# COMMISSION REGULATION (EEC) No 1589/87

## of 5 June 1987

## on the sale by tender of butter to intervention agencies

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 773/87 (2), and in particular the first subparagraph of Article 7a (1) and Article 7a (3) thereof,

Whereas Council Regulation (EEC) No 777/87 of 16 March 1987 modifying the intervention arrangements for butter and skimmed-milk powder (3), as amended by Regulaton (EEC) No 1547/87 (4), lays down the criteria on which basis, until the end of the fifth twelve-month period of application of the additional levy provided for in Article 5c of Regulation (EEC) No 804/68, buying in of butter by intervention agencies may be suspended; whereas Article 1 (3) (a) of that Regulation provides that where buying in is suspended throughout the Community or in part thereof, buying in may be carried out under a standing invitation to tender; whereas the rules for the application of the tendering procedure should consequently be laid down;

Whereas Council Regulation (EEC) No 985/68 (5), as last amended by Regulation (EEC) No 3790/85 (6), and Commission Regulation No 685/69 (7), as last amended by Regulation (EEC) No 3669/86 (8), lay down the general rules and the detailed rules for the buying-in of butter by the intervention agencies; whereas most of those provisions may be applied within the framework of this Regulation and in particular those concerning the quality of the butter which may be offered for intervention, packing and packaging;

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*

Where it is decided to issue a standing invitation to tender as provided for in Article 1 (3) (a) of Regulation (EEC) No 777/87, a notice of invitation to tender shall be published in the *Official Journal of the European Communities* in the Annex to the Regulation issuing the standing invitation to tender, not later than six days before the expiry of the first deadline for the submission of tenders.

Butter bought in must be fresh butter meeting the definition and the classification set out in Article 1 (3) of Regulation (EEC) No 985/68, put up in packs of 25 kilograms net, having satisfied quality control on the basis of a sample taken and meeting, as regards packaging, the conditions set out in Article 5 (3) and (4) of Regulation (EEC) No 685/69.

Articles 3 and 6 Regulation (EEC) No 685/69 shall apply.

*Article 2*

During the period of validity of the standing invitation to tender, the deadline for the submission of tenders for each invitation to tender shall expire at 12 noon on each second and fourth Tuesday of the month, with the exception of the fourth Tuesday of the month of December. If the Tuesday is a public holiday, the deadline shall be extended to 12 noon on the first working day thereafter.

*Article 3*

1. Tenderers may take part in the invitation to tenders only:

— in respect of butter manufactured in the 21 days preceding the final date for the submission of tenders,

— if they undertake in writing to comply with Article 6 of Regulation (EEC) No 685/69.

2. Interested parties shall participate in the invitation to tender issued by the intervention agency of the Member State on whose territory the butter as referred to in the second subparagraph of Article 1 was produced, either by lodging a written tender against a receipt or by any other written means of communication with advice of receipt.

3. Tenders shall specify:

(a) the name and address of the tenderer;

(b) the quantity offered and the minimum fat content of the butter;

(c) the price tendered per 100 kilograms of butter, not including domestic taxes, ex-cold storage depot, expressed in the currency of the Member State in which the invitation to tender is issued;

(d) the cold storage depots where the butter is held.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 78, 20. 3. 1987, p. 1.
(3) OJ No L 78, 20. 3. 1987, p. 10.
(4) OJ No L 144, 4. 6. 1987, p. 12.
(5) OJ No L 169, 18. 7. 1968, p. 1.
(6) OJ No L 367, 31. 12. 1985, p. 5.
(7) OJ No L 90, 15. 4. 1969, p. 12.
(8) OJ No L 339, 2. 12. 1986, p. 16.

4. Tenders shall be valid only if:

(a) they relate to a quantity of at least 10 tonnes;

(b) they are accompanied by the undertaking provided for in paragraph 1;

(c) evidence is furnished that tenderers have lodged, before the expiry of the final date for the submission of tenders, the security referred to in Article 4 (1) for the invitation to tender concerned.

If forwarded initially to the intervention agency, the document referred to in (b) shall be valid by tacit renewal for subsequent tenders, until explicity cancelled by the tenders or the intervention agency, provided that:

— the original tender stipulates that the tenderer intends availing himself of this provision,

— subsequent tenders refer to this provision (second subparagraph of Article 3 (4)) and to the date of the original tender.

5. Tenders may not be withdrawn after the expiry of the deadline referred to in Article 2 for the submission of tenders relating to the invitation to tender concerned.

*Article 4*

1. Under this Regulation, the maintenance of tenders after the expiry of the final date for the submission of tenders and the delivery of the butter to the depot designated by the intervention agency within the time limit fixed in Article 7 (2) shall constitute primary requirements whose fulfilment shall be ensured by the lodging of a security of 10 ECU per tonne.

2. The security shall be lodged in the Member State in which the tender is submitted.

*Article 5*

In the light of the tenders received for each invitation to tender and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum buying-in price shall be fixed depending on the intervention prices applicable.

A decision may be taken not to proceed with the invitation to tender.

*Article 6*

1. Tenders shall be refused if the price proposed is higher than the maximum price, as referred to in Article 5, applying to the invitation to tender concerned.

2. Rights and obligations arising under the invitation to tender shall not be transferable.

*Article 7*

1. Tenderers shall be informed forthwith by the intervention agency of the outcome of their participation in the invitation to tender.

The intervention agency shall issue forthwith to the successful tenderer a numbered delivery order indicating:

(a) the quantity to be delivered;

(b) the final date for the delivery of the butter;

(c) the cold storage depot where it must be delivered. Articles 3 and 4 of Regulation (EEC) No 985/68 and Article 7 of Regulation (EEC) No 685/69 shall apply.

2. Within 14 days of the final date for the submission of tenders, the successful tenderer shall deliver the butter. Deliveries may be broken up,

The cost of unloading the butter at the cold storage depot shall be borne by the successful tenderer.

3. Except in cases of *force majeure,* where the successful tenderer has not delivered the butter within the time limit laid down, in addition to the forfeiture of the security provided for in Article 4 (1), buying-in shall be cancelled in respect of the remaining quantites.

*Article 8*

For the purposes of this Regulation, the butter shall be taken over by the intervention agency on the date of entry into the cold storage depot but no earlier than the day after the issuuing of the delivery order referred to in the second subparagraph of Article 7 (1).

*Article 9*

Within the period commencing on the 90th day after taking over the butter and ending on the 120th day thereafter, the intervention agency shall pay the successful tenderer the price indicated in his tender for each quantity taken over.

*Article 10*

Commission Regulation (EEC) No 2220/85 [1], as amended by Regulation (EEC) No 1181/87 [2], shall apply except where specific provisions to the contrary are laid down in this Regulation.

*Article 11*

The security provided for in Article 4 and the maximum price provided for in Article 5 shall be converted into national currency using the representative rate valid on the final date for the submission of tenders.

*Article 12*

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

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[1] OJ No L 205, 3. 8. 1985, p. 5.
[2] OJ No L 113, 30. 4. 1987, p. 31.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 June 1987.

*For the Commission*

Frans ANDRIESSEN

*Vice-President*