COMMISSION REGULATION (EEC) No 281/84

of 1 February 1984

on the supply of various consignments of cereals and rice to the United Nations High Commissioner for Refugees (UNHCR) as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1451/82 (2),

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice (3), as last amended by Regulation (EEC) No 174/84 (4), and in particular Article 25 thereof,

Having regard to Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals intended as food aid (5), as amended by Regulation (EEC) No 3331/82 (6), and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 1992/83 of 11 July 1983 laying down the implementing rules for 1983 for Regulation (EEC) No 3331/82 concerning food-aid policy and food-aid management (7),

Having regard to Council Regulation No 129 of 23 October 1962 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy (8), as last amended by Regulation (EEC) No 2543/73 (9), and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas, on 29 July 1983, the Commission of the European Communities decided to grant, under a Community measure, 2 335 tonnes of cereals to UNHCR under the food-aid programme for 1983;

Whereas pursuant to Article 3 (3) of Council Regulation (EEC) No 2750/75 the goods may be purchased anywhere on the Community market;

Whereas an invitation to tender should be issued for supply of the products delivered unloaded at destination in view of the final use to be made of the goods delivered;

Whereas the provisions of Commission Regulation (EEC) No 1974/80 of 22 July 1980 laying down general implementing rules in respect of certain food-aid operations involving cereals and rice (10), as last amended by Regulation (EEC) No 3323/81 (11), should be applied as far as possible, particularly in respect of the procedure for submission of tenders, since the manner in which the security is lodged must guarantee that the successful tenderer complies with his obligations;

Whereas, however, the specific provisions concerning delivery to destination must be set out; whereas the successful tenderer must thus bear all risk in the goods up to unloading at the stipulated destination; whereas payment can be made only when proof of delivery to the destination is provided;

Whereas it must be made clear who is to bear any costs which arise in the event that for reasons of *force majeure* the operation in question is not completed within the period stipulated;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The intervention agencies mentioned in the Annexes hereto are hereby required to implement the mobilization and supply of the products stated in the said Annexes as food aid, subject to the provisions of this Regulation.

2. Supply of the products shall be organized under the tender procedure.

3. The Annexes shall take the place of a notice of invitation to tender. The intervention agency responsible shall make further publications as necessary.

Article 2

1. For the purposes of the invitation to tender, the following provisions of Regulation (EEC) No 1974/80 shall apply:

— Article 4, except the provisions of paragraph 3 (e) and paragraph 4 (d) and (e), in respect of submission of tenders,

— Article 5 in respect of provision of security,

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 164, 14. 6. 1982, p. 1.
(3) OJ No L 166, 25. 6. 1976, p. 1.
(4) OJ No L 21, 26. 1. 1984, p. 1.
(5) OJ No L 281, 1. 11. 1975, p. 89.
(6) OJ No L 352, 14. 12. 1982, p. 1.
(7) OJ No L 196, 20. 7. 1983, p. 1.
(8) OJ No 106, 30. 10. 1962, p. 2553/62.
(9) OJ No L 263, 19. 9. 1973, p. 1.
(10) OJ No L 192, 26. 7. 1980, p. 11.
(11) OJ No L 334, 21. 11. 1981, p. 27.

— Article 6 in respect of opening and reading tenders,

— if any, Article 8 in respect of comparing tenders.

2. The tender shall indicate the amount of the tender expressed per tonne of product, in the currency of the Member State where the tendering procedure is taking place. The tender must include the cost of fumigation, unloading and warehousing at the final destination.

The tender shall state separately the amount of cost in respect of sea and land transport to the stipulated final destination.

The tender shall indicate the Member State in which the tenderer, in the event of his being declared successful, undertakes to complete the customs export formalities.

3. The tenderer shall carry out his obligations pursuant to this Regulation and the undertakings referred to in Article 4 (4) of Regulation (EEC) No 1974/80, with the exception of subparagraphs (d) and (e) thereof.

4. The tenderer shall undertake to ship in vessels listed in the larger classes in recognized classification registers, not more than 15 years old, and attested by a competent body as meeting hygiene requirements.

Article 3

1. Without prejudice to paragraphs 2 and 3, the contract shall be awarded within 48 hours to the tenderer who has submitted the most favourable tender.

2. Where the most favourable tender is submitted by more than one tenderer, the intervention agency shall award the contract to one of those tenderers by drawing lots.

3. If the tenders do not appear to be in line with the prices normally prevailing on the market, the intervention agency may, with the agreement of the Commission, decide not to award the contract.

4. The intervention agency shall communicate the results of the tendering procedure to all the tenderers by letter or telex sent not later than the first working day following the award decision.

