COMMISSION REGULATION (EEC) No 1799/91

of 25 June 1991

laying down detailed rules for the supply of infant food as urgent aid for the people of the Soviet Union provided for by Council Regulation (EEC) No 598/91

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 598/91 of 5 March 1991 on urgent action for the supply of agricultural products intended for the people of the Soviet Union [1], and in particular Article 5 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 2205/90 [3], and in particular Article 2 (4) thereof,

Whereas Regulation (EEC) No 598/91 provides for urgent action for the supply of agricultural products intended for the people of the Soviet Union ; whereas that country has requested the supply of infant food ; whereas this request should be granted ;

Whereas, taking into consideration the particular requirements of the supply as regards transport and distribution to the destination, the costs concerning the manufacture of the products should be determined separately, by tender, in order to organize subsequently the dispatch of the products to the institutions and organizations beneficiary ;

Whereas it is necessary to determine the conditions for tendering the attribution of the supply "contract" and the obligations of the tenderers responsible for the manufacture of the products ;

Whereas infant food may be produced by using different agricultural raw materials ; whereas the rules concerning support prices for these raw materials vary according to the sector concerned ; whereas in consequence in order to ensure comparability of tenders it is necessary to take account of the differences in prices of the agricultural raw materials ; whereas this may be accomplished by deducting the refund granted in case of export for the to agricultural raw materials content, in conformity with the provisions of Council Regulation (EEC) No 3035/80 of 11 November 1990 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty and the criteria for fixing such refunds [4], as last amended by Regulation (EEC) No 3381/90 [5] ;

whereas pursuant to Article 2 (4) of Regulation (EEC) No 598/91 the goods delivered do not qualify for export refunds and are not subject to monetary compensatory amounts ;

Whereas, for the purposes of determining the supply costs and the securities to be lodged, and in order to avoid market distortions as a result of monetary factors, provision should be made for the use of the representative market rates referred to in Article 3a of Commission Regulation (EEC) No 3152/85 of 11 November 1985 laying down detailed rules for the application of Council Regulation (EEC) No 1676/85 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [6], as last amended by Regulation (EEC) No 3237/90 [7] ;

Whereas, the appropriate communications to assure the best monitoring of operations until the taking-over by the agency or enterprise charged with the dispatch to the destination should be provided for ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee foreseen in Article 5 (2) of Regulation (EEC) No 598/91,

HAS ADOPTED THIS REGULATION :

Article 1

1. A procedure is hereby initiated for four invitations to tender for the manufacture of infant food pursuant to Regulation (EEC) No 598/91 and in accordance with the conditions laid down in this Regulation.

[1] OJ No L 67, 14. 3. 1991, p. 19.
[2] OJ No L 164, 24. 6. 1985, p. 1.
[3] OJ No L 201, 31. 7. 1990, p. 9.
[4] OJ No L 323, 27. 11. 1980, p. 17.
[5] OJ No L 327, 27. 11. 1990, p. 4.
[6] OJ No L 310, 21. 11. 1985, p. 1.
[7] OJ No L 310, 9. 11. 1990, p. 18.

2. The delivery shall comprise :

1. the manufacture in the Community of :

(a) 4 600 tonnes of cereal-based flour for infants as referred to by point A of Annex I ;

(b) 1 000 tonnes of powdered fruit or vegetable-based mixtures for infants as referred to by point B of Annex I ;

(c) 1 100 tonnes of milk for infants as referred to C of Annex I ;

(d) 3 300 tonnes of infant weaning milk as referred to D of Annex I.

The goods are to be packed and labelled in conformity with the provisions of Annex I.

The packaging and presentation are to be effected in the manufacturing plant.

The manufacture and packaging of the goods covered by the tender has to be accomplished at the latest by 6 September 1991 ;

2. the storage, at the manufacturer's expense, of goods at the disposal of the organization designated by the Commission until 27 September 1991 ;

3. the undertaking to expedite as far as possible the manufacture of the amounts of goods tendered with a view to completing its manufacture and take-over by dates before those specified above, at the request of the organization designated by the Commission.

3. The goods referred to in paragraph 2 shall not be delivered under the inward processing arrangements.

Article 2

1. Tenders shall be sent by written telecommunication to the following address :

Commission of the European Communities,
DG III-C-2 Food Products — Industrial and Commercial Policy Aspects,
avenue des Nerviens, 9,
B-1040 Bruxelles.
Telex : 21877 (COMEU B) ;
telefax : 32 2 2351735.

2. Tenders must be lodged in their entirety before 12.00 noon (Brussels time), 2 July 1991.

Where no award is made under Article 5 (1), tenders must be lodged for a second submission before 12.00 noon (Brussels time), 16 July 1991.

Article 3

1. Each tender shall refer to a lot or lots of 50 tonnes (net weight of goods).

2. Tenders shall be valid only if they indicate the following :

(a) the precise reference to the invitation to tender and to one of the goods mentioned in Article 1 (2) ;

(b) the name and address and in particular telex/telefax numbers of the tenderer established in the Community ;

(c) the number of lots tendered and the net weight tendered ;

(d) the amount in ecus per tonne of goods offered ;

(e) the information necessary concerning the quantities of agricultural products used for the calculation of the refund that would have been granted in conformity with Articles 3 and 8 of Regulation (EEC) No 3035/80 to the goods to be delivered, in case of commercial export ;

(f) the exact address of the storehouse at which the goods are to be placed at disposal in conformity with Article 1 (2) (2) ;

tenders shall be accompanied by :

(g) proof that the tenderer has lodged the tendering security referred to in Article 4 before the expiry of the deadline for submission of tenders. This proof shall be furnished by means of a document issued by the guarantor.

3. A tender which contains conditions other than those laid down by this Regulation shall not be valid.

4. No tender may be changed or withdrawn.

Article 4

1. The of tendering security shall be fixed at ECU 30 per tonne of goods.

2. The tendering security shall take the form of sureties in favour of the Commission issued by a credit institution approved by a Member State.

The tendering security must be provided for a period of at least one month.

The tendering security can be released solely at the initiative of the Commission. It is shall be released or payable in conformity with Article 10.

Article 5

1. On the basis of the tenders received,

— the delivery shall be awarded to the tenderer or tenderers whose tender or tenders quote the lowest amounts,

— or, where necessary, no award shall be made, in particular where the tenders submitted exceed the prices normally obtaining on the market.

2. In comparison of tenders the amount of refund granted on the goods in case of commercial export, adjusted where necessary by the 'accession' compensatory amount, shall be deducted.

3. Within five working days following the closing date for submission of tenders, the Commission shall inform all tenderers by written telecommunication of the outcome of the tendering procedure. Where an award is made the successful tenderer shall be informed thereof immediately by written telecommunication.

Article 6

1. The tendering security provided for in Article 3 (2) (g) shall be released without delay:

— if a tender is not accepted or if no award is made,

— for the successful tenderer when proof is provided of the lodging of delivery security in accordance with Article 7.

Article 7

Within five working days of being notified that he has been awarded the delivery contract, the successful tenderer shall provide the organization indicated in Article 8 with proof that a delivery security amounting to ECU 200 per tonne of goods has been lodged.

This delivery security shall be constituted in the form of sureties issued by a credit institution approved by a Member State. It must be provided for a period of at least four months. The proof shall be furnished by means of a document issued by the guarantor.

The delivery security shall be released or in conformity with Article 10.

Article 8

1. The successful tenderer shall present before 1 October 1991 an application for payment of the delivery to the organization in the Member State in which the storehouse referred to in Article 1 (2) is situated. That application shall be accompanied by:

— the original of the certificate of take-over drawn up on the specimen in Annex II and issued by the organization designated by the Commission,

— the certificate of conformity drawn up by the body mentioned in Article 9 on completion of the checks carried out.

The payment shall be made for the supply of the quantity of goods stipulated in the certificate of take-over.

2. If the goods are not taken over by the date indicated in Article 1 (2) (2) the tenderer shall ask the organization responsible for the checks to certify that the product was available for take-over in accordance with the said Article. The payment shall be made for the quantities for which the organization responsible for the checks has certified to comply with the requisite obligations.

The organization responsible for payment shall take the appropriate measures as regards the destination of the goods, after consultation with the Commission.

