COMMISSION REGULATION (EEC) No 75/91

of 11 January 1991

laying down the procedures and conditions for the disposal of paddy rice held by 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 1418/76 of 21 June 1976 on the common oraganization of the market in rice (1), as last amended by Regulation (EEC) No 1806/89 (2), and in particular Articles 5 (5) and 8 (4) thereof,

Whereas rice may be bought in by the intervention agency either by obligatory intervention as indicated in Article 5 of Regulation (EEC) No 1418/76 or under special intervention measures as indicated in Article 6 of that Regulation;

Whereas, under Article 3 of Council Regulation (EEC) No 1424/76 of 21 June 1976 laying down general rules for intervention on the market in rice (3), as amended by Regulation (EEC) No 1908/87 (4), and Council Regulation (EEC) No 1425/76 of 21 June 1976 on special intervention measures for rice (5), rice held by intervention agencies is to be disposed of by invitation to tender;

Whereas for sales on the Community market of quantities of less than 1 000 tonnes a decision using this procedure laid down in Article 27 of Regulation (EEC) No 1418/76 is not necessary; whereas the other provisions continue to be applicable;

Whereas, under Article 3 of Regulation (EEC) No 1424/76 disposal on the internal market must be on the basis of price terms preventing deterioration of the market; whereas that aim can be achieved if the selling price is equal to the local market price — account being taken of the quality put up for tender — without being below a given level in relation to the intervention price; whereas, in certain cases, observing such a price level may not be in the interests of sound management of the market or the intervention system and may lead to disruptions in the operation of the common organization of the market; whereas provision should therefore be made for disposing of intervention stocks on special price terms in such cases;

Whereas the disposal of rice for export must be on the basis of price terms to be determined in each case in the light of current market trends and requirements; whereas such sales must not, however, lead to distortions to the detriment of exports form the open market; whereas a minimum selling price should therefore be fixed by the Commission on the basis of the tenders submitted;

Whereas the minimum selling price will be determined by the Commission using all relevant data available on the day on which the tenders are submitted; whereas, in order to prevent speculation and ensure identical conditions for all concerned, all tenders must be accompanied by an application for advance fixing of the export refund;

Whereas tenders for different lots are comparable one with another only where they are for rice in identical situations; whereas rice put up for tender is stored in different places; whereas greater comparability can be ensured by reimbursing to the successful tenderer the lowest coasts of transport between the place where the rice in question is stored and the place of exit; whereas, however, for budgetary reasons, such reimbursement can be made only in respect of the place of exit with facilities for exporting rice that can be reached at the lowest cost;

Whereas, to allow for the position of successful tenderers exporting to certain non-member countries, provision should be made for cancellation of the contract with the intervention agency; whereas such possibility is, however, justified only where the successful tenderer has applied for an export licence in accordance with Article 44 of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (6), as last amended by Regulation (EEC) No 1599/90 (7);

Whereas demand on the world market is for rice at a milling stage other than paddy and the possibility should therefore be introduced of putting paddy rice held by the intervention agencies on sale on the Community market for export at a subsequent milling stage;

(1) OJ No L 166, 25. 6. 1976, p. 1.
(2) OJ No L 177, 24. 6. 1989, p. 1.
(3) OJ No L 166, 25. 6. 1976, p. 24.
(4) OJ No L 182, 3. 7. 1987, p. 53.
(5) OJ No L 166, 25. 6. 1976, p. 26.
(6) OJ No L 331, 2. 12. 1988, p. 1.
(7) OJ No L 151, 15. 6. 1990, p. 29.

Wheras the ensure equal treatment of all interested parties in the Community invitations to tender should be published in the *Official Journal of the European Communities* and an adequate period allowed between publication and the first time limit for submission of tenders;

Whereas a tendering procedure can operate properly only if those concerned submit serious tenders; whereas that can be ensured by requiring that a security be provided which is released upon payment of the selling price within the item limit specified;

Whereas, in the case of an invitation to tender for export, it must be ensured that the rice is not put back on the Community market, whereas there is a risk that this will happen if the selling price is less than the minimum price to be observerd for resale on the internal market; whereas provision should therefore be made in such cases for lodging a second security which must be equal to the difference between the selling price and the said minimum price; whereas, consequently, this security may be released only if the successful tenderer for export furnishes the proof referred to in Article 18 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products [1], as last amended by Regulation (EEC) No 1615/80 [2];

Whereas, to ensure that intervention stocks are disposed of rapidly and in a manner which accords as far as possible with commercial practice, a time limit should be imposed for the exercise of rights and discharge obligations arising from the award;

Whereas there should be a general system covering procture and conditions for sale of paddy rice based by intervention agencies; whereas, for reasons of clarity, Commission Regulation No 471/67/EEC [3] should be repealed and replaced;

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

1. Rice bought in by the intervention agencies pursuant to Articles 5 and 6 of Regulation (EEC) No 1418/76 shall be sold by tender under the conditions laid down in the following Articles.

2. For the purposes of this Regulation, selling by tender means offering for sale by inviting tenders, the contract being awarded to the person tendering the best price and observing the requirements of this Regulation.

TITLE I

Disposal on the Community market

Article 2

1. The decision to issue an invitation to tender shall be taken in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 1418/76. The decision shall specify in particular.

(a) the quantities to be put up for tender;

(b) the closing date for submission of tenders in the case of an individual invitation to tender and the first and final closing dates for the submission of tenders in the case of a standing invitation to tender.

2. Paragraph 1 shall not apply to invitations to tender relating to quantities of less than 1 000 tonnes.

Article 3

1. Intervention agencies shall draw up notices of invitation to tender in accordance with Article 12 (2) and shall publicize them, in particular by displaying them at their head offices. In the case of a standing invitation to tender they shall specify therein the closing dates for the submission of tenders in response to each partial invitation to tender.

2. Notices of invitation to tender shall specify the minimum quantities to which tenders may relate.

Article 4

The invitations to tender referred to in Article 2 may be restricted to specified uses and/or destinations.

Article 5

1. For resale other than as referred to in paragraph 3, successful tenders must offer a price at lease equal to the price recorded, for an equivalent quality and representative quantity, on the market for the place of storage or, failing this, on the nearest market, account being taken of transport costs. The tender price may in no case be lower than the intervention price referred to in Article 5 (2) of Regulation (EEC) No 1418/76, applicable on the closing date for the submission of tenders, adjusted where appropriate by the increases and reductions provided for in Annexes I, II and III to Commission Regulation No 470/67/EEC [4].

[1] OJ No L 351, 14. 12. 1987, p. 1.
[2] OJ No L 152, 16. 6. 1990, p. 33.
[3] OJ No 204, 24. 8. 1967, p. 12.
[4] OJ No 204, 24. 8. 1967, p. 8.

2. For the purposes of paragraph 1, the intervention price to be taken into consideration during the 12th month of the marketing year shall be that in force for the 11th month (with one monthly price increase added).

3. If, during the marketing year, there are disruptions in the operation of the common organization of the market, in particular on account of difficulty in selling rice at prices which comply with paragraph 1, special price terms may be fixed in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 1418/76.

TITLE II

Disposal for export

Article 6

1. The decision to issue an invitation to tender shall be taken in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 1418/76. The decision shall specify in particular:

(a) the quantities to be put up for tender;

(b) the regions where the quantities are stored;

(c) the closing date for submission of tenders in the case of an individual invitation to tender and the first and final closing dates for the submission of tenders in the case of a standing invitation to tender.

2. In the notice of invitation referred to in Article 12 (2) the invitation agency shall specify for each lot the port or point of exit for which transport costs are lowest that has adequate technical facilities for exporting rice.

The lowest transport costs between the place of storage and the place of loading at the port or point of exit referred to above shall be reimbursed to the successful tenderer by the intervention agency for the quantities exported.

3. In the case of standing invitations to tender, the intervention agency shall fix the closing dates for the submission of tenders in response to each partial invitation.

Article 7

1. Tenders:

(a) may be rejected if they relate to lots of less than 200 tonnes;

(b) may stipulate that they are valid only for specified quantities;

(c) shall be considered as being submitted for rice delivered to, but not unloaded at, a port or other exit point as referred to in Article 6 (2).

2. Tenders shall not be valid unless accompanied by an application for an export licence together with an application for the advance fixing of the export refund or levy for the relevant destination. All countries for which the same level of refund or levy applies shall be considered a single destination.

Article 8

Article 21 (1) of Regulation (EEC) No 3719/88 notwithstanding, export licences issued under this Regulation shall be regarded, for determination of their period of validity, as having been issued on the closing date for submission of tenders.

Article 9

On expiry of each time limit for submission of tenders, the Member State concerned shall provide the Commission with a list of the tenders, without names, in each case showing in particular the quantity and the price. The Commission, acting in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 1418/76, shall fix the minimum selling price or shall decide to reject the tenders received.

Article 10

Where the export licence application made by the successful tenderer pursuant to Article 7 (2) is submitted under Article 44 of Regulation (EEC) No 3719/88, the intervention agency shall cancel the contract in respect of the quantities for which, as provided for in that Article, no licence is issued.

TITLE III

Disposal on the Community market for export as rice other than paddy rice

Article 11

Decisions to issue an invitation to tender for the export of rice ohter than paddy rice shall be taken in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 1418/76. The decision shall specify in particular:

(a) the quantities of paddy rice to be put up for tender;

(b) the closing date for submission of tenders in the case of an individual invitation to tender ad the first and final closing dates for the submission of tenders in the case of a standing invitation to tender;

(c) the CN codes of the products to be exported and the quantity to be exported per tonne of paddy rice awarded;

(d) where applicable, the export destination zone(s);

(e) the minimum selling price to be observed;

(f) the requirements pertaining to submission of tenders, in particular on the lodging of security.

