COMMISSION REGULATION (EEC) No 328/84

of 8 February 1984

on delivery of common wheat flour to the Central African Republic 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 ro Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals intended as food aid (3), as amended by Regulation (EEC) No 3331/82 (4), 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 (5),

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 (6), as last amended by Regulation (EEC) No 2543/73 (7), and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas on 29 July 1983 the Commission decided to grant, by way of Community action, 1 000 tonnes of cereals to the Central African Republic under the 1983 food-aid programme ;

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

Whereas consideration should be given to having the products delivered to the place of destination, in view of the final use to be made of them ;

Whereas, because of the urgency of the matter, a direct-award procedure should be used ;

Whereas the provisions applicable in this case should, as far as possible, be the same as those 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 (8), as last amended by Regulation (EEC) No 3323/81 (9) ; whereas this applies particularly in respect of the procedure for submission of tenders, since the manner in which the security is lodged must guarantee that the contractor complies with his obligations and that, prior to loading, the goods satisfy the requirements stipulated ;

Whereas, however, the specific provisions concerning delivery to destination must be set out ; whereas the contractor 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 where, 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 agency referred to in Annex I is hereby required to implement the mobilization and supply as food aid of the product stated in the said Annex, in accordance with the provisions of this Regulation.

2. Supply of the product shall be organized by direct-award procedure. The intervention agency designated for the purpose shall, after ensuring competition from several tenderers, conclude the contract on the basis of the most favourable terms in relation to prices on the market.

3. The intervention agency shall immediately send to the Commission a copy of the contract concluded in accordance with the direct-award procedure.

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

Article 2

1. A tender shall be valid only if it indicates :

(a) the number of this Regulation ;

(b) the name and address of the tenderer ;

(c) a single port of shipment selected from the Community ports accessible to sea-going vessels ;

(d) the amount of the tender, expressed per tonne of product in the currency of the Member State where the intervention agency referred to in Article 1 is situated. That amount shall include the cost of unloading and warehousing at the final destination specified in Annex I ;

(e) separately, the cost of sea and land transport to the final destination ;

(f) the Member State in which the tenderer, in the event of his being awarded the contract, undertakes to complete the customs export formalities.

2. In addition, the tender must be accompanied by an undertaking on the part of the tenderer that, in the event of his being awarded the contract, he will :

(a) fulfil his obligations as laid down in this Regulation ;

(b) lodge the security specified in Annex I. The security shall be furnished, at the option of the tenderer, in cash or in the form of a guarantee given by a credit establishment which satisfies the criteria laid down by the Member State in which the intervention agency is situated ;

(c) apply as soon as possible for an export licence as laid down in Article 6 of Commission Regulation (EEC) No 2042/75 (1) ;

(d) transport the goods by sea 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. For the purpose of comparing tenders, each tender shall be corrected by the monetary compensatory amount, if any, applicable on the closing date for the submission of tenders to exports from the Member State specified in the tender in accordance with Article 2 (1) (f).

The correction shall be made by :

— increasing the tenders specifying a Member State with negative monetary compensatory amounts,

— reducing the tenders specifying a Member State with positive monetary compensatory amounts.

2. The monetary compensatory amount shall, where appropriate, be converted into the currency of the Member State in which the tendering procedure is opened 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.*

Article 4

1. The contractor shall contract as necessary 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 contractor 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 contractor 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 contractor 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 contractor.

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 contractor and the recipient's representative shall be invited to take part in the operation.

(1) OJ No L 213, 11. 8. 1975, p. 5.

Two sealed samples shall be kept by the intervention agency until issue 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 different body, 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 contractor 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. The certificate shall state the place and date of taking over. It shall 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 contractor 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 the method indicated in Article 3 (2).

3. The amount referred to in paragraph 2 shall be paid to the contractor 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 to the contractor of 80 % of the value of the quantity given in the bill of lading, on presentation of a copy of that document and the attestation referred to in Article 5 (1), and subject to the provision of a security for an amount equal to the initial payment.

The said security shall be lodged in accordance with Article 2 (2) (b).

Article 8

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

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

— 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, if this is not available, the certificate referred to in Article 6 (2).

2. The security referred to in Article 7 (4) shall be released immediately when the contractor furnishes 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 contractor 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 contractor shall bear all the financial consequences of the non-delivery of the goods under the conditions laid 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, forward 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, 8 February 1984.

For the Commission

Poul DALSAGER

Member of the Commission

ANNEX I

1. **Programme :** 1983
2. **Recipient :** Central African Republic
3. **Place or country of destination :** Bangui
4. **Product to be mobilized :** common wheat flour
5. **Total quantity :** 730 tonnes (1 000 tonnes of cereals)
6. **Number of lots :** one
7. **Intervention agency responsible for conducting the procedure :**

   Azienda di Stato per gli interventi sui mercati agricoli (AIMA), via Palestro 81, I-Roma (telex 613 003)
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 :

      composite sacks jute/polypropylene of a minimum weight of 335 grams
    - — net weight of the bags : 50 kilograms
    - — marking on the bags in letters at least 5 cm high :

      'FARINE DE FROMENT / DON DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE À LA RÉPUBLIQUE CENTRAFRICAINE'
11. **Port of shipment :** a Community port
12. **Delivery stage :**

    delivered destination — Bangui — stores of the SICPAD in Bangui — via Douala
13. **Procedure to be applied in order to determine supply costs :** mutual agreement
14. **Shipment period :** 15 February to 15 March 1984
15. **Security :** 12 ECU per tonne

Note :

Since the goods may be rebagged, the co-contractor 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 Annex I to Regulation (EEC) No 328/84.