Article 4

1. The successful tenderer shall contract as necessary, at his own expense, for carriage of the goods to the final destination and shall bear all the costs involved, including those of unloading and warehousing at the destination. He shall take out suitable insurance.

2. The successful tenderer shall bear all the risks relating to the goods, in particular of loss or deterioration to which the goods are subject, until they have effectively been unloaded and delivered to the final destination.

3. The successful tenderer shall communicate as soon as possible to the recipient's representative the date of loading, the means of transport used to consign the goods to the final destination, and the probable date of arrival. He shall immediately send this information to the intervention agency responsible for payment, which shall forward it without delay to the Commission.

The tenderer shall advise the recipient's representative, at least three days in advance, of the probable date of arrival of the goods at the final destination.

Article 5

1. The intervention agency of the country of shipment shall arrange for a check at the port before loading on the quantity, quality and packaging of the goods. Following inspection an attestation shall be issued by the intervention agency. The costs relating thereto shall be borne by the successful tenderer.

The successful tenderer shall provide that intervention agency with a certificate from the organization which undertook fumigation, showing that that operation has been carried out.

2. Samples intended for analysis shall be taken and the inspection shall be carried out in accordance with the trade practices in force in the country of shipment. The successful tenderer and the recipient's representative shall be invited to take part in the operation.

Two sealed samples shall be kept by the intervention agency until issue by the recipient of the taking-over certificate or until issue of the certificate referred to in Article 6 (2).

3. If the inspection referred to in paragraph 1 gives rise to a dispute, the intervention agency shall arrange for a second inspection by a service different from that mentioned in paragraph 1, the findings of which shall be final. The costs relating thereto shall be borne by the losing party.

4. Where the inspection provided for in the preceding paragraphs reveals that the goods do not satisfy the requirements stipulated, they must be refused and replaced. Where some quantities are missing the successful tenderer must make up the cargo.

Article 6

1. A taking-over certificate shall be issued by the recipient immediately following unloading at the final destination. It shall state the place and date of taking over and give a description of the goods taken over in the form given in Annex II and any comments by the recipient.

2. Where the taking-over certificate is not issued for reasons other than a dispute about the goods, proof of delivery may be provided by means of a certificate of the form given in Annex II endorsed by the Community representative in the country of destination.

Article 7

1. Payment to the successful tenderer shall be made by the intervention agency of the Member State in which the customs export formalities are completed.

2. The amount to be paid shall be that of the tender plus, where appropriate, the costs referred to in Article 9. It shall be paid in the currency of the Member State which is responsible for payment. For this purpose this amount shall be converted by using :

— where the currencies in question are maintained within a maximum spread at any one time of 2,25 %, the conversion rate resulting from their central rate,

— in other cases, the relationship between the two currencies concerned established by using the latest statement of their spot exchange rates made immediately prior to the closing date for the submission of tenders as published in the 'C' series of the *Official Journal of the European Communities.*

3. The amount referred to in paragraph 2 shall be paid to the successful tenderer on presentation of the original of the taking-over certificate or a certified copy thereof or, if this is not available, of the certificate referred to in Article 6 (2).

4. The intervention agency is hereby authorized to make without delay an initial payment of 80 % of the value of the quantity given in the bill of lading, on presentation of a copy of that document, of the attestation referred to in Article 5 (1) and of the fumigation certificate, and subject to the provision of a security for an amount equal to the initial payment.

The said security shall be provided as laid down in Article 5 (2) of Regulation (EEC) No 1974/80.

Article 8

1. The security referred to in Article 2 shall be immediately released to :

— every tenderer whose tender was not successful or was not accepted,

— the successful tenderer in respect of quantities not delivered on account of *force majeure,*

— the successful tenderer in respect of the quantities delivered in accordance with this Regulation and on presentation of the original of the taking-over certificate or a certified true copy thereof or, where appropriate, the certificate referred to in Article 6 (2).

2. The security referred to in Article 7 (4) shall be released immediately when the successful tenderer furnishes the proof in accordance with Article 6 that at least 80 % of the quantity provided for has been delivered in conformity with the conditions laid down in this Regulation.

Article 9

If the successful tenderer, for reasons of *force majeure,* has to bear exceptional costs in respect of the delivery made under this Regulation which cannot be covered by insurance, he may receive compensation therefor on production of supporting documents and with the prior agreement of the Commission.

Article 10

Except in case of *force majeure* the successful tenderer shall bear all the financial consequences of the non-delivery of the goods under the conditions laid down in this Regulation if the recipient had made delivery possible under such conditions.