TITLE IV

General and final provisions

Article 12

1. Decision as provided for in Articles 2, 6 and 11 shall be notified by publication in the *Official Journal of the European Communities.*

There must be a gap at least 10 days between publication and the first closing date for submission of tenders.

2. Intervention agencies shall publish at least eight days before the said first closing date a notice of invitation to tender specifying :

— any additional terms of sale consonant with the provisions of this Regulation,

— the main technical characteristics of the various lots as observed on purchase by the intervention agency or subsequent inspection,

— the storage locations and names and addresses of the storers.

The notice and all amendeds thereto shall be transmitted to the Commission before publication.

Article 13

1. In cases of disposal ont the Community market, tenders shall be drawn up in terms of the standard quality defined in Regulation (EEC) No 1423/76.

Where the quality of the rice differs from the standard, the successful tender rice shall be adjusted by increases or reductions determined in accordance with Article 5 (5) of Regulation (EEC) No 1418/76.

2. In case of disposal for export under Titles II and III

— tenders shall be drawn up in terms of the actual quality of the lot to which the tender relates,

— provision may be made for the inadmissibility of tenders submitted under Article 44 of Regulation (EEC) No 3719/88.

3. Once tenders have been sumbitted, they may be neither amended nor withdrawn.

4. Tenders shall be valid only if they are accompanied by evidence that the tenders has lodged security of ECU 15 per tonne.

Article 14

In cases of disposal for export under Titles II and III the minimum selling price as mentioned in Articles 9 and 11 shall be set at a level that does not impede other exports.

It may not be adjusted on quality grounds.

Article 15

Intervention agencies shall take all necessary action to enable interested parties to assess the quality of the rice put up for sale before submitting their tenders.

Article 16

Intervention agencies shall immediately inform all tenderers of the autcome of their tender and within three days following this shall send a statement of award of contract to successful tenderers, by registered letter or written telecommunication.

Article 17

The successful tenderer shall pay for the rice before it is removed and at the latest one month after the date on which the statement indicated in Article 16 is sent. He shall bear all risks and storage costs in respect of rice not removed within the period of payment.

Rice awarded and not removed within the time limit for payment shall be deemed, for all purposes, to have left storage on expiry of that time limit. In such cases, if the sale is to the Community market, the tender price shall be adjusted in line with the quality characteristics specified in the notice of invitation to tender.

If the rice is removed after the time limit for payment the successful tenderer shall bear the removal costs.

If the sale is for export, the price to be paid shall be that shown in the tender plus a monthly increase if the rice is removed during the month following that in which the contract was awarded.

It the price paid is less than the minimum applicable under Article 5 (1) and (2) for disposal on the Community market the rice may not be removed until security has been lodged covering the difference between the two prices.

If the rice is not paid for within the time limit specified in the first subparagraph the intervention agency shall cancel the contract in respect of the unpaid quantities.

Article 18

1. The securities referred to in this Regulation shall be provided in accordance with the provisions of Title III of Commission Regulation (EEC) No 2220/85 (1).

(1) OJ No L 205, 3. 8. 1985, p. 5.

2. The security referred to in Article 13 (4) shall be released in respect of quantities for which :

— no contract has been awarded,

— the selling price has been within the period specified and, in cases of sale for-export under Title II or III, the security referred to in the fifth paragraph of Article 17 has been lodged.

3. The security referred to in the fifth paragraph of Article 17 shall be released in respect of quantities for which :

— proof has been furnished that the goods have become unfit for human or animal consumption,

— the proof referred to in Article 18 of Regulation (EEC) No 3665/87 has been furnished,

— under Article 44 of Regulation (EEC) No 3719/88 the licence is not issued,

— the contract has been cancelled under the sixth paragraph of Article 17.

4. The security referred to in Article 13 (4) shall be forteit in respect of quantities of which :

— the security referred to in the second subparagraph of Article 44 (2) of Regulation (EEC) No 3719/88 has been forfeited,

— except in cases of *force majeure,* pay is not made within the time limit specified in Article 17.

5. Except in cases of *force majeure,* the security referred to in the fifth paragraph of Article 17 shall be forfeit in respect fo quantities for which the proof referred to in Article 18 of Regulation (EEC) No 3665/87 is not furnished within the time limit specifiedin Article 4 of that Regulation.

Article 19

The Member States concerned shall keep the Commission informed of the progress of invitations to tender, in particular of the selling prices of the different lots and the quantities sold. This information mus reach the Commission not later than seven days after the closing date for the submission of tenders in response to each invitation to tender.

Article 20

Regulation No 471/67/EEC is hereby repealed.

Article 21

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

It shall apply with effect form 1 January 1991.

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

Done at Brussels, 11 January 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission