COMMISSION REGULATION (EEC) No 709/87
of 12 March 1987
on delivery of common wheat as food aid to the Kingdom of Lesotho

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regualtion (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management (1), and in particular Article 13 thereof,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (2), as last amended by Regulation (EEC) No 1579/86 (3), and in particular Article 28 thereof,

Whereas, by its Decision of 27 October 1986 on the supply of food aid to Lesotho the Commission allocated to the latter country 7 000 tonnes of cereals to be supplied free at destination;

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 it is necessary to provide for the carrying out of this measure in accordance with the rules laid down by 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 (4), as last amended by Regulation (EEC) No 3826/85 (5); whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The intervention 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 under the tender 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.

Article 2

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

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

— Article 5 in respect of provision of security,

— Article 6 in respect of opening and reading tenders,

— Article 8 in respect of comparing tenders.

2. The tender shall indicate the amount of the tender expressed per tonne of product, in the currency of the Member State where the tendering procedure is taking place.

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

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

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

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

(1) OJ No L 370, 30. 12. 1986, p. 1.
(2) OJ No L 281, 1. 11. 1975, p. 1.
(3) OJ No L 139, 24. 5. 1986, p. 29.
(4) OJ No L 192, 26. 7. 1980, p. 11.
(5) OJ No L 371, 31. 12. 1985, p. 1.

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

Article 3

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

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

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

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

Article 4

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

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

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

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

Article 5

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

The successful tenderer shall provide that intervention agency with the certificate showing that the fumigation has been carried out.

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

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

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

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

Article 6

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

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

Article 7

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

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

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

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

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

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

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

Article 8

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

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

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

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

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

Article 9

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

Article 10

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

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

Article 11

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

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

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

Article 12

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

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

Done at Brussels, 12 March 1987.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX I

1. **Programme** : 1986 — Operation No 44/87 (1)
2. **Recipient** : Lesotho
3. **Place or country of destination** : Lesotho
4. **Product to be mobilized** : common wheat
5. **Total quantity** : 7 000 tonnes
6. **Number of lots** : one
7. **Intervention agency responsible for conducting the procedure** :

   Bundesanstalt für landwirtschaftliche Marktordnung (BALM), Adickesallee 40, D-6000 Frankfurt/Main (Telex 411 475)
8. **Method of mobilizing the product** : the Community market
9. **Characteristics of the goods** :

   common wheat of fair, sound and merchantable quality, free from abnormal smell and pests, which produces dough which does not stick during the mechanical kneading process

   The common wheat must meet the following conditions :

   — moisture : 14,5 % maximum (ICC Method No 110)
   — protein content : 11,5 % minimum (N × 5,7 in terms of dry matter) (ICC Method No 105)
   — Hagberg falling number of at least 220, including the preparation (agitation) time of 60 seconds (ICC Method No 107)
   — Zeleny index of at least 20 (ICC Method No 118)
10. **Packaging** : in bulk
11. **Port of shipment** : a Community port
12. **Delivery stage** : delivered destination — Lesotho Flour Mills, Private bag A62, Maseru 100, Telex 329 BB, Tel. : 23498
13. **Procedure to be applied in order to determine supply costs** : tendering
14. **Deadline for the submission of tenders** : 12 noon on 31 March 1987
15. **Shipment period** : 15 May to 15 June 1987
16. **Security** : 10 ECU per tonne

Notes

1. The successful tenderer shall send a copy of the shipping documents to the following address :
   Commission Delegation in Lesotho,
   PO Box MS 518,
   Maseru 100, Lesotho,
   Tel. 313 726,
   Telex 4351 lo DELEGEUR MASERU.
2. At the request of the beneficiary the successful tenderer may deliver a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded.
3. As soon as the successful tenderer has been informed of the award of the contract, he shall contact the beneficiary or his representative without delay, in order to determine the necessary consignment documents, as well as the details of period, and other circumstances concerning shipment.

(1) The operation number is to be quoted in all correspondence.

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.