COMMISSION REGULATION (EEC) No 3418/82

of 20 December 1982

on the procedure for sale of oil seeds held by the intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by Regulation (EEC) No 1413/82 [2], and in particular Articles 26 (3) and 27 (5) thereof,

Having regard to Council Regulation No 142/67/EEC of 21 June 1967 on export refunds on colza, rape and sunflower seeds [3], as last amended by the Act of Accession of Greece, and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture [4], as last amended by Regulation (EEC) No 2792/82 [5], and in particular Article 4 (3) thereof,

Whereas under Council Regulation No 724/67/EEC [6], as last amended by Regulation (EEC) No 2382/79 [7], oil seeds held by intervention agencies must be sold by tender;

Whereas, since the purpose of sale by tender is to obtain the best price, contracts must be awarded to the tenderers quoting the highest prices, provided that the tenders in question correspond to the actual market situation; whereas, for this reason, sale prices should be determined on the basis of the tenders, provided that these tenders are no lower than the intervention prices; whereas, however, provision should be made, in special cases, for selling oil seeds held by intervention agencies at a price other than the one referred to above, to be fixed in accordance with Community rules;

Whereas, in both cases, buyers can be given equal access to the products and equal treatment by giving suitable publicity to the notice of invitation to tender; whereas, in the case of the former, agencies should, in order to comply with those principles, be required to accept tenders until all the quantities available have been sold; whereas, in order to achieve that aim in the case of the latter, tenders should be submitted within a period to be fixed;

Whereas the notices of invitation to tender and the tenders should contain all the necessary information for identifying the products in question;

Whereas provisions should be made to cover cases in which several tenders are submitted quoting the same price;

Whereas compliance with the terms of the contract should be guaranteed by lodging a security; whereas rules should be laid down concerning the security in question and the conditions under which it may be forfeited, in whole or in part; whereas the extra costs incurred following an incomplete sale justify forfeiture of all the security when the contract is fulfilled in respect of less than 70 % of the amount originally set out therein;

Whereas under Article 4 (2) of Council Regulation (EEC) No 1134/68 [8], the sums specified are payable on the basis of the exchange rate applicable when the transaction, or part of the transaction, was carried out; whereas, under Article 6 of that Regulation, the time when a transaction is carried out is considered as being the date on which occurs the event, as defined by Community rules or, in the absence of and pending adoption of such rules, by the rules of the Member State concerned, in which the amount involved in the transaction becomes due and payable; whereas, however, the above rules may be waived pursuant to Article 4 (3) of Regulation (EEC) No 878/77;

Whereas, for the transactions in question to be conducted rapidly, provision should be made for fulfilling the rights and obligations arising from the sales contract or sale by tender within certain periods;

Whereas Commission Regulation (EEC) No 189/68 [9] should be repealed;

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[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 162, 12. 6. 1982, p. 6.
[3] OJ No 125, 26. 6. 1967, p. 2461/67.
[4] OJ No L 106, 29. 4. 1977, p. 27.
[5] OJ No L 295, 21. 10. 1982, p. 6.
[6] OJ No 252, 19. 10. 1967, p. 10.
[7] OJ No L 274, 31. 10. 1979, p. 7.
[8] OJ No L 188, 1. 8. 1968, p. 1.
[9] OJ No L 43, 7. 2. 1968, p. 7.

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION :

Article 1

Intervention agencies shall, in accordance with the following Articles, put up for sale by tender the oil seeds which they hold :

I. Standing invitation to tender

Article 2

1. The intervention agencies shall sell the oil seeds in their possession, in the manner provided for in Articles 2 and 3, to any purchaser who offers at least the intervention price prevailing at the time when the goods are withdrawn from intervention plus an amount of 1 ECU per 100 kilograms.

However :

(a) where the goods are withdrawn in the last month of the marketing year, the intervention price shall be that valid for the following month,

(b) in the case of colza and rape seed bought out of intervention under the conditions set out in Article 7a (1) of Commission Regulation No 282/67/EEC [1], the intervention price shall be that resulting from the application of the above provisions, supplemented by the increase laid down in the abovementioned Article 7a.

2. The lots offered for sale in the manner referred to in paragraph 1 shall be the subject of a notice published in the *Official Journal of the European Communities*. For this purpose, Member States shall notify the Commission by telex, not later than the fifth working day of each month, of the quantities of oil seeds in intervention on their territory at the end of the previous month, together with the places where they are stored. The notices of the above quantities put up for sale shall be published in the Official Journal not later than the 10th working day of each month, in accordance with the specimen in Annex I.

Article 3

1. The intervention agency shall conclude the sale with any person who submits a suitable tender to the agency during a working day for a lot or lots not previously sold.

2. The tender shall state the amount by which the price offered exceeds the intervention price, as defined in Article 2 (1) plus 1 ECU per 100 kilograms. This amount shall be expressed in the national currency of the Member State where the seeds are stored, per 100 kilograms of standard quality seeds, delivered on the means of transport, unstowed, ex intervention agency's warehouse.

3. Where several tenders are submitted on the same day for one or more lots, the intervention agency shall conclude the sale with the person who undertakes to pay the highest price.

If several tenderers quote the same price, the award shall be made by drawing lots.

4. 'Tender submitted on the same day' shall mean any tender submitted not later than 2 p.m., local time, on any working day. Any tender submitted after 2 p.m. or submitted on a non-working day shall be considered to have been submitted on the following working day.

II. Periodic invitation to tender

Article 4

In accordance with the procedure provided for in Article 38 of Regulation No 136/66/EEC, a decision may be taken, in respect of one or more lots, to replace the standing invitation to tender referred to in Articles 2 and 3 by a sale by periodic invitation to tender under the conditions laid down in Articles 5 to 9.

Article 5

1. Where it is decided that sale is to be by tendering procedure as referred to in Article 4, a notice of invitation to tender shall be drawn up in accordance with the specimen in Annex II. This notice of invitation shall be published in the *Official Journal of the European Communities* and shall be displayed at the headquarters of the intervention agencies concerned.

2. The invitation shall remain open until a date to be fixed. During this period partial invitations may be issued.

3. Lots not awarded as the result of a partial invitation to tender shall be republished for the next partial invitation.

Article 6

1. Tenders must be received not later than the date and time fixed in the notice of invitation to tender.

Tenders received after the deadline or tenders which do not meet the conditions of sale cannot be taken into consideration.

[1] OJ No L 151, 13. 7. 1967, p. 1.

2. Tenders shall state the amount proposed in the national currency of the Member State where the seeds are stored, per 100 kilograms of standard quality seeds, delivered on the means of transport, unstowed, intervention agency's warehouse.

Article 7

The tenders shall be examined by the competent authorities of the Member State concerned as soon as possible.

These authorities shall transmit to the Commission, by telex, a list showing for each lot put up for sale the highest offer price received, without giving names.

Article 8

In the light of the tenders received, a minimum selling price shall be fixed in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC and, subject to this minimum price being observed, the successful tenderer shall be the person who tenders the highest price.

If several tenderers tender the same price the award shall be made by drawing lots.

Article 9

The Commission shall communicate to the Member States, by telex, the minimum prices adopted.

The competent authorities of the Member State shall inform each tenderer of the result of his participation in the invitation to tender at the latest on the fifth working day following the communication by the Commission.

III. General provisions

Article 10

The intervention agencies shall take all the necessary measures to enable the parties concerned, before tenders are submitted, to assess the quality of the seeds put up for sale.

Article 11

1. The tenders referred to in Articles 3 and 6 must be submitted to the relevant intervention agency, either handed in, in writing, against a receipt, or sent by registered letter, telex or telegram. They must be made out in one of the official languages of the Community.

2. No tender may cover part of a lot.

3. The tenders must bear the name and address of the tenderer and state the number and weight of the lot or lots to which the tenders relate.

4. A tender shall not be valid unless it is accompanied by a security of 7·5 ECU per 100 kilograms. The security shall be provided in the form of a guarantee given by an establishment meeting the criteria laid down by the Member State concerned. Where the proof that the security has been provided is presented to the intervention agency after the submission of the corresponding tender the moment at which the tender was submitted, the time of submission of proof of security shall be considered as the time at which the tender was submitted.

5. Tenders submitted which do not comply with these specifications cannot be accepted.

6. When notifying their tenders, operators may request advance fixing of the Community aid or the export refund valid on the day the tender is received, as defined by Commission Regulation (EEC) No 1204/72 [1] and Council Regulation No 142/67/EEC respectively.

For quantities which have not been awarded, such advance fixing shall be cancelled and the security shall be released.

Article 12

1. The security shall be released when :

(a) the tenderers have not been awarded the goods ; or

(b) the successful tenderer has satisfied, except in case of *force majeure,* the obligations laid down by this Regulation, and, where appropriate, other conditions compatible with the provisions of this Regulation, laid down by the Member State concerned, and where the quantity taken over is at least 99 % of the quantity placed at his disposal.

2. Except in case of *force majeure,* the security shall be forfeit :

(a) in proportion to the quantities not taken over during the period provided for in Article 14 (5), where the quantity taken over is above or equal to 70 % and below 99 % of the quantity placed at the disposal of the successful tenderer ;

(b) in total if the quantity taken over is less than 70 % of the quantity placed at the disposal of the successful tenderer.

Article 13

1. The purchaser shall be informed of the quantity awarded by the intervention agency as soon as possible, by telex, telegram or registered letter.

2. The purchaser shall pay the price which he offered for the quantity awarded before the goods are placed at his disposal.

The price must be calculated on the basis of the quantity set out in the notice of invitation to tender and in respect of the lot for which he has been declared the successful tenderer.

[1] OJ No L 133, 10. 6. 1972, p. 1.

The difference between the final price to be paid and the price indicated in the previous paragraph shall be settled on the basis of the weight of the goods on removal, the weight being adjusted in accordance with paragraph 3.

3. Where the seeds delivered are not of the standard quality, their weight shall be determined in accordance with the method set out in the Annex to Regulation (EEC) No 1204/72 and the increase or reduction given in Annex I to Regulation No 282/67/EEC shall be applied to their selling price.

4. The rate to be used for converting the amounts fixed in ECU in this Regulation into national currency shall be the representative rate in force :

— on the day the tender is submitted, in the case of sale by standing invitation to tender,

— on the final day for the submission of tenders, in the case of sale by periodic invitation to tender.

Article 14

1. Samples shall be taken when the goods leave the intervention agency's warehouse, in accordance with the methods set out in Regulation (EEC) No 1470/68 (1).

2. The seeds' impurity, moisture and oil content shall be determined in accordance with the methods set out in Regulation (EEC) No 1470/68.

3. The removal costs, up to the stage of delivery on the means of transport, intervention agency's warehouse, unstowed, and including the costs of weighing, sampling and analysis shall be borne by the intervention agency.

4. The goods must be taken over at the warehouse not later than the 30th day following the date of notification of the award.

However, if the quantities to be taken over by a single purchaser exceed 8 000 tonnes a period of 60 days following the date of the notification of the award shall be granted for the removal of the goods. Where the invitation to tender takes place under the procedure provided for by Articles 5 to 9, the price to be paid for quantities withdrawn after the first 30 days shall be supplemented by an amount equal to that of the monthly increase applicable in the marketing year in which the award is made.

5. Except in case of *force majeure,* if the purchaser does not abide by the deadlines provided for in paragraph 4, he shall pay an additional amount of 1 ECU per 100 kilograms for the quantity concerned for each month or part of a month of delay.

After the deadlines referred to in paragraph 4, any risks relating to the storage of the goods shall be borne by the purchaser. Except in cases of *force majeure,* if certain quantities of seed are not taken over by two months at the latest following the deadlines referred to in paragraph 4 the sale shall be cancelled for these quantities and the security shall be forfeit as provided for in Article 12 (2).

6. No dispute shall be entertained if the weight recorded on delivery does not correspond to that indicated in the notice of invitation to tender.

Article 15

Regulation (EEC) No 189/68 is hereby repealed.

Article 16

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, 20 December 1982.

For the Commission

Poul DALSAGER

Member of the Commission

(1) OJ No L 239, 28. 8. 1968, p. 2.

ANNEX I

Notice of invitation to tender : sale of oil seeds held by an intervention agency in accordance with Article 2 of Regulation (EEC) No 3418/82 (standing invitation to tender)

Name, address, telex and telephone numbers of the intervention agency

Type of seeds

Lot No	Nominal weight (tonnes)	Year of harvest	Place of storage

The lots marked with an asterisk (*) are those of 'double-zero' colza and rape seeds.

ANNEX II

Notice of invitation to tender : sale of oil seeds held by an intervention agency in accordance with Article 5 of Regulation (EEC) No 3418/82 (exceptional invitation to tender)

Name, address, telex and telephone numbers of the intervention agency	Deadline for submission of tenders	
	Date(s)	Time

Type of seeds

Lot No	Nominal weight (tonnes)	Year of harvest	Place of storage

The lots marked with an asterisk (*) are those of 'double-zero' colza and rape seeds.