COMMISSION REGULATION (EEC) No 342/84

of 9 February 1984

on delivery of common wheat flour to Swaziland 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 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 of the European Communities decided to grant by way of Community action 4 000 tonnes of cereals to Swaziland under the 1983 food-aid programme;

Whereas pursuant to Article 3 (2) of Council Regulation (EEC) No 2750/75 intervention products may be utilized;

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 (8), as last amended by Regulation (EEC) No 3323/81 (9), 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 where, for reasons of *force majeure*, the operation in question is not completed within the period stipulated;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The intervention agency mentioned in Annex I hereto is hereby required to implement the mobilization and supply of the product stated in the said Annex as food aid, subject to the provisions of this Regulation.

2. Supply of the products shall be organized by tendering procedure.

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

(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. Without prejudice to the specific provisions of this Regulation the provisions of Articles 4, 5, 6 and 7 of Regulation (EEC) No 1974/80 shall apply to the tendering procedure.

2. The tender must include the cost of fumigation, unloading and warehousing at the final destination stated in Annex I.

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

Tenders 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.

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. 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 4

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 5 (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 5

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 6

1. Payment to the successful tenderer shall be made by the intervention agency of the Member State which held the intervention products.

2. The amount to be paid shall be that of the tender plus, where appropriate, the costs referred to in Article 8. 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 5 (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 4 (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 7

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 5 (2).

2. The security referred to in Article 6 (4) shall be released immediately when the successful tenderer furnishes the proof in accordance with Article 5 that at least 80 % of the quantity provided for has been delivered in conformity with the conditions laid down in this Regulation.

Article 8

If the successful tenderer 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 9

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 10

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 3 (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 4.

Article 11

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, 9 February 1984.

For the Commission

Poul DALSAGER

Member of the Commission

ANNEX I

1. **Programme** : 1983

2. **Recipient** : Swaziland

3. **Place or country of destination** : Swaziland (Mbabane, Matsapha)

4. **Product to be mobilized** : common wheat flour

5. **Total quantity** : 2 920 tonnes (4 000 tonnes of common wheat)

6. **Number of lots** : one (in two parts) :
   Part 1 : 1 168 tonnes — Mbabane
   Part 2 : 1 752 tonnes — Matsapha

7. **Intervention agency responsible for conducting the procedure** :
   Office national interprofessionnel des céréales (ONIC), 21, avenue Bosquet, F-Paris 7e (telex OFIBLE 270 807 F)

8. **Method of mobilizing the product** : intervention

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 (1), double sewn, in containers of 17 × 6 m :
      — 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'

11. **Port of shipment** : a Community port

12. **Delivery stage** :
    Stores of the Swaziland United Bakeries, Matsapha and Mbabane via Durban

13. **Procedure to be applied in order to determine supply costs** : tendering

14. **Deadline for the submission of tenders** : 12 noon on 21 February 1984

15. **Shipment period** : 10 March to 10 April 1984

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

(1) 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.

BILAG III — ANHANG III — ΠΑΡΑΡΤΗΜΑ III — ANNEX III — ANNEXE III — ALLEGATO III — BIJLAGE III

Partiets nummer Nummer der Partie Αριθμός παρτίδων Number of lot Numéro du lot Numero della partita Nummer van de partij	Mængde (t) Menge (t) Τόνοι Tonnage Tonnage Tonnellaggio Hoeveelheid (t)	Lagerindehaverens navn og adresse Name und Adresse des Lagerhalters Όνομα και διεύθυνση εναποθηκευτού Address of store Nom et adresse du stockeur Nome e indirizzo del detentore Naam en adres van de depothouder	Lagerplads Ort der Lagerhaltung Τόπος αποθηκεύσεως Town at which stored Lieu de stockage Luogo di accantonamento Adres van de opslagplaats
1	4 000	UCAP boîte postale 47 36, rue de Noyon F-80500 Montdidier	F-80465 Languevoisin