COMMISSION REGULATION (EEC) No 1385/89

of 22 May 1989

laying down detailed rules applicable on the purchase of cereals held by an intervention agency for the supply of Community food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1213/89 (2), and in particular Article 7 (5) thereof,

Having regard to Council Regulation (EEC) No 1581/86 of 23 May 1986 laying down general rules for intervention on the market in cereals (3), as last amended by Regulation (EEC) No 195/89 (4), and in particular the second paragraph of Article 4 thereof,

Whereas the second paragraph of Article 4 of Regulation (EEC) No 1581/86 provides that where cereals are purchased from intervention agencies for the purposes of fulfilling obligations arising from the award of Community food-aid supply contracts in connection with international conventions on food aid or other supplementary programmes, the conditions applicable with regard to prices and the detailed rules of application are to be determined in advance.

Whereas, in order to enable interested parties to take part under optimum conditions in the procedure for the award of food-aid supply contracts, they should be given the possibility of examining at their expense the quality and the characteristics of the product before the expiry of the closing date for the submission of tenders;

Whereas, in order to facilitate transactions, purchase applications must contain all information required to identify the product;

Whereas, in order to avoid disruption of the Community market and any distortion of competition between Community operators, the purchase price for the goods from public storage must be determined according to clear-cut criteria and be known to all tenderers in advance; whereas, in view of these requirements, provision should be made for goods purchased by the person awarded a Community food-aid supply contract to be paid at the buying-in price determined pursuant to Article 7 (3) of Regulation (EEC) No 2727/75;

Whereas, in order that the conditions of competition existing when tenders are submitted for the award of the food-aid supply contract are not altered subsequent to the award of the contract, a derogation should be introduced from the application of certain procedures for adjusting the prices on the basis of the date of conclusion of the purchase contract or the date of removal of the goods;

Whereas Article 4 of 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 (5) makes provision for the successful tenderer to deliver with a view to a food-aid supply contract goods which are not from public stocks or, where appropriate, manufactured therefrom, but goods mobilized on the market or manufactured therefrom provided that he purchases the goods mentioned in the notice of invitation to tender; whereas compliance with this latter obligation is essential on the one hand to meet the objective of contributing towards reducing public stocks and on the other hand to ensure the equality of operators in the award of the supply contract; whereas provision should therefore be made for the lodging by the successful tenderer of a specific security to ensure compliance with the obligation to pay the purchase price to the intervention agency concerned within a short time; whereas, consequently, with a view to that objective, provision should be made for failure to lodge a purchase application with the intervention agency under the conditions laid down to result in the loss of the security for the supply of the food aid, lodged pursuant to Article 12 of Regulation (EEC) No 2200/87; whereas Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (6), as amended by Regulation (EEC) No 1181/87 (7), should be applied for the lodging and the release of that specific security;

Whereas the execution of Community food-aid supply contracts is the subject of specific surveillance arrangements; whereas the provisions of Commission Regulation (EEC) No 569/88 of 16 February 1988 laying down common detailed rules for verifying the use and/or destination of products from intervention (8), as last amended by Regulation (EEC) No 1045/89 (9), should accordingly not apply;

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 128, 11. 5. 1989, p. 1.
(3) OJ No L 139, 24. 5. 1986, p. 36.
(4) OJ No L 25, 28. 1. 1989, p. 22.
(5) OJ No L 204, 25. 7. 1987, p. 1.
(6) OJ No L 205, 3. 8. 1985, p. 1.
(7) OJ No L 113, 30. 4. 1987, p. 31.
(8) OJ No L 55, 1. 3. 1988, p. 1.
(9) OJ No L 111, 22. 4. 1989, p. 12.

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

With a view to a given Community food-aid supply contract within the meaning of the second paragraph of Article 4 of Regulation (EEC) No 1581/86, carried out in accordance with the provisions of Regulation (EEC) No 2200/87 and the terms of the open or restricted invitation to tender for the award of the supply contract, cereals held by an intervention agency, shall be purchased in accordance with this Regulation.

Article 2

With a view to the supply contract mentioned in Article 1, intervention agencies shall make available goods meeting the characteristics laid down in the notice of open or restricted invitation to tender.

Intervention agencies shall take the necessary steps so that all operators interested in submitting a tender for the invitation to tender for the supply contract may, on publication of the notice of invitation to tender or on receipt of the latter, examine at his own expense samples collected from the product to be mobilized. Applications to examine the goods may be submitted and samples may be collected only before the expiry of the closing date laid down for the submission of tenders.

Article 3

1. Within six working days following the award of the food-aid supply contract, the operator concerned shall lodge with the intervention agency a purchase application by any means of written communication, relating to the quantity of the lot or lots for the supply of which he has been awarded the contract. Applications shall indicate:

(a) the name and address of the applicant;

(b) the reference to the Community food-aid operation, with the number of the specific lot or lots for the supply of which the operator has been awarded the contract.

2. Applications shall be accompanied by proof that the party concerned has been awarded the supply contract in question. Such proof shall be provided by a copy of the notification of award of the contract forwarded to him by the Commission.

3. Purchase applications shall be admissible only where they comply with the requirements of paragraphs 1 and 2 and are accompanied by proof that the applicant has lodged, pursuant to Title III of Regulation (EEC) No 2220/85, a security of an amount equal to the purchase price of the lots or lots of cereals in question, determined in accordance with Article 5.

4. Except in cases of *force majeure,* failure to submit a purchase application within the time limit mentioned in paragraph 1 shall result in the loss of the security lodged pursuant to Article 12 of Regulation (EEC) No 2200/87 under the conditions laid down in the notice of open or restricted invitation to tender.

Article 4

Within three working days following the day of submission of the purchase application, the intervention agency shall inform the applicant by written telecommunication that his application has been accepted where it meets the conditions laid down in Article 3.

Article 5

1. The purchase price to be paid for the cereals in question shall be the intervention price referred to in Article 7 (3) of Regulation (EEC) No 2727/75 applying to that cereal on the date laid down in the notice of open or restricted invitation to tender for the supply of the food aid, no adjustment being made for the quality of the product. In addition that price shall not be adjusted for the actual date of removal from the intervention agency. It shall be understood to relate to goods in bulk loaded on the means of transport outside the warehouse.

2. The conversion rate to be applied to the purchase price shall be the representative rate applicable on the closing date for the submission of tenders in the notice of open or restricted invitation to tender for the supply of the food aid.

Article 6

1. The purchaser shall pay the intervention agency the purchase price for the cereals, before the goods are removed, within 15 days from the notification of acceptance of the application mentioned in Article 4.

Within the period referred to in the first subparagraph, the goods may be slit up for removal with the agreement of the intervention agency; in that case, payment shall be made in instalments to take account of the actual timetable for the removal of the goods.

Payment of the purchase price shall be a primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85.

2. Risks and storage costs for cereals not removed within the time limit referred to in paragraph 1 shall be borne by the operator.

Article 7

The security referred to in Article 3 (3) shall be released in accordance with Title V of Regulation (EEC) No 2220/85.

Article 8

The Commission shall forward to the intervention agency concerned, within three working days from the award of the supply contract, all information necessary for the purchase operation, and in particular the name of the person or persons awarded the lots to be mobilized for the execution of a Community food-aid supply contract.

Article 9

The provisions of Commission Regulation (EEC) No 569/88 shall not apply to purchases from intervention agencies pursuant to this Regulation.

Article 10

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, 22 May 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission