COMMISSION REGULATION (EEC) No 1158/91

of 3 May 1991

on the buying in by tender of skimmed-milk powder to intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products (1), as last amended by Regulation (EEC) No 3641/90 (2), and in particular the first subparagraph of Article 7a (1) and Article 7a (3) thereof,

Whereas Council Regulation (EEC) No 777/87 of 16 March 1987 modifying the intervention arrangements for butter and skimmed-milk powder (3), as last amended by Regulation (EEC) No 3577/90 (4), lays down the criteria on which basis, until the end of the eighth 12-month period of application of the additional levy provided for in Article 5c of Regulation (EEC) No 804/68, buying in of skimmed-milk powder by intervention agencies may be suspended; whereas Article 1 (3) (a) of that Regulation provides that where buying in is suspended throughout the Community or in part thereof, buying in may be carried out under a standing invitation to tender; whereas the rules for the application of the tendering procedure should consequently be laid down;

Whereas Council Regulation (EEC) No 1014/68 (5), as last amended by Regulation (EEC) No 3577/90, and Commission Regulation (EEC) No 625/78 (6), as last amended by Regulation (EEC) No 890/91 (7), lay down the general rules and the detailed rules for the buying in of skimmed-milk powder by the intervention agencies; whereas most of those provisions may be applied within the framework of this Regulation and in particular those concerning the quality of the skimmed-milk powder which may be offered for intervention, packing and packaging; whereas it is appropriate, however, to adapt some of these provisions to the tender procedure for purchases; whereas, for this reason, the provision concerning the age of the skimmed-milk powder being offered should be adapted;

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

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 362, 27. 12. 1990, p. 5.
(3) OJ No L 78, 20. 3. 1987, p. 10.
(4) OJ No L 353, 17. 12. 1990, p. 23.
(5) OJ No L 173, 22. 7. 1968, p. 4.
(6) OJ No L 84, 31. 3. 1978, p. 19.
(7) OJ No L 90, 11. 4. 1991, p. 21.

HAS ADOPTED THIS REGULATION:

Article 1

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

Skimmed-milk powder bought in must be skimmed-milk powder meeting the conditions set out in Article 1 (1) (a), (b), (c) and (e) of Regulation (EEC) No 625/78.

Article 2

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

Article 3

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

— in respect of skimmed-milk powder manufactured in the 21 days preceding the final date for the submission of tenders; in the case provided for in Annex III (f) second subparagraph of Regulation (EEC) No 625/78, this period is fixed at three weeks,

— if they undertake in writing to comply with Article 2 (6) of Regulation (EEC) No 625/78.

2. Interested parties shall participate in the invitation either by lodging a written tender against a receipt or by any other written means of communication with advice of receipt.

3. Tenders shall specify:

(a) the name and address of the tenderer;

(b) the quantity offered and the production process used (spray or roller);

(c) the price tendered per 100 kilograms of skimmed-milk powder, not including domestic taxes, delivered to storage depot, expressed in ecus, with no more than two decimals;

(d) the place where the skimmed-milk powder is stored.

4. Tenders shall be valid only if:

(a) they relate to a quantity of at least 20 tonnes;

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

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

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

Article 4

1. Under this Regulation, the maintenance of tenders after the expiry of the final date for the submission of tenders and the delivery of the skimmed-milk powder to the depot designated by the intervention agency within the time limit fixed in Article 7 (2) shall constitute primary requirements whose fulfilment shall be ensured by the lodging of a security of ECU 40 per tonne.

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

Article 5

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

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

Article 6

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

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

Article 7

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

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

(a) the quantity to be delivered;

(b) the final date for the delivery of the skimmed-milk powder;

(c) the depot where it must be delivered. Article 3 (1) of Regulation (EEC) No 1014/68 and Articles 5, 6 and 7 of Regulation (EEC) No 625/78 shall apply.

2. Within 28 days of the final date for the submission of tenders, the successful tenderer shall deliver the skimmed-milk powder. Deliveries may be made in several lots.

The cost of unloading the skimmed-milk powder at the storage depot shall be borne by the successful tenderer.

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

Article 8

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

Article 9

Within the period commencing on the 120th day after taking over the skimmed-milk powder and ending on the 140th day thereafter, the intervention agency shall pay the successful tenderer the price indicated in his tender for each quantity taken over.

Article 10

The provisions of Articles 2 (5), 3 and 4 of Regulation (EEC) No 625/78 shall apply.

Article 11

Commission Regulation (EEC) No 2220/85 [1] shall apply except where specific provisions to the contrary are laid down in this Regulation.

Article 12

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

Article 13

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

[1] OJ No L 205, 3. 8. 1985, p. 5.

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

Done at Brussels, 3 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission