COMMISSION REGULATION (EEC) No 3328/89

of 3 November 1989

opening invitations to tender for the supply of certain citrus fruit to Poland in accordance with Council Regulation (EEC) No 2247/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2247/89 of 24 July 1989 on an emergency measure for the free supply of certain agricultural products to Poland [1], and in particular Article 3 thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [2], as last amended by Regulation (EEC) No 1636/87 [3], and in particular Article 2 (4) thereof,

Whereas the Council, by Regulation (EEC) No 2247/89, decided on the free supply to Poland of agricultural products withdrawn from the market by intervention; whereas, given the Community market situation and in agreement with the Polish authorities the products supplied in the fruit and vegetable sector are to be citrus fruits, that is to say lemons and oranges; whereas forecasts concerning the extent of withdrawals indicate that mobilization of products should be restricted to certain Mediterranean regions;

Whereas under Regulation (EEC) No 2247/89 supply costs are to be determined by tender; whereas all obligations in connection with the supply operation should be precisely defined, from the taking over of products withdrawn from the market under Article 15 of Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [4], as last amended by Regulation (EEC) No 1119/88 [5], up to receipt by the Polish authorities at the place agreed for them to take the products over;

Whereas in view of the purpose of the operation and of the conditions under which it will be carried out, the citrus fruit to be delivered to Poland should meet the class I quality standard as defined in the Community rules;

Whereas determination of the lots to be tendered for must be in accordance with the latest forecasts and information on product availability; whereas lots will be specified in the notices of individual invitation to tender drawn up and published by the competent authorities of the Member States in which the products are to be mobilized;

Whereas, in order to ensure that the supply operation is properly carried out, a check for conformity must be made before departure from the consignment zone or, at the latest, at the time of departure from the Member State in which the fruit is mobilized; whereas, likewise, 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 [6], as amended by Regulation (EEC) No 3060/89 [7], should apply; whereas, however, the successful tenderer may not be released from his obligations and conformity may not be finally assessed until the goods are taken over by the Polish authorities, as attested by a certificate of receipt;

Whereas to ensure that tendering procedures operate smoothly and that supply operations are properly carried out adequate financial security must be required of tenderers and successful tenderers; whereas the provisions of 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 [8], as amended by Regulation (EEC) No 1181/87 [9], should apply to the lodging and the release of securities;

Whereas the conversion rate to be used for supply costs must be specified; whereas a more balanced approach that is also closer to the economic reality determining these costs will be secured by applying the exchange rate published in the C series of the *Official Journal of the European Communities*;

Whereas all the notifications necessary for the satisfactory application of this Regulation, in particular those pertaining to withdrawals and the monitoring of supplies to Poland, should be specified;

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

(1) OJ No L 216, 27. 7. 1989, p. 5.
(2) OJ No L 164, 24. 6. 1985, p. 1.
(3) OJ No L 153, 13. 6. 1987, p. 1.
(4) OJ No L 118, 20. 5. 1972, p. 1.
(5) OJ No L 118, 29. 4. 1989, p. 12.
(6) OJ No L 55, 1. 3. 1988, p. 1.
(7) OJ No L 293, 12. 10. 1989, p. 29.
(8) OJ No L 205, 3. 8. 1985, p. 5.
(9) OJ No L 113, 30. 4. 1987, p. 31.

HAS ADOPTED THIS REGULATION:

Article 1

1. In accordance with Regulation (EEC) No 2247/89, Poland shall be supplied with 20 000 tonnes of citrus fruit from the 1989/90 marketing year withdrawn from the market pursuant to Article 15 of Regulation (EEC) No 1035/72.

2. The supplies referred to in paragraph 1 shall consist of:

(a) 15 000 tonnes of lemons mobilized in the following Member States:

— in Italy:	8 000 tonnes,
— in Spain:	6 000 tonnes,
— in Greece:	1 000 tonnes;

(b) 5 000 tonnes of oranges mobilized in the following Member States:

— in Italy:	2 500 tonnes,
— in Spain:	1 000 tonnes,
— in Greece:	1 500 tonnes.

3. The geographical breakdown of the quantities shown in paragraph 2 my be altered according to the actual availability of products withdrawn from the market and the tenders submitted in accordance with Article 5.

4. The products referred to paragraph 1 shall meet the class I quality standards laid down in Commission Regulation (EEC) No 920/89 (1). Lemons shall be in the size range 4 to 7 and oranges in the size range 3 to 10.

Article 2

1. A special tendering procedure shall be opened to determine the supply costs from each of the Member States listed in Article 1 (2), and for each of the two products.

2. The supply operation shall comprise:

— the taking-over of products withdrawn from the market in accordance with the provisions of Regulation (EEC) No 1035/72, in particular as regards quality,

— the selection of the products satisfying the requirements of Article 1 (4),

— the sizing, packaging (maximum net weight of packages 25 kilograms) and marking, as provided in article 9 (2), and

— transport, as provided for in paragraph 3, to the place where the products are to be taken over by the agency designated by the Polish authorities.

3. Transport of the products indicated in Article 1 (1) shall be effected by land or sea by insulated means of transport. The products shall be delivered by the successful tenderer:

— if transported by sea, landed on the quay at the Polish port indicated in the notice of invitation to tender.

— if transported by rail, free-at-frontier at the Polish frontier point indicated in the notice of invitation to tender,

— if transported by rood, to the place indicated in the notice of invitation to tender.

Article 3

1. The agencies authorized by Greece, Spain and Italy shall draw up the notices of invitation to tender necessary for the supply, under the conditions laid down in this Regulation, of the products referred to in Article 1 and shall see to it that they are published. The notices shall be published by 10 November 1989 at the latest. Further notices may be drawn up later if necessary.

A copy of the draft notices shall be sent forthwith to the Commission so that a notice may be published in the C series of the *Official Journal of the European Communities.*

2. Notices of invitation to tender shall contain particulars of the following matters:

— the nature, quality and quantity of the product to be supplied, and the lots involved,

— the area in which the products withdrawn are to be taken over and the list and location of the producers organizations liable to withdraw oranges and lemons and make available to successful tenderers fruit suitable for supply to Poland,

— the place of taking over of the product by the competent Polish authorities,

— the period during which the products are to be taken over at the departure point and the timetable fixed for the supply of the product, or the maximum transport period,

— the method of packaging the product,

— the deadline for the submission of tenders,

— the name and address of the agency to which the tender must be submitted,

— all other necessary information.

Article 4

Any natural person having the nationality of a Member State and established in the Community, and any company formed in accordance with the law of a Member State and having its company headquarters, central administration or a main establishment in the Community shall have the right to take part, on equal terms, in the tendering procedures referred to in Article 2.

Article 5

1. Interested parties shall take part in a tendering procedure by submitting their tender either by letter with acknowledgement of receipt to the agency designated by the Member State and named in the notice, or by registered letter or by any other means of written telecommunication, to the address of the abovementioned agency.

(1) OJ No L 97, 11. 4. 1989, p. 19.

2. Tenders shall include:

— the tendering procedure reference,

— the name or business name and address of the tenderer,

— particulars of the lot to which the tender relates,

— the total supply costs tendered, in ecus per tonne, itemized as follows:

  — the costs involved in taking over the products withdrawn from the market,

  — the costs involved in selecting, sizing and packaging products satisfying the requirements of Article 1 (4), transport and delivery costs,

— any other information required in the notice of invitation to tender.

3. Tenders shall be valid only if:

— they are submitted in full before the expiry of the deadline fixed for the submission of tenders,

— they contain all the information referred to in paragraph 2 and comply with the requirements of the notice of invitation to tender,

— they are accompanied by an undertaking on the part of the tenderer to supply the products on the terms laid down if he should be successful,

— they are accompanied by proof that a tendering security of ECU 20 per tonne has been provided in accordance with Title III of Regulation (EEC) No 2220/85 in respect of the lot to which the tender relates.

4. Tenders may not be changed or withdrawn.

Article 6

1. The agency referred to in Article 5 shall forward to the Commission by telex not later than 24 hours after the expiry of the deadline fixed for the submission of tenders, using the layout set out in Annex I, all the tenders which meet the requirements of Article 5,

2. On the basis of the tenders forwarded pursuant to paragraph 1, a decision may be taken, in respect of one or more lots:

— to make no award, or

— to fix a maximum amount per tonne for the supply costs, or to reject tenders which do not appear to be in line with normal market prices.

3. Where a maximum amount is fixed for supply costs, the contract to supply the lot or lots concerned shall be awarded to the tenderer submitting the lowest tender.

4. Where several tenders are for the same amount, the contract shall be awarded by drawing lots.

Article 7

1. Within 48 hours following the adoption of the decision pursuant to Article 6 (2) the competent agency referred to in Article 5 shall inform all tenderers, by written telecommunication, of the outcome of their participation in the tendering procedure and shall notify each successful tenderer of the award to him of the contract to supply the lot or lots.

Article 8

The agency designated by the Member State concerned shall ensure that the products taken over by the successful tenderer are in conformity with the rules relating to withdrawals. It shall also ensure that products taken over by the successful tenderer but not selected for supply are not marketed.

Article 9

1. The taking over of the products by the successful tenderer is subject to the provision of a delivery security in accordance with Title III of Regulation (EEC) No 2220/85 for an amount per tonne equal to the purchase price applicable during the month of takeover plus 10 % of the basic price.

2. The quality standard provisions laid down in Regulation (EEC) No 920/89 concerning quality, sizing, tolerances, presentation and marking shall apply to supplies furnished under this Regulation. In addition, the packaging shall bear, in Polish and in one official Community language, the words: 'Product of the European Economic Community'. The packaging shall not bear any trade name.

Article 10

1. Before departure from the consigning zone or, at the latest, at the time of departure from the Member State concerned the agency designated by that Member State shall check that the products in question are in conformity with the requirements of this Regulation and of the notice of invitation to tender. A certificate of conformity, in the form set out in Annex II, shall be issued to the successful tenderer. If not certificate is issued he must replace or supplement the consignment.

2. Except in cases of *force majeure*, the successful tenderer shall bear all the risks — particularly of loss and deterioration — associated with the supply of the product until it is taken over by the competent Polish authorities. He shall take out suitable insurance against these risks.

Evidence that the product has been taken over shall be provided by the issue of a certificate drawn up, immediately following unloading, at the request of the successful tenderer by the Polish authorities, in the form set out in Annex III.

3. Without prejudice to paragraph 4, the product shall be deemed to have been supplied if at least 97 % of the quantity to be supplied is taken over by the Polish authorities in accordance with the provisions of the tendering procedure.

4. The successful tenderer shall receive payment of the supply costs from the agency authorized by the Member State concerned on presentation of the certificate showing that the quantity actually delivered referred to in the document has been taken over. To that end, on way of derogation from Article 2 of Regulation (EEC) No 1676/85, the tender amount shall be converted into national currency at the rate applicable on the last day of the period fixed for the submission of tenders and published in the C series of the *Official Journal of the European Communities.*

Article 11

1. The primary requirements within the meaning of Articles 20 of Regulation (EEC) No 2220/85 shall be as follows :

(a) for the tendering security referred to in Article 5 (3) :

— maintenance of the tender,

— lodging of the delivery security ;

(b) for the delivery security referred to in Article 9 :

— taking over of the product ot be supplied, as provided for in the notice of invitation to tender,

— supply in accordance with this Regulation and the providions of the notice of invitation to tender.

2. The tendering security shall be released :

— forthwith where a decision is taken to make no award,

— forthwith where the tender is not accepted,

— in the event of the tender being accepted, when the primary requirements referred to in point 1 of paragraph 1 have been met.

3. The delivery security shall be released on presentation of the takeover certificate duly stamped by the competent Polish authorities and of the T5 control copy or equivalent document.

Article 12

The provisions of Regulation (EEC) No 569/88 shall apply in respect of the supply of products provided for in this Regulation.

Article 13

In Part I of the Annex to Regulation (EEC) No 569/88 entitled 'Products to be exported in the same state as that in which they were removed from intervention stock', the following is added :

'51. Commisson Regulation (EEC) No 3328/89 of 3 November 1989 opening invitations to tender for the free supply of certain types of citrus fruit to Poland in accordance with Council Regulation (EEC) No 2247/89 ([51]),

([51]) OJ No L 321, 4.11.1989, p. 43'.

Article 14

1. For the purposes of this Regulation : Greece, Spain and Italy shall notify to the Commission :

— Within 10 days of the entry into force of this Regulation, for each type of citrus fruit in question, the producers' organizations liable to have products available for supply to Poland and a forecast of available quantities,

— from the entry into force of this Regulation or from 1 November, whichever is the later, every week by Tuesday at the latest, the quantities of lemons and oranges withdrawn under Article 15 of Regulation (EEC) No 1035/72 and taken over by a successful tenderer during the previous week specifiying precisely the producers' organizations which effected the withdrawal,

— from the entry into force of this Regulation or from 1 December, whichever is the later, every week by Tuesday at the latest, the quantities of oranges and lemons consigned to Poland under this Regulation.

2. The Member States shall notify as quickly as possible any occurrence likely to create difficulties for the supply of the products to Poland.

Article 15

1. For the purposes of the payment of the financial compensation referred to in Article 18 of Regulation (EEC) No 1035/72, the Member States concerned shall keep separate accounts in respect of products withdrawn from the market and taken over for supply to Poland in accordance with this Regulation.

2. For EAGGF Guarantee accounting purposes the book value of the products supplied to Poland shall be :

— for lemons : ECU 32,5 per tonne for Italy and Greece, and ECU 77,0 per tonne for Spain,

— for oranges : ECU 149,8 per tonne for Italy and Greece, and ECU 134,8 per tonne for Spain.

Conversion of these values into national currency shall be at the agricultural conversion rate applying on 1 December 1989.

Article 16

This Regulation shall enter into force on the day of 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, 3 November 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

MODEL FOR TRANSMISSION OF TENDERS TO THE COMMISSION IN THE TENDERING PROCEDURE OPENED BY COMMISSION REGULATION (EEC) No 3328/89

Member State : **Product :**

Lot No

quantity : .....

month of departure : .....

fortnight of departure : .....

region of takeover : .....

zone of takeover : .....

means of transport : .....

Numbering of tenderers	Supply costs requested (ECU/tonne)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	

NB :

— The Member State certifies that the tenders conform with the requirements of Articles 4 and 5.

— Tenders are to be transmitted on the basis of an anonymous list. Tenders are to be classified in ascending order, starting with the lowest amount tendered.

— The total supply cost is to be itemized as indicated in Article 5 (2).

ANNEX II

MODEL CERTIFICATE OF CONFORMITY OF CITRUS FRUIT FOR SUPPLY TO POLAND UNDER REGULATION (EEC) No 2247/89

(Article 10 (1) of Regulation (EEC) No 3328/89)

I, the undersigned : .....

(surname, first name, business name)

acting on behalf of the Polish Government, hereby certify that the following goods to be supplied to Poland under Regulation (EEC) No 2247/89 conform with the requirements of Regulation (EEC) No 3328/89 and of the notice of invitation to tender :

— Place and date of check : .....

— Product : .....

— Tonnage (net weight)

.....

— Packaging : .....

— Number : .....

— kg net per unit : .....

— marks (particulars) : .....

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

Comments : .....

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COMPETENT AUTHORITY RESPONSIBLE FOR COMPLETING AND STAMPING CERTIFICATE :

ANNEX III

MODEL CERTIFICATE SHOWING THAT A PRODUCT HAS BEEN TAKEN OVER BY THE POLISH AUTHORITIES

I, the undersigned : .....
(surname, first name, business name)

acting on behalf of the Polish Government, hereby certify that the goods listed below have been taken over :

— Place and date of taking over : .....

— Product : .....

— Tonnage (net weight)

.....

— marks .....

— Number : .....

— kg net per unit : .....

— marks (particulars) : .....

Comments : .....

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COMPETENT AUTHORITY RESPONSIBLE FOR COMPLETING AND STAMPING CERTIFICATE :