The costs resulting from the non-delivery of the goods following a case of *force majeure* shall be borne by the intervention agency responsible for payment.

Article 11

Articles 21 and 22 (1) and (2) of Regulation (EEC) No 1974/80 shall apply in the context of this Regulation.

The intervention agency responsible for payment shall, on receipt, send the information referred to in Article 4 (3) to the Commission.

The intervention agency in the country of shipment shall send the Commission, without delay, the results of the inspection referred to in Article 5.

Article 12

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, 1 February 1984.

For the Commission

Poul DALSAGER

Member of the Commission

ANNEX Ia

1. **Programme** : 1983
2. **Recipient** : UNHCR — Uganda
3. **Place or country of destination** : Kampala
4. **Product to be mobilized** : common wheat flour
5. **Total quantity** : 500 tonnes (685 tonnes of common wheat)
6. **Number of lots** : two
   Lot 1 : 250 tonnes
   Lot 2 : 250 tonnes
7. **Intervention agency responsible for conducting the procedure** : OBEA, rue de Trèves 82, B-1040 Bruxelles (telex 24 076)
8. **Method of mobilizing the product** : the Community market
9. **Characteristics of the goods** :
   — flour of fair and sound merchantable quality, free from abnormal smell and pests
   — moisture : 14 % maximum
   — protein content : 10,5 % minimum (N × 6,25 on dry matter)
   — ash content : 0,62 % maximum referred to dry matter
10. **Packaging** :
    — in new bags
      — jute sacks of a minimum weight of 600 g, or
      — composite sacks jute/polypropylene of a minimum weight of 335 g
    — net weight of the bags : 50 kg
    — marking on the bags (in letters at least 5 cm high) :
      'WHEAT FLOUR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO UNHCR / PROGRAMME OF ASSISTANCE IN UGANDA / KAMPALA'
11. **Port of shipment** : a Community port
12. **Delivery stage** : delivered destination — Stores of UNHCR in Kampala via Mombasa (The Representative, UNHCR, PO box 3813, Kampala, Uganda)
13. **Procedure to be applied in order to determine supply costs** : tendering
14. ***Deadline for the submission of tenders*** : 12 *noon on* 14 February 1984
15. **Shipment period** :
    Lot 1 : 1 to 31 March 1984
    Lot 2 : 1 to 30 June 1984
16. **Security** : 12 ECU per tonne

Notes :

1. The successful tenderer shall forward, through the intermediary of the intervention agency, to the recipient on the latter's request and in accordance with his instructions the documents necessary for importation of the goods into the country of destination.
2. Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

ANNEX Ib

1. **Programme** : 1983
2. **Recipient** : UNHCR — Uganda
3. **Place or country of destination** : Kampala
4. **Product to be mobilized** : maize flour
5. **Total quantity** : 500 tonnes (850 tonnes of cereals)
6. **Number of lots** : two

   Lot 1 : 250 tonnes
   Lot 2 : 250 tonnes

7. **Intervention agency responsible for conducting the procedure** :

   Bundesanstalt für landwirtschaftliche Marktordnung (BALM), Adickeallee 40, D-6000 Frankfurt/ Main (telex 411 475)

8. **Method of mobilizing the product** : on the Community market
9. **Characteristics of the goods** :
   - maize flour (11.01 E I) for human consumption, of sound merchantable quality, free of odour and pests
   - moisture content : maximum 13 %
   - acidity : 0,6 % maximum
10. **Packaging** :
    - in new bags :
      - jute sacks of a minimum weight of 600 g or
      - composite sacks jute/polypropylene of a minimum weight of 335 g
    - net weight of the bags : 50 kg
    - marking on the bags in letters at least 5 cm high :

      'MAIZE FLOUR / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO UNHCR / PROGRAMME OF ASSISTANCE IN UGANDA / KAMPALA'

11. **Port of shipment** : a Community port
12. **Delivery stage** : delivered destination — Stores of UNHCR in Kampala via Mombasa (The Representative, UNHCR, PO box 3813, Kampala, Uganda)
13. **Procedure to be applied in order to determine supply costs** : tendering
14. **Deadline for the submission of tenders** : 12 noon on 14 February 1984
15. **Shipment period** :

    Lot 1 : 1 to 31 March 1984
    Lot 2 : 1 to 30 June 1984

16. **Security** : 12 ECU per tonne

Notes :

1. The successful tenderer shall forward, through the intermediary of the intervention agency, to the recipient on the latter's request and in accordance with his instructions the documents necessary for importation of the goods into the country of destination.
2. Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