Article 9

The manufacture and packaging of the goods shall be the subject of a control to be carried out by the organization designated by the Member State within which lies the place of manufacture and packaging.

For this purpose the successful tenderer shall inform this organization and the Commission of the places and period of manufacture and of packaging of the goods, at least five days in advance as well as the address of the storehouse mentioned in Article 3 (2) (f) at which goods are kept at disposal.

The organization shall issue a certificate of conformity, certifying that the milk used for the manufacture of the goods originated from healthy animals, free from foot-and-mouth disease or any other infectious or contagious diseases.

Article 10

The delivery security shall be released without delay in proportion to the quantities for which the successful tenderer fulfils his obligations and on presentation of the documents mentioned in Article 8.

The quantity delivered shall be considered satisfactory when the net weight taken over is not more than 1 % less than the proper quantity.

The security shall be released at once in cases of *force majeure.*

Article 11

The conversion rates to be used for payment of tenders and for tendering and delivery securities shall be the representative market rates referred to in Article 3 a *bis* of Council Regulation (EEC) No 3152/85, valid on the final date for submission of tenders.

Article 12

1. The Commission shall communicate to the organizations mentioned in Articles 8 and 9 the name of the successful tenderer and all other necessary information for carrying out delivery.

2. The organizations referred to in paragraph 1 shall communicate to the Commission all information concerning the carrying out of the delivery, in particular the results of the checks and the conditions of take-over of the goods.

Article 13

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, 25 June 1991.

For the Commission
Martin BANGEMANN
Vice-President

ANNEX I

1. **Characteristics of goods to be delivered as food aid :**

(a) flours based on cereals and/or rice for nurslings and children of small age :

flours must correspond to point 2.2 (straight or complex precooked cereal flours) or 2.3 (enzyme treated cereal flours) of the standard Codex STAN 74-1981 concerning processed cereal-based foods for infants and children and to conform to points 4 to 9 of the same standard ;

(b) powdered mixtures based on fruit and vegetables for nurslings and children of small age :

these mixtures must be submitted in powder form and conform either to the standard Codex STAN 74-1981 with the addition of fruit or vegetables or to the standard Codex STAN 73-1981 concerning canned 'baby foods' (world-wide standard) ;

(c) preparations for nurslings based exclusively on cow milk (for infants) :

the preparations for nurslings must be submitted in the form of powder and conform at a minimum to the standard Codex STAN 72-1981 concerning infant formula (world-wide standard).

The preparations must be suitable for infants (0 to 6 months) and be prepared exclusively from cow milk ;

(d) weaning preparations for nurslings and children of small age based exclusively on cow milk :

weaning preparations for nurslings and children of small age must be submitted in the form of powder and conform at a minimum to the standard Codex STAN 156-1987 concerning follow-up formula (world-wide standard). They must be prepared exclusively from cow milk.

2. **Additional requirements concerning packaging and labelling**

(a) The goods described above under (a) and (b) must be packaged in packs of minimum 200 grams net weight and maximum 1 kilogram net weight ; the goods described under (c) and (d) must be packaged in packs of minimum 400 grams net weight and maximum 1 kilogram net weight.

(b) The goods in packs shall be assembled in cartons conforming to the usual standards for exportation and stowed in wooden cases.

(c) Every single package shall be labelled 'ПОМОЩЬ ЕС СССР. 598/91' as well as the designation 'Food aid of the Community to Soviet Union — Commission Regulation (EEC) No 1799/91' in one of the official languages of the Member State of the manufacture of the goods.

This last designation is also appended in block letters in indelible lettering on the top of the cartons in which goods are packed.

The designation 'EEC AID — Regulation (EEC) No 598/91' in one of the official languages of the Community shall be repeated in block letters on the interior package in case of goods presented as packs in a carton or, in case of goods presented in metal cases shall be printed in block letters on the bottom.

ANNEX II

CERTIFICATE OF TAKE OVER

The undersigned :

.....

(surname, name, organization)

acting for ....., for the account of

..... certify that the goods described below, delivered in observance of Commission Regulation (EEC) No 1799/91, have been taken over :

by :

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

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— Type of goods : .....

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— Tonnage, (net) weight taken over : .....

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— Packaging : .....

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Observations :

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Signature : .....

Date : .....