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(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2200/87

of 8 July 1987

laying down general rules for the mobilization in the Community of products to be supplied as Community 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 3972/86 of 22 December 1986 on food aid policy and food aid management (1), and in particular Article 5 thereof,

Whereas Council Regulation (EEC) No 3972/86 provides for the laying down of rules for the mobilization of the products to be supplied as Community food aid ; whereas the procedures must be specified in the case of mobilization within the Community itself ;

Whereas the most appropriate procedure for ensuring that mobilization and supply costs are set at the optimum level, and for ensuring equality of access for firms in the Community, is the issue of an invitation to tender ; whereas, however, provision should be made for the conclusion of contracts by direct agreement in view of the need for flexibility and speed in certain circumstances ; whereas, however, experience may reveal the need to prohibit on a temporary or permanent basis, participation in tendering procedures by firms which have committed a flagrant and serious infringemment of their obligations arising from a previous food aid supply operation ;

Whereas it should be made clear that the arrangements for mobilizing products, and in particular for mobilizing products from the stocks held by the intervention agencies, are adopted in the context of the Community rules on trade in the products concerned ; whereas it should also be made clear that tenders for the supply are deemed to have been established without including amounts equivalent to export refunds or levies or the other compensatory amounts (monetary or accession) laid down by the relevant Community regulations, given that these amounts will be paid or collected on export from the Community or in certain cases in intra-Community trade ;

Whereas experience in recent years has shown that it is often inappropriate to apply in the context of Community food aid the international trading practices known as supply cif ; whereas, given in particular the undertakings given by the Community to the recipients, provision should be made for supply free-at-port-of-landing, with the successful tenderer personally bearing the risks connected with the supply up to the port of landing stipulated by the recipient, the goods being landed or not landed, as the case may be ;

Whereas having regard to the obligations laid upon the successful tenderers, which are of a specific nature or even depart from normal commercial practices, it is not in the interests of clarity or legal security to make general use of commercial terminology, notably as found in Incoterms ;

Whereas in the case of supply free at a Community port of shipment, the possible connection by sea transport with the country of destination which the tenderer must allow for in indicating a port in his tender may include a maximum of one transhipment in the Community ; whereas in the context of Community food aid it is inconceivable that the recipient should have to bear the costs and risks involved in several transhipments ;

Whereas in the case of supply free-at-port-of-landing or supply free-at-destination, past experience and, in particular, the excessive costs repeatedly proposed for sea transport, and indeed subsequent overland transport, make it desirable for the Commission to keep open the option of awarding the contract for a different stage of supply from that stated in the notice of invitation to tender ; whereas, in order to allow the Commission to make a correct judgment of these items in the tender in the light of prices quoted on the freight market, it is desirable to lay down that the tenderer should make several bids for different stages of supply ;

(1) OJ No L 370, 30. 12. 1986, p. 1.

Whereas when the invitation to tender concerns a supply operation including sea transport, the obligation to abide by the rules laid down by Council Regulations (EEC) No 954/79 [1], (EEC) No 4055/86 [2], (EEC) No 4056/86 [3], (EEC) No 4057/86 [4], and (EEC) No 4058/86 [5] concerning the Community's marine transport policy, especially the provisions concerning competition and pricing practices, should be pointed out; whereas it should therefore be provided that the sea transport of the goods may not be carried out by a shipping company that has infringed the above Regulations;

Whereas the systematic implementation at the Community port of shipment of adversary procedures for checking the products, whatever the real stage of supply, is an appropriate means of providing all parties concerned with guarantees of the eventual correct performance of the supply operation; whereas it can in particular often guard the successful tenderer against rejection of the goods at destination; whereas, however, the definitive judgment concerning the conformity of the supply must be made at the stage actually stipulated in the notice of invitation to tender;

Whereas the correct performance of the supply operation, in accordance with the obligations entered into by the Community, requires that the successful tenderer's obligations should be clearly laid down, that the successful tenderer should lodge adequate financial securities, and that administrative penalties should be laid down for the non observance of particular provisions;

Whereas, on the other hand, the additional expenses and costs which cannot be attributed to a failure by the successful tenderer and must be borne by the Community should be determined;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Food Aid Committee,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

1. Where it is decided, for the purpose of implementing a Community food aid operation, to mobilize products in the Community, the procedures laid down in this Regulation shall apply, without prejudice to any special provisions adopted on a case-by-case by the Commission. All deliveries shall entail purchase of the product.

2. The general procedures adopted in this Regulation shall apply to operations to be carried out on a free-at-port-of-shipment, free-at-port-of-landing or free-at-destination basis.

3. For the purposes of this Regulation, the countries of the Belgo-Luxembourg Economic Union shall be considered as as single Member State.

Article 2

Participation in the tendering procedures provided for under this Regulation shall be open on equal terms to any natural person who is a national of a Member State and established in the Community, or any company established under the legislation of a Member State:

— the registered office, or central administration or main establishment of which is in a Member State,

— which is engaged in the manufacture, processing, trading, forwarding or transport of products supplied as food aid.

The Commission may, however, restrict on a temporary or permanent basis participation in the tendering procedures by undertakings which are proved to have committed a serious infringement of any of their obligations in the implementation of a food aid supply operation.

Article 3

The supply of the products shall be determined by a tendering procedure.

The supply may, however, be determined by the direct award procedure in the following cases:

— emergency supply operations within the meaning of Article 6 of Regulation (EEC) No 3972/86;

— the supply of small quantities;

— supplies of an experimental nature, involving new types of products, or the application of new packaging or market preparation procedures or new methods of transport;

— a supply operation decided on following the cancellation of a previous supply contract pursuant to Article 20;

— a supply operation falling within the emergency criteria following the allocation decision.

Article 4

Depending on the mobilization procedures determined for each supply operation, the product shall

(a) be purchased or have been purchased on the Community market;

(b) be purchased from an intervention agency designated in the notice of invitation to tender, or be manufactured from goods purchased from such a body. The purchase shall be effected on the basis of fixed-price sale in accordance with the provisions of the Community agricultural rules in force. However, in the case of rice and grain products, the successful tenderer may mobilize on the Community market products corresponding to the specifications laid down for the supply operation, provided the goods specified in the notice of invitation to tender are purchased by him from the intervention agency concerned in accordance with the rules mentioned above.

[1] OJ No L 121, 17. 5. 1979, p. 1.
[2] OJ No L 378, 31. 12. 1986, p. 1.
[3] OJ No L 378, 31. 12. 1986, p. 4.
[4] OJ No L 378, 31. 12. 1986, p. 14.
[5] OJ No L 378, 31. 12. 1986, p. 21.

Article 5

The characteristics of the products to be mobilized and the requirements regarding market preparation shall be published in the *Official Journal of the European Communities.*

TITLE II

Designation of the undertaking responsible for the supply operation

Article 6

Where it is decided to hold a tendering procedure, a notice of invitation to tender drawn up in accordance with Annex I shall be published in the *Official Journal of the European Communities* an Annex to the Regulation opening the invitation to tender, no later than fifteen days before the expiry of the period for the submission of tenders.

The name and address of the representative of the recipient in the Community shall be given in the notice of invitation to tender.

Article 7

1. Tenderers shall participate in the tendering procedure either by sending tenders in writing by registered letter to the Commission office indicated in the notice of invitation to tender, or by lodging the written tender, against acknowledgement of receipt, with that office. The tender must be placed in an envelope bearing the words 'Food aid' and the reference number of the relevant invitation to tender. The envelope must be sealed and placed inside a second envelope bearing the address given in the notice of invitation to tender.

— Tenders may be sent by telecommunication in written form.

— Tenders must reach the abovementioned office in their entirety or be lodged at that office before the time stated in the notice of invitation to tender on the day of expiry of the period for submission of tenders laid down in the notice of invitation to tender.

2. Where the goods are to be delivered in more than one lot, a separate tender shall be submitted for each lot.

3. In order to be considered valid, a tender must relate to a complete lot and indicate :

(a) the reference number of the invitation to tender;

(b) the name of the tenderer and the address of his registered office ;

(c) the number and net weight of the lot to which the tender relates ;

(d) a single Community port of shipment, suitable for carrying out the supply operation under the conditions laid down : however, two ports in the same area may be specified in the tender if the whole cargo cannot be loaded in the first port because of the port's characteristics and loading of the same ship must be completed in a second port.

In the case of supply free-at-port-of-shipment, the criteria for selecting the port, or the first port of loading in the case of a port area, shall be the possibility of a connection with the country of destination in the form of a vessel meeting the conditions laid down in Article 14 (2) during the shipment period specified in the notice of invitation to tender and the possibility of loading on the vessel in a single operation, in accordance with the loading rate of the port. If loading is carried out in a port as provided for in the first subparagraph the splitting of operations resulting from a change of port shall be permissible. In special circumstances, however, for which reasons must be given, the port of shipment may be specified in the notice of invitation to tender. For all dairy products and other products put up in quantities of less than 50 kilograms net weight in the case of supplies of no more than 150 tonnes, the connection may include one transhipment in another Community port, which must also be indicated in the tender ;

(e) the amount proposed in the tender, expressed in ECU [1] per tonne of product, at which the tenderer undertakes to deliver the supplies in accordance with the conditions laid down where the provision contained in (h) does not apply. The amount of the tender shall be considered as established both in the light of the mobilization procedures provided for in Article 4 and determined for the supply operation in question, and also taking account of the refund of Levy applicable on export and the other compensatory amounts (monetary and accession) laid down in the rules on trade in agricultural products ;

(f) regarding the presentation of the tender :

— in the case of supply free-at-port-of-shipment, the amount of the tender shall not include the port liner terms charge made at certain ports or the loading costs ;

— in the case of supply free-at-port-of-landing, the tenderer shall simultaneously submit two tenders :

— the first, corresponding to supply free-at-port-of-landing, shall show clearly and separately the costs relating to sea transport proper, in accordance with Annex II,

— the second, corresponding to supply free-at-port-of-shipment, shall be in accordance with the provisions given above ;

[1] The Commission has introduced an automatic telex answering service which will provide, upon receipt of a request sent by ordinary telex, a list of the conversion rates into the main currencies. This service operates daily from 15.30 until 13.00 the following day.
The user must :
— contact telex number 23789 in Brussels ;
— give his own telex number ;
— use the code 'ccc', which triggers the automatic answering service and the print-out of the ECU conversion rates on the user's telex machine ;
— ensure that he does not interrupt the communication before the end of the message, indicated by the letters 'ffff'.

— in the case of supply free-at-destination, the tenderer shall simultaneously submit three tenders :

— the first, corresponding to supply free-at-destination, shall show clearly and separately the costs relating to overseas land transport proper, in accordance with Annex II,

— the second and third, corresponding to supply free-at-port-of-landing and free-at-port-of-shipment respectively, shall be in accordance with the provisions given above ;

(g) the Member State in which the tenderer undertakes to complete the customs export formalities ;

(h) the quantity of products proposed where the invitation to tender relates to a contract for the supply of maximum quantities of given products for specific monetary amounts. The tender shall be valid only if submitted for the full amount of the sums indicated.

