrémé en poudre enrichi de vitamines A et D / Don de la Communauté économique européenne / Action du programme alimentaire mondial / Dakar pour Bamako
		40	Congo	Lait écrémé en poudre enrichi de vitamines A et D / Don de la Communauté économique européenne / Action du programme alimentaire mondial / Pointe-Noire
		50	Niger	Lait écrémé en poudre enrichi de vitamines A et D / Don de la Communauté économique européenne / Action du programme alimentaire mondial / Cotonou pour Niamey
		30	Upper Volta	Lait écrémé en poudre enrichi de vitamines A et D / Don de la Communauté économique européenne / Action du programme alimentaire mondial / Abidjan pour Ouagadougou
		30	Rwanda	Lait écrémé en poudre enrichi de vitamines A et D / Don de la Communauté économique européenne / Action du programme alimentaire mondial / Kigali
		72	Senegal	Lait écrémé en poudre enrichi de vitamines A et D / Don de la Communauté économique européenne / Action du programme alimentaire mondial / Dakar
B	364	99	Somalia	Skimmed-milk powder enriched with vitamins A and D / Gift of the European Economic Community / World Food Programme action / Mogadishu
		65	Somalia	Skimmed-milk powder enriched with vitamins A and D / Gift of the European Economic Community / World Food Programme action / Berbera
		200	Bolivia	Leche desnatada en polvo con vitaminas A y vitaminas D / Donación de la Comunidad Económica Europea / Acción programa mundial de alimentos / Arica por La Paz

ANNEX II

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