COMMISSION REGULATION (EEC) No 2344/92

of 10 August 1992

laying down detailed rules applicable to the free supply of agriculture products to the victims of the conflict in the former Yugoslavia provided for in Council Regulation (EEC) No 2139/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2139/92 of 23 July 1992 on an emergency measure for the free supply of agricultural products to the victims of the conflict in the former Yugoslavia [1], and in particular Article 3 (2) 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 rate to be applied for the purpose of the common agricultural policy [2], as last amended by Regulation (EEC) No 2322/91 [3], and in particular Article 2 (4) thereof,

Whereas Council Regulation (EEC) No 2139/92 provides for an emergency measure for the supply of agriculture products to the victims of the conflict in the former Yugoslavia; whereas, with a view to implementing that emergency measure, detailed rules of application should be laid down for the cereals, rice, milk products, beef meat and fruit and vegetable sectors, providing in particular for the said supply operation to be allocated by a tendering procedure; whereas common detailed rules should be laid down for invitations to tender opened for the purposes of this measure;

Whereas Council Regulation (EEC) No 2139/92 provides for the free supply of agricultural products in the same state as that in which they were removed from intervention stock but also of products processed from the same group of products; whereas, therefore, provision should be made for detailed rules for invitations to tender for the free supply of processed products; whereas special detailed rules should be laid down for this, in particular provision should be made that these supplies, the processing, transport and other related costs shall be paid for in the form of raw materials from intervention stocks;

Whereas the detailed rules of application must also provide for arrangements governing the lodging of securities and controls to ensure the proper execution of the supply operation;

Whereas, in order to avoid the risk of monetary distortion when converting into ecus the tenders awarded for supply costs, a rate corresponding more closely to actual economic circumstances than the agricultural conversion rate should be used with due regard to the application of the correcting factor referred to in Article 2 (2) of Regulation (EEC) No 1876/85; whereas Article 3a of Commission Regulation (EEC) No 3152/85 of 11 November 1985 laying down detailed rules for the application of 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 [4], as last amended by Regulation (EEC) No 3237/90 [5] provides for the publication of such a rate;

Whereas products held by intervention agencies and intended for export are subject to the provisions of Commission Regulation (EEC) No 569/88 [6], as last amended by Regulation (EEC) No 2315/92 [7]; whereas, however, the Annex I to the said Regulation setting out the entries to be made should be expanded;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the relevant management Committees,

HAS ADOPTED THIS REGULATION:

Article 1

The detailed rules set out herein shall apply for the purpose of the free supply of agricultural products to the victims of the conflict in the former Yugoslavia as provided for in Regulation (EEC) No 2139/92.

Article 2

1. The invitation to tender shall cover the determination of the supply costs between the intervention stores and the destination laid down.

2. Such costs shall cover the supply of goods loaded in bulk or in sacks on the means of transport, ex-store of the intervention agency, cif former Yugoslavia maritime port of unloading, or, in the case of land transport, up to the point of taking over by the appropriate bodies to be determined.

[1] OJ No L 214, 30. 7. 1992, p. 8.
[2] OJ No L 164, 24. 6. 1985, p. 1.
[3] OJ No L 213, 1. 8. 1991, p. 64.
[4] OJ No L 310, 21. 11. 1985, p. 1.
[5] OJ No L 310, 9. 11. 1990, p. 18.
[6] OJ No L 55, 1. 3. 1988, p. 1.
[7] OJ No L 222, 7. 8. 1992, p. 46.

3. However, in the case of the supply of processed products from the same group of products, the invitation to tender shall cover the quantity of basic products to be taken from intervention stocks as payment in kind.

Article 3

Participation in the invitations to tender shall be open on equal terms to any natural person who is a national of a Member State and established in the Community or any company established in accordance with the laws of a Member State, the registered office, central administration or main establishment of which is in a Member State.

Article 4

Tenderers shall participate in the invitation to tender by forwarding to the intervention agency concerned a tender by letter or any other written means of telecommunication provided for in the notice of invitation to tender.

Article 5

1. In the case of invitations to tender as provided for in Article 2 (1) of this Regulation, tenders shall cover all the supply costs referred to in Article 2 (2) of a lot or group of lots indicated in the notice of invitation to tender for a given destination. They shall be expressed in ecus per tonne. That amount shall be converted using the representative market rate specified in Article 3a of Commission Regulation (EEC) No 3152/85, applicable on the closing date for the submission of tenders.

2. In the case of invitations to tender as provided for in Article 2 (3) of this Regulation, tenders shall cover the quantities of basic products to be taken from intervention stocks as payment in kind for the supply.

3. Tenders shall be valid only where they are accompanied by:

(a) an application for an export licence quoting a reference to the present Regulation, to be entered in section 22;

(b) proof that a tendering security has been lodged in accordance with Regulation (EEC) No 2220/85 [1], as last amended by Regulation (EEC) No 3745/89 [2].

Tenders not submitted in accordance with this Regulation and the invitation to tender shall not be valid.

Tenders may be neither amended nor withdrawn.

Article 6

1. The intervention agency concerned shall notify the Commission of tenders received two hours at the latest after the expiry of the closing date for the submission of tenders.

2. In accordance with the procedure laid down in Article 26 of Council Regulation (EEC) No 2727/75 [3] as the case may be, in the corresponding Articles in the other Regulations on the organization of the agricultural market in question, the Commission shall fix either the maximum supply costs for each lot or the maximum quantity of the basic product to be taken as payment in kind, or shall decide to make no award in respect of tenders received.

Article 7

1. The intervention agencies concerned shall inform all tenderers of the outcome of their tenders at the earliest opportunity. It shall forward a declaration of award by written telecommunication to the successful tenderers.

2. Where several tenderers have lodged tenders quoting the same offer in respect of the same lot, the supply shall be awarded by the intervention agency by drawing lots.

Article 8

1. In the case of invitations to tender as referred to in Article 2 (1) of this Regulation, removal of the goods shall be subject to the lodging of a security of an amount equal to the intervention buying-in price for the said basic products, adjusted as necessary in accordance with the monthly increases applicable on the last day for submission of tenders, increased by 10 %.

2. In the case of invitations to tender as referred to in Article 2 (3) of this Regulation, the successful tenderer must lodge a supply security before the goods are shipped. The amount of the security shall be equal to the purchase price of the total basic product awarded as payment in kind, adjusted as necessary in accordance with the monthly increases applicable on the last day for submission of tenders, increased by 10 %.

Article 9

1. Except in cases of *force majeure*, the successful tenderer shall bear all risks which the goods may incur, in particular loss or deterioration as far as the supply stage laid down.

2. If taking over at the delivery stage is delayed owing to circumstances beyond the control of the successful tenderer, the additional costs may be reimbursed by the Commission on the basis of supporting documents.

[1] OJ No L 205, 3. 8. 1985, p. 5.
[2] OJ No L 364, 14. 12. 1989, p. 54.
[3] OJ No L 281, 1. 11. 1975, p. 1.

3. The successful tenderer shall apply to the consignee indicated in the notice of invitation to tender for a certificate testifying that the quantity delivered has been taken over.

4. In the case of invitations to tender as provided for in Article 2 (1) of this Regulation, the supply costs shall be reimbursed in respect of the quantity appearing in the taking-over certificate, no amount being withheld for normal loss of weight.

5. In the case of invitations to tender as provided for in Article 2 (3) of this Regulation, the basic product for which a contract is awarded shall be put at the disposal of the tenderer on presentation of:

— a quality certificate issued before loading on the means of transport;

— the original taking-over certificate issued by the consignee of the supply, or, if no such document is issued, on presentation of a certificate issued at destination by a body designated by the Member State.

Article 10

1. Representative samples of the quantities of products supplied shall be taken at the time of loading for exportation and at the time of unloading in the place of destination.

The security firm which monitors the unloading may not be the same as that monitoring the loading and must operate independently from the latter. Security firms shall be designated by the intervention agency acting in agreement with the tenderer.

2. Samples shall be taken at the expense of the successful tenderer and made available to the intervention agency concerned.

Article 11

1. For the purpose of invitations to tender as provided for in Article 2 (1) of this Regulation 'primary requirement' within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 means:

(a) maintenance of the tender and removal of the goods as regards the tendering security referred to in point (b) of Article 5 (3);

(b) actual delivery of the lots awarded up to the supply stage without any significant change in quality compared with that recorded at the time of removal from the intervention store as regards the security referred to in Article 8.

2. The tendering security referred to in point (b) of Article 5 (3) shall be released when:

— the tender has been rejected,

— the goods have been removed by the tenderer.

3. The security referred to in Article 8 shall be released when the successful tenderer has presented the taking-over certificate provided for in Article 9 (3) and when evidence has been provided that the quality of the goods supplied at delivery is not significantly different from that applying when they were removed. That evidence shall be provided by an analysis of the samples taken for the purpose.

4. When the successful tenderer has provided the taking-over certificate and on presentation of the document relating to transport, the supply costs as laid down in the tender shall be reimbursed to him.

Article 12

1. For the purpose of invitations to tender as provided for in Article 2 (3) of this Regulation 'primary requirement' within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85:

(a) maintenance of the tender and removal of the goods as payment in kind from intervention stocks as regards the tendering security provided for in point (b) of Article 5 (3);

(b) actual delivery of the lots awarded up to the supply stage without any significant change in quality compared with that provided for in the invitation to tender as regards the security referred to in Article 8.

2. The tendering security referred to in point (b) of Article 5 (3) shall be released when:

— the tender has been rejected,

— the goods for payment in kind have been removed from the intervention stocks by the tenderer.

3. The security referred to in Article 8 shall be released when the successful tenderer has presented the taking-over certificate provided for in Article 9 (3) and when evidence has been provided that the quality of the goods supplied at delivery is not significantly different from that provided for in the invitation to tender and established when samples are taken. That evidence shall be provided by an analysis of the samples taken for the purposes.

4. When the successful tenderer has provided the taking-over certificate and on presentation of the documents relating to transport and the quality of the processed product, the goods awarded for payment in kind may be removed from the intervention stocks.

Article 13

In Part 1 of the Annex to Regulation (EEC) No 569/88, 'Products to be exported in the same state as that in which they were when removed from intervention stock', the following item and footnote are added:

'133. Commission Regulation (EEC) No 2344/92 of 10 August 1992 laying down detailed rules applicable to the free supply of agricultural products to the victims of the conflict in the former Yugoslavia as provided for in Council Regulation (EEC) No 2139/92 ([133]).

([133]) OJ No L 227, 11. 8. 1992, p. 18.'

Article 14

The export licences shall include in section 20 : 'Humanitarian Aid Council Regulation (EEC) No 2139/92. Not eligible for export refunds or monetary compensatory amounts.'

Article 15

1. With a view to the invitation to tender provided for in Article 2 (1) of this Regulation, the intervention agencies concerned shall publish at least eight days before the date laid down for the first partial invitation to tender, a notice of invitation to tender specifying in particular :

— the additional clauses and conditions compatible with this Regulation,

— the lots or groups of lots to which the tender must relate, with the names and addresses of the storers and the places of supply to which the lots must be delivered,

— the main physical and technical characteristics of the various lots recorded at the time of buying-in by the intervention agency or at the time of checks conducted subsequently,

— the time limits laid down for removal and supply.

2. With a view to the invitation to tender provided for in Article 2 (3) of this Regulation, the intervention agencies concerned shall publish at least eight days before the date laid down for the first partial invitation to tender, a notice of invitation to tender specifying in particular :

— the additional clauses and conditions compatible with this Regulation,

— the lots or groups of lots to which the tender must relate and the places of supply to which the lots must be delivered,

— the quantity, quality and packaging of the processed product to be supplied,

— the time limits laid down for supply,

— the places of storage where the basic products to be taken as payment in kind are available.

That notice, together with any amendments, shall be forwarded to the Commission before the expiry of the first closing date for the submission of tenders.

Article 16

The book value of the products disposed of pursuant to this Regulation shall be fixed in ecus per tonne in the regulation issuing the invitation to tender. That value shall be converted into national currency at the agricultural conversion rate applying on 1 August 1992.

Article 17

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, 10 August 1992.

For the Commission

Jean DONDELINGER

Member of the Commission