ANNEX Ic

1. **Programme** : 1983
2. **Recipient** : UNHCR — Zaire
3. **Place or country of destination** : Aru via Mombasa
4. **Product to be mobilized** : *maize flour*
5. **Total quantity** : 300 tonnes (510 tonnes of cereals)
6. **Number of lots** : one
7. **Intervention agency responsible for conducting the procedure** :

   Bundesanstalt für landwirtschaftliche Marktordnung (BALM), Adickesallee 40, D-6000 Frankfurt/ Main, (telex 411 475)
8. **Method of mobilizing the product** : on the Community market
9. **Characteristics of the goods** :
   - maize flour (11.01 E I) for human consumption, of sound merchantable quality, free of odour and pests
   - moisture content : maximum 13 %
   - acidity : 0,6 % maximum
10. **Packaging** :
    - in new bags
      - jute sacks of a minimum weight of 600 g or
      - composite sacks jute/polypropylene of a minimum weight of 335 g
    - net weight of the bags : 50 kg
    - marking on the bags (in letters at least 5 cm high) :

      'FARINE DE MAÏS / DON DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE / À DISTRIBUER GRATUITEMENT / ACTION HUMANITAIRE DE L'UNHCR POUR RÉFUGIÉS AU ZAÏRE / ARU VIA MOMBASA'
11. **Port of shipment** : a Community port
12. **Delivery stage** : delivered destination — Stores of UNHCR in Aru via Mombasa (M. le Délégué régional, UNHCR, BP 7248, Kinshasa, Zaïre)
13. **Procedure to be applied in order to determine supply costs** : *tendering*
14. **Deadline for the submission of tenders** : 12 noon on 14 February 1984
15. **Shipment period** : 1 to 31 March 1984
16. **Security** : 12 ECU per tonne

Notes :

1. The successful tenderer shall forward, through the intermediary of the intervention agency, to the recipient on the latter's request and in accordance with his instructions the documents necessary for importation of the goods into the country of destination.
2. Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

ANNEX Id

1. **Programmes** : 1983
2. **Recipient** : UNHCR — Central African Republic
3. **Place or country of destination** : Bangui via Douala
4. **Product to be mobilized** : fully milled long grain rice
5. **Total quantity** : 100 tonnes (290 tonnes of cereals)
6. **Number of lots** : one
7. **Intervention agency responsible for conducting the procedure** :
   Ente nazionale Risi, piazza Pio XI, 1, I-Milano (telex 334 032)
8. **Method of mobilizing the product** : the Community market
9. **Characteristics of the goods** :
   — rice of fair and sound merchantable quality, free from abnormal smell and pests
   — moisture : 15 %
   — broken rice : 5 % maximum
   — chalky grains : 5 % maximum
   — grains striated with red : 3 % maximum
   — spotted grains : 1,5 % maximum
   — stained grains : 1 % maximum
   — yellow grains : 0,050 % maximum
   — amber grains : 0,20 % maximum
10. **Packaging** :
   — in new bags :
      — jute sacks of a minimum weight of 600 g, or
      — composite sacks jute/polypropylene of a minimum weight of 335 g
   — net weight of the bags : 50 kg
   — marking on the bags in letters at least 5 cm high :
      'RIZ / DON DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE / PROGRAMME DE L'UNHCR EN FAVEUR DES REFUGIÉS EN RÉPUBLIQUE CENTRAFRICAINE / DISTRIBUTION GRATUITE / BANGUI VIA DOUALA'
11. **Port of shipment** : a Community port
12. **Delivery stage** : delivered destination — Stores of UNHCR in Bangui via Douala (Le Chef de la Sous-délégation du HCR à Bangui, c/o PNUD, BP 872, Bangui, République Centrafricaine)
13. **Procedure to be applied in order to determine supply costs** : tendering
14. **Deadline for the submission of tenders** : 12 noon on 13 February 1984
15. **Shipment period** : 1 to 31 March 1984
16. **Security** : 12 ECU per tonne

Notes :

1. The successful tenderer shall forward, through the intermediary of the intervention agency, to the recipient on the latter's request and in accordance with his instructions the documents necessary for importation of the goods into the country of destination.
2. Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

ANNEX II

TAKING-OVER CERTIFICATE

Recipient .....

I the undersigned .....
(Name, forename, business name)

acting on behalf of .....

certify that delivery has been taken of the goods listed below :

— Cereals or products .....
— Net tonnage accepted .....
— Packaging .....
  in bulk .....
  in bags .....
— Number of bags ..... at ..... kg net
  marking .....
  number of marked empty bags .....
— Place of taking over .....
— Date of taking over .....

The quality of the goods delivered is in accordance with that fixed in the invitation to tender.