4. No tender shall be valid unless it is also accompanied by :

(a) evidence that the tendering security referred to in Article 8 has been lodged before the final date for submission of tenders ;

(b) in the case of delivery free-at-port-of-shipment, a declaration that confirmation has been obtained from a shipping company or its agent that a connection satisfying the conditions laid down in paragraph 3 (d) is possible.

5. A tender which is not submitted in accordance with the provisions of this Article or which contains conditions other than those laid down in respect of the tendering procedure shall not be valid.

6. No tender may be changed or withdrawn.

Article 8

1. The amount of the tendering security shall be laid down in ECU in the notice of invitation to tender.

2. The security shall be lodged in favour of the Commission in the form of a guarantee given by a credit establishment approved by a Member State.

The tendering security must be lodged for a minimum period of two weeks its period of validity shall be extended automatically on request by the Commission. The security may be released only on the initiative of the Commission. The conditions for its release or forfeiture, are set out in Article 22.

Article 9

1. The award shall be made, no later than three working days from the last day of the period for the submission of tenders, to the tenderer who submitted the lowest tender in ECU for the lot in question without any correction on the basis of the amounts referred to in Article 7 (3) (e) *in fine.* The successful tenderer shall be informed of the award by telecommunication, in written form.

2. Where the lowest tender is presented simultaneously by a number of tenderers, the contract shall be awarded by the drawing of lots.

3. The Commission may decide to make no award, in particular where the tenders submitted exceed the prices normally obtaining on the market.

4. In the event of an invitation to tender issued for a supply delivered free-at-port-of-landing, the award may nevertheless be made for a supply operation to be carried out free-at-port-of-shipment where the sea transport costs proposed exceed appreciably the costs which can be obtained on the market.

In the event of an invitation to tender issued for a supply delivered free-at-destination, the award may nevertheless be made for a supply operation to be carried out free-at-port-of-shipment, or free-at-port-of-landing, account being taken of the sea and/or overland transport costs which may be obtained on the market.

5. Unsuccessful tenderers shall be informed of the outcome of their participation in the tendering procedure by telex, which shall be sent no later than the first working day following the award of the contract or, where appropriate, the decision taken pursuant to paragraph 3. The results of invitations to tender shall be published periodically in the *Official Journal of the European Communities,* C series.

6. Where, under a tendering procedure, a contract is not awarded pursuant to paragraph 3, a new tendering period shall commence, indicated in the initial invitation to tender, and tenderers shall be informed accordingly by the Commission.

Article 10

As soon as the award is made, the Commission shall inform the successful tenderer of the name of the undertaking selected in advance by invitation to tender, responsible for carrying out the checks provided for in Article 16, issuing the taking-over certificate in accordance with Article 17 (2) and, on a general level, coordinating all the stages of the supply operation. In the case of supplies delivered free-at-port-of-landing or free-at-destination, the Commission may, in certain circumstances, designate two different undertakings, one to be responsible for checks and for coordinating operations before shipment and the other to be responsible for delivery.

In the event of disagreement between the abovementioned undertaking(s) and the tenderer during the implementation of the supply operation, the Commission shall adopt the necessary measures.

Article 11

1. Where the direct award procedure is used, tenders shall be invited from no fewer than three tenderers and the contract shall be awarded to the tenderer offering the most favourable terms in relation to the prices normally obtaining on the market.

2. The provisions of Articles 7, 8, 9 and 10 also apply to the direct award procedure.

3. In the event of a supply operation conducted on an experimental basis, in accordance with the third indent of the second paragraph of Article 3, the contract may be concluded with an individual supplier without an invitation to tender. The provisions referred to in paragraph 2 shall not apply.

4. The party to whom the contract is awarded under a direct award procedure shall be deemed to be the successful tenderer within the meaning of this Regulation with effect from the conclusion of the contract. In such a case the provisions of the contract shall be binding upon the contracting party in the same manner as the provisions of the notice of tender are binding upon the successful tenderer.

TITLE III

Obligations of the successful tenderer and conditions relating to the supply of products

Article 12

1. The successful tenderer shall meet his obligations in accordance with the conditions laid down in the Regulation opening the invitation to tender and shall comply with the undertakings referred to in this Regulation, including those arising from his tender.

He shall ensure that the said undertakings are properly implemented and shall grant all possible assistance to this end.

2. In order to ensure that he meets his obligations regarding the supply operation, the successful tenderer shall, within five days following the award of the contract, furnish the Commission department indicated in the notice of invitation to tender with evidence that a delivery security has been lodged. The amount of the security to be lodged shall be indicated in the notice of invitation to tender.

The security referred to in the first subparagraph shall be provided in favour of the Commission by a credit establishment approved by a Member State. The minimum period of validity shall be three months in the case of supply free-at-port-of-shipment, five months in the case of supply free-at-port-of-landing and six months in the case of supply free-at-destination. This period of validity shall be automatically extended by simple request of the Commission for a duration specified by the Commission. The security may be released only on the initiative of the Commission. The conditions for its release or forfeiture are set out in Article 22.

If the successful tenderer does not supply evidence that the security has been lodged in accordance with the first subparagraph, this shall be regarded as failure to carry out the supply operation. The provisions of Article 20 shall *mutatis mutandis.*

3. The rights and obligations arising from the award shall not be transferable.

Article 13

In the case of delivery free-at-port-of-shipment, the following shall apply:

1. The successful tenderer shall agree with the recipient or his representative, within the period specified in the notice of invitation to tender, the date on which the goods are to be made available at the port of shipment indicated in his tender and also the ship's berth. The undertaking referred to in Article 10 shall provide any assistance which may be needed to reach agreement. In any event, the supply operation must be carried out before the end of the period laid down in the notice of invitation to tender. Unless the recipient agrees otherwise, the supplies must be loaded in a single operation.

