COMMISSION REGULATION (EEC) No 3398/91

of 20 November 1991

on the sale by invitation to tender of skimmed-milk powder for the manufacture of compound feedingstuffs and amending Regulation (EEC) No 569/88

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 1630/91 (2), and in particular Articles 7 (5) and 28 thereof,

Whereas Council Regulation (EEC) No 1014/68 of 20 July 1968 laying down general rules for the public storage of skimmed-milk powder (3), as last amended by Regulation (EEC) No 3577/90 (4), sets the resale requirements for skimmed-milk powder held by intervention agencies; whereas there is now a possibility of disposing of skimmed-milk powder from public stocks, owing to a fall in the quantities available on the market, in particular for use in the manufacture of compound feedingstuffs for calves; whereas supplies should therefore be provided for this purpose by sales of skimmed-milk powder from public stocks;

Whereas Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (5), as last amended by Regulation (EEC) No 3480/90 (6), should be referred to in connection with the use to which skimmed milk must be put;

Whereas in order to ensure equality of access for all potential purchasers, to arrive at a selling price reflecting market conditions and to provide for effective verification of the quantities sold, a standing invitation to tender should be organized;

Whereas 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 (7), as last amended by Regulation (EEC) No 3380/91 (8) will be applicable; whereas an addition must therefore be made to its Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

Skimmed-milk powder bought in pursuant to Article 7 (1) of Regulation (EEC) No 804/68 and taken into storage before a date to be determined shall be sold under the terms laid down herein.

Article 2

The skimmed-milk powder shall be sold by means of a standing invitation to tender organized by each intervention agency.

Article 3

Tenders shall not be valid unless the tenderer makes a written undertaking to:

(a) denature the powder or have it denatured or process the powder or have it processed into compound feedingstuffs in accordance with Article 2 or 4 of Regulation (EEC) No 1725/79, within 60 days of the closing date for the submission of tenders in response to each round of the invitation to tender, as specified in Article 4 (3) of this Regulation;

(b) apply or have an application made for the aid granted pursuant to Regulation (EEC) No 1725/79 and observe the provisions of that Regulation or ensure that they are observed.

Article 4

1. A standing invitation to tender shall be published in the *Official Journal of the European Communities* at least eight days before the first closing date laid down for the submission of tenders.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 150, 15. 6. 1991, p. 19.
(3) OJ No L 173, 22. 7. 1968, p. 4.
(4) OJ No L 353, 17. 12. 1990, p. 23.
(5) OJ No L 199, 7. 8. 1979, p. 1.
(6) OJ No L 336, 1. 12. 1990, p. 68.
(7) OJ No L 55, 1. 3. 1988, p. 1.
(8) OJ No L 319, 21. 11. 1991, p. 48.

2. The intervention agency shall organize tendering rounds during the term of validity of the standing invitation to tender.

To this end it shall draw up a notice of invitation to tender indicating in particular the closing date and address for submission of tenders.

It shall also, for the skimmed-milk powder held by it, indicate :

(a) the locations of the warehouses where the powder to be sold is in store ;

(b) the quantity held for sale in each warehouse.

3. The period for the submission of tenders for each round shall expire at 12 noon on the second and fourth Tuesdays of the month, except for the fourth Tuesday in December. If Tuesday is a public holiday the period shall be extended to 12 noon on the next working day.

Article 5

1. The intervention agency shall keep up to date and make available to interested parties on request a list of the information referred to in point (a) of the third subparagraph of Article 4 (2) and the corresponding quantities. It shall also publish regular updates of the list in an appropriate form, to be indicated in the notice of invitation to tender referred to in Article 4 (2).

2. The intervention agency shall make the necessary arrangements to enable interested parties to examine at their own expense, before submitting a tender, samples of the skimmed-milk powder put up for sale.

Article 6

1. Tenders under each round shall be submitted by registered letter or delivered by hand to the intervention agency against acknowledgement of receipt, or by any other means of written telecommunication.

Tenders shall be submitted to the intervention agency holding the skimmed-milk powder for which an offer is made.

2. Tenders shall state :

(a) the name and address of the tenderer ;

(b) the quantity desired ;

(c) the price tendered per 100 kilograms, not including national taxes, ex-warehouse, in ecus ;

(d) the Member State in which denaturing or processing into compound feedingstuffs is to take place ;

(e) if appropriate, the warehouse where the skimmed-milk powder is and if desired a substitute warehouse.