2. Where, pursuant to the marine transport contract concluded by the recipient, the loading operations including, where appropriate, the port liner terms charges referred to in Article 7 (3) (f), are not the responsibility of the tenderer, the latter shall make the goods available to the recipient, or to the forwarding agent in his capacity as the representative of the recipient, in accordance with the terms agreed on or laid down pursuant to point 1. In this case, the supply operation shall be complete when all the goods have thus been made available.

   Where, on the basis of the abovementioned marine transport contract, the loading operations specified in the first subparagraph are the responsibility of the tenderer, the latter shall load the goods on board the vessel designated by the recipient in accordance with a loading schedule adopted in agreement with the latter, having regard to the customary practice at the port. The corresponding costs shall be refunded to the tenderer by the Commission when the supply is paid for, on presentation of the supporting documents. Any stowage costs shall not be payable by the tenderer, except for bulk supplies, in which case the supply operation shall be complete when the goods have passed the ship's rail.

3. The undertaking referred to in Article 10 shall record the actual date on which the goods are made available or on which loading is completed, as appropriate, by means of a special indication on the certificate of conformity pursuant to Article 16 (5).

4. The successful tenderer shall, having regard to the customary practice at the port, bear all the risks, and in particular those of loss or deterioration, to which the goods are subject until they are made available to the recipient or to the forwarding agent, acting as the recipient's representative, or — in the other case provided for in point 2 — until the goods have effectively passed the ship's rail.

5. Where the goods cannot be made available or loaded, as provided for in point 2, in accordance with the terms agreed on or laid down pursuant to point 1, the Commission, at the request of the tenderer or of the recipient, backed up by appropriate supporting documents, shall extend the deadline laid down in the notice of invitation to tender by maximum of 60 days, in order to enable the supplies to be delivered. The tenderer shall be required to accept such an extension.

The provisions of point 1 shall apply *mutatis mutandis* in respect of this new period, for the purpose of determining the new date on which the goods must be made available and also the ship's berth.

If the supplies cannot be delivered within the maximum period referred to in the first subparagraph, the successful tenderer shall, at his request, be released from his obligations.

The costs arising from any extension to the shipment period shall be determined and paid in accordance with Article 19 (1).

6. The successful tenderer shall inform the undertaking referred to in Article 10 and the Commission as soon as possible of the agreed date and place for making the supplies available pursuant to points 1 and 5 or, where necessary, of the lack of agreement with the recipient.

Article 14

In the case of supply free-at-port-of-landing, the following provisions shall apply :

1. The successful tenderer shall arrange, at his own expense and on the customary terms, transport by the route most appropriate for completing the operation within the period referred to in point 8 from the port of shipment indicated in his tender to the port of destination indicated in the notice of invitation to tender. At the tenderer's request, backed up by appropriate supporting documents, the Commission may, however, authorize a change of port of shipment.

2. The successful tenderer shall arrange for maritime transport

— in vessels which are listed in the higher category of the classification societies in use in the Member States and which meet all the health requirements for the transport of foodstuffs,

and

— in conformity with the rules on the prevention of the distortion of free and fair competition on a commercial basis as laid down in Regulations (EEC) No 954/79, (EEC) No 4055/86, (EEC) No 4056/86, (EEC) No 4057/86 and (EEC) No 4058/86 concerning the maritime transport policy of the Community. Shipping may not be carried out by shipping companies whose practices have caused injury to Community shipowners, or whose country has restricted free access to cargos by shipping companies of Member States or by ships registered in a Member State in accordance with its legislation, particularly during the validity of a published decision taken by the Council under Article 11 of Regulation (EEC) No 4057/86 or Article 4 (1) (b) of Regulation (EEC) No 4058/86.

The successful tenderer shall certify to the undertaking referred to in Article 10 that the vessel booked or chartered meets the abovementioned health classification and conformity requirements.

3. (a) The successful tenderer shall take out a marine insurance policy or claim cover under a general policy. This policy, which shall be for at least the amount of the tender, shall cover all the risks associated with carriage and, where appropriate, transshipment and unloading, including all cases of non-delivery, loss and risks regarded as exceptional, without exclusion of particular average.

(b) The insurance policy shall take effect as soon as the goods insured leave the tenderer's stores, and shall cease :

— when the goods enter the recipient's stores, in other words any place in the port area, whether or not belonging to him, where the recipient stores them ;

— or when they are placed, on the initiative of the recipient, on a vehicle for reconsignment from the port area ;

— or, if neither of the above has taken place, at the end of a period of 30 days from the last day of landing at the stage of supply referred to at point 5 below.

The recipient must cover risks beyond the supply stage.

4. The successful tenderer shall communicate to the recipient and to the undertaking referred to in Article 10 the name of the vessel and the description of its flag, the loading date, the expected date of arrival at the port of landing and any incident occurring while the supplies are in transit, as soon as these particulars come to his knowledge.

The successful tenderer shall advise the recipient of the ship's expected date of arrival at the port of landing, or have the recipient so advised by the captain or the correspondent of the shipping company, at least 72 hours in advance.

5. The successful tenderer shall bear the cost of loading the goods on board the vessel at the port of shipment and shall bear the marine freight costs.

   (a) Where the tendering procedure relates to supply to the landed stage, the successful tenderer shall bear the costs of unloading at the port of landing, including wharfage at ship's rail and, where necessary, lighterage charges, including hiring, towing and unloading of the lighters, and any demurrage. Where the goods are supplied in containers, the supplies shall be free at terminal and the cost of unloading the goods from the containers shall not be charged to the successful tenderer. In special circumstances for which the successful tenderer is not responsible, these demurrage costs shall be met by the Commission.

   (b) In the case of supply at ex-ship stage, the successful tenderer shall not have to bear the costs of unloading or of any demurrage at the port of landing, as long as he has not delayed unloading.

   The successful tenderer shall not have to bear the costs and charges relating to customs formalities on importation.

6. The successful tenderer shall immediately furnish the recipient, where necessary through the undertaking referred to in Article 10, with the following:

   (a) in the case of supply ex-ship:

   — the bill of lading for the port of destination indicated,

   — where appropriate the charter party or any equivalent document stating in particular the demurrage period,

   — the certificate of conformity provided for in Article 16,

   — the certificate attesting that the vessel complies with the requirements laid down in point 2;

   (b) in the case of supply at the landed stage:

   — a delivery note,

   — a copy of the abovementioned certificate of conformity,

   — a marine insurance certificate.

7. The successful tenderer shall bear all the risks, in particular those of loss or deterioration, to which the goods are subject, until the stage of the supply operation stipulated in point 5.

8. The goods supplied must arrive at the port of landing before the end of the period specified in the notice of invitation to tender. Registration of the vessel by the authorities of the port of landing shall be taken as proof of date of arrival in that port. If it is not possible to obtain such proof by registration the date of arrival shall be that declared by the captain and confirmed by the undertaking referred to in Article 10.

Article 15

The following provisions shall apply in the case of supply free-at-destination:

1. The successful tenderer shall arrange transport by the means most appropriate to ensure arrival within the period referred to in point 4 from the port of shipment indicated in his tender to the final destination and shall conclude the necessary contracts for transporting the goods. If he so requests, however, and puts forward appropriate supporting arguments, the successful tenderer may obtain the Commission agreement to change of port of shipment. He shall bear all the relevant costs and also the costs of unloading, including the costs of placing the goods in the warehouse at their destination.

   The provisions of Article 14, point 2 concerning sea transport and those of point 5 (b) concerning customs formalities, costs and charges shall be applicable. In addition, the provisions of point 5 (a) of Article 14 shall apply *mutatis mutandis* to any demurrage costs at the port of landing.

   The notice of invitation to tender shall specify the port of landing or of transit prior to overland transport.

2. The successful tenderer shall bear all the risks relating to the goods, notably those of loss or deterioration, up to the time when the goods are actually unloaded and placed in the warehouse at their destination.

   The successful tenderer shall take out an appropriate insurance policy, of the type laid down in point 3 (a) of Article 14.

3. The successful tenderer shall indicate as soon as possible to the recipient and to the undertaking referred to in Article 10 the means of transport to be used for the supply, the dates of loading and shipment and the presumed date of arrival of the goods at the place specified for delivery.

   The successful tenderer shall send to the abovementioned undertaking copies of documents concerning overland transport from the port of landing.

   He shall advise the recipient and the abovementioned undertaking, by the most rapid means avaliable, of the probable date of arrival at the place specified for delivery, not later than three days prior to that date.

4. Supply must take place before the end of the period specified in the notice of invitation to tender.

Article 16

1. For all supplies to be provided in accordance with this Regulation, the undertaking referred to in Article 10 shall check, prior to the commencement of loading operations at the port of shipment, that the provisions relating to quantity, packaging and, where appropriate, the verification of bags, have been complied with. The checks shall be carried out a time and under conditions which make it possible to obtain all the results of analyses required and, where appropriate, the results of a second opinion, before the goods are made available in the case referred to in the first subparagraph of point 2 of Article 13, or before the commencement of loading at the port of shipment in all other cases.

However, in special circumstances, particularly where there is a danger of product substitution taking place after the quality and packaging checks provided for above, the undertaking may, having received authorization from the Commission, make additional checks of the same nature during the loading operations. Any financial costs arising from the discovery of non-conformity during these latter checks, notably and demurrage costs, shall be borne by the successful tenderer.

The undertaking referred to above shall issue, when the checks are complete, a certificate of conformity in accordance with the analyses and checks carried out. Where the certificate of conformity is withheld, the successful tenderer shall be obliged to replace or supplement the goods, if the supplies are free-at-port-of shipment.

In the case of supply free-at-port-of-landing or free-at-destination the certificate referred to in the previous subparagraph shall be only a provisional guarantee of conformity. Final assessment of conformity shall take place, in accordance with the methods of analysis in force in the Community, at the stage laid down for supply.

For this purpose, the undertaking referred to in Article 10 shall at this stage carry out the checks provided for in the first subparagraph and, if appropriate, issue a definitive certificate of conformity. A duty-substantiated written refusal by the undertaking to issue a certificate shall entail an obligation to replace all or part of the supplies on the part of the successful tenderer.

Where the mobilization concerns a processed or a packaged product, the successful tenderer shall advise the undertaking referred to above, at least three working days in advance, either in writing or by telex, of the date when the manufacturing or the packaging process was begun.

2. The recipient's representative shall be invited by the undertaking to participate in the taking of samples to be used for the analyses and checks referred to in paragraph 1 ; the taking of samples shall be carried out in accordance with professional practice.

When samples are taken, the undertaking shall take two extra samples which it shall keep sealed at the disposal of the Commission with a view to a possible second check and to cover the possibility of an objection being raised by the recipient and/or the successful tenderer.

The cost of the samples shall be borne by the successful tenderer.

3. In the event of an objection by the successful tenderer, or by the recipient, to the results of the checks carried out in accordance with paragraph 1, the undertaking referred to above shall have a second check carried out forthwith, so as to avoid any delay in the making available of the goods or the loading operations ; the results of the second check shall decide the matter. This check shall be carried out by a service or laboratory appointed by mutual agreement of the undertaking, the recipient's representative and the successful tenderer.

4. The expenses incurred in connection with the check provided for in paragraph 1 shall not be borne by the successful tenderer.

All expenses connected with the check referred to in paragraph 3 shall be borne by the losing party, as shall be expenses resulting from any failure to comply with the time limit laid down in the notice of invitation to tender, including storage costs and any demurrage.

5. Once the checks are complete and immediately following the issue of the certificate, the goods to be supplied shall be subject to customs control, or to administrative control providing equivalent security, until such time as they have left Community territory.

Article 17

A taking-over certificate containing the particulars set out in Annex III shall be issued in accordance with the provisions of this Article ; it shall be deemed to constitute acceptance of the goods by the recipient in accordance with point 1 or acknowledgement of the supply in accordance with point 2.

1. Immediately after the goods have been made available at the stage laid down or agreed for the supply, the successful tenderer shall ask the recipient or his representative to issue the taking-over certificate and shall present to the recipient or his representative the certificate of conformity referred to in Article 16, a certificate of origin and a *pro-forma* invoice establishing the value of the goods and their transfer to the recipient free of charge.

   In the case of supply free-at-port-of-landing, the successful tenderer shall also present the documents referred to in Article 14 (6).

2. Failing the issue of the taking-over certificate by the recipient, the undertaking referred to in Article 10 shall issue to the successful tenderer, at his request and on receipt of the certificate of origin and the invoice referred to in point 1, a certificate of acknowledgement of supply where the checks carried out at the stage laid down for supply have been such as to permit the issue of the certificate of conformity referred to in Article 16.

In the case of supply free-at-port-of-landing or free-at-destination, the certificate shall also be issued on presentation of the certificate of conformity made out prior to shipment and also, according to the case, of the documents referred to in Article 14 (6).

3. The taking-over certificate and certificate of acknowledgement referred to in points 1 and 2 may be issued for partial quantities making up a substantial proportion of the supplies.

4. The net quantity supplied to the recipient shall be verified precisely at the time of taking over. For bulk supplies, the quantity delivered shall be considered to be satisfactory where the net weight is not more than 3 % lower than the quantity requested. In the case of packaged supplies, the accepted tolerance shall be 1 %. The amounts taken as samples for the purposes of the checks laid down in Article 16 shall be added to the abovementioned tolerances.

5. In the event of disturbances having a serious effect on unloading where highly perishable goods are being supplied free-at-port-of-landing or free-at-destination, the Commission may decide that the undertaking shall issue, before the stage laid down in the notice of invitation to tender and after an appropriate check, a certificate deemed to constitute acknowledgement of the supply as regards quality and packaging.

TITLE IV

Conditions relating to payment and the release of securities

Article 18

1. The amount to be paid to the successful tenderer shall not exceed the amount of the tender plus, where appropriate, the costs referred to in Article 19.

Where, in accordance with Article 7 (3) (h), the award concerns a contract for the supply of maximum quantities of a given product, the amount to be paid shall be that indicated in the notice of invitation to tender, without prejudice to the application of Article 19.

The payment to the successful tenderer, in accordance with this Article, shall be made without prejudice to refunds or levies payable on export, or to the other amounts laid down by the regulations on trade in agricultural products.

2. Payment shall be made in respect of the net quantity given in the taking-over certificate or in the certificate of acknowledgement of the supply.

Where the quality of the goods or the packaging is found at the supply stage not to correspond exactly to the requirements laid down, though without being such as to have prevented acceptance of the goods in accordance with Article 17 (1) or acknowledgement of the supply in accordance with Article 17 (2) drawback may be applied when the amount to be paid is calculated.

3. Payment shall be made at the successful tenderer's request, backed up by the following supporting documents :

(a) the original of the taking-over certificate, or the certificate of acknowledgement of the supply, referred to in Article 17 ;

(b) a copy of the certificate of conformity referred to in Article 16 issued in respect of the supply stage specified.

4. At the request of the successful tenderer, payment may be made in proportion to the quantities of products in respect of which the supporting documents listed above have been provided.

5. In the case of supply free-at-port-of-landing or free-at-destination, an advance payment shall be made, at the successful tenderer's request and upon presentation of :

— the certificate of conformity issued prior to shipment in accordance with Article 16 (5),

— a copy of the bill of lading for the port of destination specified in the notice of invitation to tender,

— a copy of the marine insurance certificate referred to in Article 14 (6) (b).

No advance payment may exceed 90 % of the amount of the tender. The advance payment shall be made on presentation of evidence of the lodging of a security in favour of the Commission, for an amount equal to the amount of the advance, plus 10 %. The security shall be lodged in accordance with the second subparagraph of Article 12 (2). The security may be relased only on the initiative of the Commission.

6. Requests for payment shall be presented to the Commission, together with the supporting documents referred to in paragraph 2, within 12 months of the end of the period specified in the notice of invitation to tender. Without prejudice to the application of Article 21, requests presented after this deadline shall result in 10 % of the payment being withheld.

Payment shall be made within three months of the date of presentation of the complete request for payment, provided that additional inspections or investigations have not been ordered for the purpose of checking the implementation of the supply in question. Payment later than the abovementioned deadline, if not justified by additional inspections or investigations, shall attract post-maturity interest at the Commission's normal rate.

Article 19

1. The successful tenderer shall bear all the costs incurred in respect of the supply of goods to the stage specified in the notice of invitation to tender. However, the Commission shall refund to the successful tenderer the additional costs which are not attributable to him, which the Commission shall assess on the basis of appropriate supporting documents, where the conformity of the supply has been established in accordance with Article 16.

Such additional costs shall be :

(a) in the case of supply free-at-port-of-shipment, costs arising as a result of the vessel being made available at a date which makes it impossible to comply with the period specified in the notice of invitation to tender, or as a result of an extension of the shipment period in accordance with Article 13 (5), or else from the fact that the vessel is unsuitable for the cargo.

Excluding any administrative costs, the additional costs shall be :

— storage and insurance costs,

— financing costs, on the basis of the rate obtaining in the Member State of which the currency has been adopted for payment.

Such costs shall be calculated for the period beginning on the day following the last day of the period specified in the notice of invitation to tender and ending either on the date on which the goods are made available or loading is effectively commenced, as appropriate, or at the end of the period referred to in Article 13 (5), in the event that the successful tenderer is released from his obligations.

(b) In the case of supply free-at-port-of-landing or free-at-destination, the storage, insurance and financing costs entailed by delays exceeding 15 days between the goods being made available or the completion of unloading or delivery of the goods to the warehouse at their destination, whichever is appropriate, and the issue of the taking-over certificate shall be reimbursed to the successful tenderer, on production of supporting documents. The financing to the successful tenderer, on production of supporting documents. The financing costs shall be assessed on the basis of the rates obtaining in the Member States in which the customs export formalities are carried out.

(c) For all types of supply, unforeseen expenses which have not been covered in advance by an insurance policy, provided that they do not arise from a defect in the products delivered, inadequate or inappropriate packaging, or a delay in effecting the supply.

2. If, after the award has been made, the Commission designates a port of shipment or a port of landing or a final destination other than those originally scheduled, the successful tenderer shall deliver the goods to the new port or the new final destination. The Commission shall reach agreement with the successful tenderer on any decrease or increase of the costs initially determined.

By submitting a duly reasoned request, however, the successful tenderer may be released from his obligations.

Article 20

If, for reasons which are not the fault of the recipient but are attributable to the successful tenderer, the goods have not been supplied within 60 days following the date of expiry of the period specified for supply free-at-port-of-shipment or the date of expiry of the period for landing or delivery to the destination in cases other than supply free-at-port-of-shipment, whichever is appropriate, the successful tenderer shall bear all the financial consequences resulting from total or partial failure to supply the goods on the terms stipulated. These financial consequences may include the costs incurred by the ecipient as a direct result of the failure to carry out the supply, such as the cost of the dead freight by sear or overland, the rent of warehouses or storage areas and related insurance charges.

In addition, in the circumstances described in the first paragraph, the Commission shall note the absence of the supply and take the appropriate measures.

Article 21

The Commission shall assess cases of *force majeure* which might be the cause of the successful tenderer's failure to supply the goods or to comply with any of his obligations.

The additional costs arising from a case of *force majeure* shall be borne by the Commission.

Article 22

The securities lodged pursuant to Articles 8 and 12 and Article 18 (5) shall either be released or be forfeit, as appropriate, in accordance with the provisions laid down in this Article.

1. The tendering security provided for in Article 8 shall be released :

(a) where the tender is not valid within the meaning of Article 7 or has not been accepted, or where no contract has been awarded ;

(b) when the successful tenderer has lodged the delivery security provided for in Article 12 (2).

2. The delivery security provided for in Article 12

(a) shall be released in full when the successful tenderer :

— has carried out the supply in compliance with all his obligations ;

— has been released from his obligations pursuant to the third paragraph of point 5 of Article 13 and the second subparagraph of Article 19 (2) ;

— has not carried out the supply for reasons of *force majeure* recognized by the Commission ;

— has lodged the security on the advance provided for in Article 18 (5) ;

(b) shall be withheld on a cumulative basis as follows :

— in proportion to the percentage of the quantities not delivered, without prejudice to the application of Article 17 (3) ;

— 20 % of the cost of sea transport as specified in the tender where the vessel chartered by the successful tenderer for the purposes of the supply does not meet the conditions stipulated in Article 14, point 2;

— 0,001 % of the total value of the tender for each day's delay in making the goods available or in shipment in the case of supply free-at-port-of-shipment, or in arrival at the port of landing in the case of supply free-at-port-of-landing or in arrival at the destination in the case of supply free-at-destination, whichever is appropriate.

The security shall not be withheld in accordance with the first and third indents if the failure which has taken place is not attributable to the successful tenderer and does not lead to a payment under insurance cover.

(c) The security shall be forfeit if the Commission, pursuant to Article 20, establishes that the supply has not been carried out.

3. The security provided for in Article 18 (5) shall be released:

(a) where definitive entitlement to the amount advanced has been established;

(b) where the advance has been refunded by the successful tenderer.

Article 23

The Court of Justice of the European Communities shall be competent to judge any dispute resulting from the carrying-out of, or the failure to carry out, supply operations in accordance with this Regulation, or from the interpretation of provisions concerning such operations.

Article 24

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

It shall apply with effect from 1 July 1987, except for supplies for which the tendering procedure was initiated before that date.

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

Done at Brussels, 8 July 1987.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX I

1. Operation No
2. Programme
3. Recipient
4. Representative of the recipient (see Article 6 of Regulation (EEC) No 2200/87)
5. Place or country of destination
6. Product to be mobilized
7. Characteristics and quality of the goods
8. Total quantity (gross weight, net weight or gross for net as the case may be) (where appropriate, indicate the commodity equivalent)
9. Number of lots
10. Packaging and marking
11. Method of mobilization (market or intervention and, if the latter, the agency holding the stock)
12. Stage of supply (free at port of shipment, free at port of landing, free at final destination)
13. Port of shipment (in special circumstances, for supply free at port of shipment)
14. Port of landing specified by the recipient (for supply free at port of shipment)
15. Port of landing (for supply free at port of landing)
16. Address of the warehouse and, if appropriate, port of landing (for supply free at destination)
17. Period for making the goods available at the port of shipment (for supply free at port of shipment)
18. Deadline for the supply (for supply free at port of landing or free at destination)
19. Procedure for determining the costs of supply (tendering procedure or direct award)
20. In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders
21. In the case of a second invitation to tender (see Article 9 (6) of Regulation (EEC) No 2200/87):
    (a) deadline for the submission of tenders;
    (b) period for making the goods available at the port of shipment (for supply free at port of shipment);
    (c) deadline for the supply (for supply free at port of landing or free at destination).
22. Amount of the tendering security (see Article 8 of Regulation (EEC) No 2200/87)
23. Amount of the delivery security (see Article 12 (2) of Regulation (EEC) No 2200/87)
24. Address for submission of tenders
25. Refund payable on request by the successful tenderer.

ANNEX II[1]

I. COSTS TO BE INCLUDED IN THE TENDER

A. **Supply free at port of shipment**

1. Price of the product and packaging
2. Loading and transport costs up to the place of supply
3. Unloading costs at the place of supply and, where appropriate, the costs relating to all operations and activities, in particular by the forwarding agent, which immediately procede the making available or shipment of the goods, except the port liner terms charges and the loading costs proper (see Article 7 (3) (f), first indent)

   In the case of the supply of cereals in bulk, the costs include, where necessary, the cost of placing in silos, ensilage, and release from silos.
4. Costs related to customs export formalities
5. Costs of any weighing, checks or analyses carried out on the initiative of the successful tenderer (other than those carried out pursuant to Article 16).

N. B. Since they may have to be paid by the successful tenderer and refunded, pursuant to Article 13 (2), the loading costs must be indicated separately.

B. **Supply free at port of landing**

1. Costs as in 1. A above
2. Port liner terms charges, including the cost of the services of the forwarding agent, and, if relevant, loading and stowage costs
3. Sea freight
4. Insurance
5. Unloading costs as indicated in point 5 (a) of Article 14, in the case of supply to the landed stage

C. **Supply free at destination**

1. Costs as in I. B above, including the unloading costs referred to in point B.5
2. Customs transit costs
3. Cost of transfer on to means of transport for forwarding to the final destination
4. Overland transport costs to final destination
5. Insurance costs for overland transport (except if included in point I. B. 4.)
6. Costs of unloading from the means of overland transport and costs of placing in store at destination
7. Customs import formalities, except payment of duties, taxes and other charges levied for the benefit of the recipient country

II. MODEL FOR SUBMISSION OF TENDERS

The tenderer is deemed to have considered all the provisions of this Regulation initiating the tendering procedure.

1. Number of the Regulation initiating the tendering procedure
2. Number of the operation
3. Name and address of the tenderer
4. Evidence of eligibility pursuant to Article 2
5. Product
6. Weight of the product (net, gross or gross for net)

[1] This list is given for information only.

7. Port of shipment

8. Amount of the tender for the stage of supply specified in the notice of invitation to tender: ... ECU/tonne (1)

— of which costs of sea transport proper (for supply free at port of landing or free at destination)

— of which costs of overseas land transport proper (for supply free at destination)

8a For supply indicated in the notice of invitation to tender as being free at port of landing

— amount of a second tender for possible supply free at port of shipment (2)

8b In addition, for supply specified in the notice of invitation to tender as being free at destination:

— amount of a second tender for possible supply free at port of shipment (2)

— amount of a third comprehensive tender for possible supply free at port of landing, showing the costs of sea transport proper (2)

9. Member State where customs export formalities are carried out

10. Financial institution where the tendering security is lodged (3)

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(1) This amount is considered to take account of the amounts to be collected or paid under the agriculture regulations (see Article 7 (3) of Regulation (EEC) No 2200/87).

(2) For possible application of Article 9 (4) of Regulation (EEC) No 2200/87.

(3) The tender must be accompanied by evidence that this security has been lodged.

ANNEX III

TAKING-OVER CERTFICIATE (1)

CERTIFICATE OF ACKNOWLEDGEMENT OF SUPPLY (1)

The undersigned : .....
(name, forename, business name)

acting on behalf of the recipient (or on behalf of the Commission, as the case may be) :

.....

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

.....

— place and date of taking-over : .....

— products : .....

— tonnage or weight accepted (net, gross or gross for net) : .....

— packaging : .....

— number ..... at ..... kg/net : .....

— port of shipment : .....

— name of vessel : .....

— date of shipment or making available (if free-at-port-of-shipment, see Article 13 (3) of the Regulation) : ....

— port of landing : .....

— final destination : .....

— means of overland transport : .....

— date of supply if free at port of landing or free at destination (see Articles 14 (8) and 15 (4) of the Regulation) : .....

The quality of the goods delivered is in accordance with that laid down in the notice of invitation to tender.

Comments or reservations : .....

.....

.....

.....

(1) Delete as appropriate (see points 1 and 2 of Article 17 of the Regulation).