3. A tender shall not be valid unless :

(a) it relates to at least 10 tonnes ; if, however, the quantity available in a warehouse is less than 10 tonnes, that amount shall be the minimum quantity for which an offer may be made ;

(b) it is accompanied by the undertaking referred to in Article 3 ;

(c) it is accompanied by a statement by the tenderer waiving all right of complaint with regard to the quality and characteristics of any skimmed-milk powder assigned ;

(d) proof is furnished that the tendering security provided for in Article 7 (1) has been lodged by the tenderer for the tendering round in question before expiry of the period set for submission of tenders.

4. Tenders may not be withdrawn after expiry of the time limit provided for in Article 4 (3).

Article 7

1. For the purposes of this Regulation the maintenance of tenders after the closing date laid down for submission of tenders, the lodging of the processing security referred to in Article 8 (2) and the payment of the price within the time limit laid down in Article 1 (2) shall constitue primary requirements compliance with which shall be guaranteed by the lodging of a tendering security of ECU 30 per tonne.

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

Article 8

1. A minimum selling price shall be fixed on the basis of the tenders received under each round and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

It may be decided to make no award under the round.

2. The amount of the processing security shall be fixed per 100 kilograms of skimmed-milk powder at the same time as the minimum selling price and in accordance with the same procedure.

The purpose of the processing security shall be to ensure fulfilment of the primary requirement concerning the use of the skimmed-milk powder in accordance with Article 3 within the time limit provided for.

Article 9

1. Tenders shall be rejected if the price offered is lower than the minimum price.

2. Where the acceptance of two or more tenders offering the same price for skimmed-milk powder in a particular warehouse would lead to contracts being awarded in excess of the quantity available, the award shall be made by allocation of the quantity available in proportion to the quantities tendered for. However, should such allocation lead to the award of quantities of less than five tonnes, the award shall be made by drawing lots.

3. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 10

1. Each tenderer shall immediately be notified by the intervention agency of the outcome of his participation in a tendering round.

2. Within the period specified in Article 11 (2) the successful tenderer shall, before the removal of the skimmed-milk powder, pay the intervention agency the amount corresponding to his tender, for each quantity that he wishes to withdraw.

3. Except in cases of *force majeure,* if the successful tenderer has not paid for the skimmed-milk powder within the prescribed period the tendering security referred to in Article 7 (1) shall be forfeit and the sale cancelled in respect of the remaining quantities.

Article 11

1. When the amount referred to in Article 10 (2) has been paid and the security referred to in Article 8 (2) has been lodged the intervention agency shall issue a removal warrant indicating:

(a) the quantity in respect of which the abovementioned requirements have been met;
(b) the warehouse in which the skimmed-milk powder is in store;
(c) the final date for removal of the skimmed-milk powder;
(d) the final date for denaturing or processing into compound feedingstuffs.

2. Within 30 days of the closing date for the submission of tenders the successful tenderer shall remove the skimmed-milk powder awarded to him. Removal may be effected by instalments.

Except in cases of *force majeure,* if the skimmed-milk powder has not been removed within the period laid down in the first subparagraph, the cost of storage of the powder shall be borne by the successful tenderer from the day following the day on which the period expired.

3. The skimmed-milk powder shall be handed over by the intervention agency in packages bearing a reference to this Regulation in clearly visible and legible characters.

Article 12

The tendering security referred to in Article 7 (1), the minimum price referred to in Article 8 (1) and the processing security referred to in Article 8 (2) shall be converted into national currency at the agricultural conversion rate applicable on the closing date for the submission of tenders under the round in question.

Article 13

Member States shall notify the Commission by Tuesday of each week at the latest of the quantities of skimmed-milk powder that left storage in the previous week.

Article 14

The following point 41 and the relevant footnote are hereby added to Part II (Products subject to a use and/or destination other than that mentioned under I) of the Annex to Regulation (EEC) No 569/88:

'41. "Commission Regulation (EEC) No 3398/91 of 20 November 1991 on the sale by invitation to tender of skimmed-milk powder for the manufacture of compound feedingstuffs (41):

— Section 104:

"To be denatured or processed (Regulation (EEC) No 3398/91)"

— Section 106:

"The final date for denaturing or processing into compound feedingstuffs."

(41) OJ No L 320, 22. 11. 1991, p. 16.'

Article 15

This Regulation shall enter into force on the third 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, 20 November 1991.

For the Commission
Ray MAC SHARRY
Member of the Commission