COMMISSION REGULATION (EEC) No 2388/92

of 13 August 1992

laying down detailed rules applicable to the free supply of food products to the populations of Estonia, Latvia and Lithuania as provided for in Council Regulation (EEC) No 2335/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2335/92 of 7 August 1998 on an emergency measure for the free supply of food products to the populations of Estonia, Latvia and Lithuania (1),

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (2), as last amended by Regulation (EEC) No 1738/92 (3), and in particular Article 7 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 (4), as last amended by Regulation (EEC) No 2322/91 (5), and in particular Article 2 (4) thereof,

Whereas Council Regulation (EEC) No 2335/92 provides for an emergency measure for the supply of food products to the populations of Estonia, Latvia and Lithuania;

Whereas, with a view to implementing that emergency measure, detailed rules of application should be laid down for the cereals sector 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 Regulation (EEC) No 2335/92 provides for the free supply of food products in the form of cereals in the same state as that in which they were removed from intervention stock but also of products processed from cereals and rice; whereas, therefore, provisions should also be made for invitations to tender for the free supply of processed products; whereas special detailes rules should be laid down for this, in particular to the effect that these supplies, and the processing, transport and other related costs shall be paid for in kind in the form of raw materials from intervention stocks;

Whreas 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 operations;

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 1676/85; 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 (6), as last amended by Regulation (EEC) No 3237/90 (7), 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 (8), as last amended by Regulation (EEC) No 2344/92 (9); whereas, however, the Annex 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 opinion of the Managemet Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. The detailed rules set out herein shall apply for the purpose of the free supply of food products to the population of Estonia, Latvia and Lithuania as provided for in Regulation (EEC) No 2335/92.

2. All supplies shall entail an invitation to tender for supply costs as defined in Article 2 (2).

3. However, in the case of the supply of processed products from the cereals and rice sector, invitations to tender shall cover the quantities of basic products to be taken from intervention stocks as payment in kind.

Article 2

1. An invitation to tender shall be organized for the supply costs incurred between the intervention stores and the destination laid down.

(1) OJ No L 227, 11. 8. 1992, p. 2.
(2) OJ No L 281, 1. 11. 1975, p. 1.
(3) OJ No L 180, 1. 7. 1992, p. 1.
(4) OJ No L 164, 24. 6. 1985, p. 1.
(5) OJ No L 213, 1. 8. 1991, p. 64.
(6) OJ No L 310, 21. 11. 1985, p. 1.
(7) OJ No L 310, 9. 11. 1990, p. 18.
(8) OJ No L 55, 1. 3. 1988, p. 1.
(9) OJ No L 227, 11. 8. 1992, p. 18.

2. Such costs shall cover supply for goods loaded in bulk or in sacks on the means transport, ex-store of the intervention agency, cif Estonian, Latvian or Lithuanian maritime port of unloading.

3. An invitation to tender shall also be organized for the supply of processed products from the cerals and rice sector in accordance with Article 1 (3) of Regulation.

Article 3

Participation in the invitation to tender provided for under this Regulation 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 telecommuncation 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 must 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 conversion 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 must cover the quantities of basic products to be taken from intervention stocks as payment in kind.

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

(a) an application for an export licence quoting a reference to Regulation (EEC) No 2335/92, to be entered in section 22;

(b) proof that a tendering security of ECU 10 per tonne has been lodged.

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 intevention 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 Regulation (EEC) No 2727/75, the Commission shall fix the maximum supply costs for each lot or shall decide to make no award in respect of tenders received.

Article 7

1. The intervention agency 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 provided for in Article 2 (1) of this Regulation, removal of the goods shall be subject to the lodging of a security equal to the intervention bying-in price for the said cereals, adjusted in accordance with monthly increases applicable in the month of submission of tenders, that price being increased by 10 %.

2. In the case of invitations to tender as provided for 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 intervention buying-in price of the basic product concerned, adjusted in accordance with monthly increases applicable in the month of submission of tenders, that price being 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 determination as far as the supply stage provided for in Article 2 (2).

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

3. The successful tenderer shall apply to the Estonian, Latvian or Lithuanian authorities for a certificate testifying that the quantity delivered has been taken over.

4. The detailed rules for the granting of the taking-over certificate shall be defined in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75.

5. 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.

6. 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 supplied on presentation of:

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

— the original taking-over certificate issued by the beneficiary 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 supplied shall be taken at the time of loading in the port of export and at the time of unloading in the port of destination.

The security firm monitoring unloading may not be the same as that monitoring loading and must operate independently from it. Security firms shall be designated by the tenderers before tenders are lodged and in agreement with the intervention agency, the latter acting in agreement with the Commission.

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 [1], as last amended by Regulation (EEC) No 3745/89 [2], means:

(a) maintenance of the tender and removal of the goods as regards the security provided for in point (b) of the third subparagraph of Article 5;

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

2. The security provided for in point (b) of the third subparagraph of Article 5 shall be released when:

— the tender has been rejected,

— the goods have been removed by the tenderer.

3. The security provided for 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 to the Estonian, Latvian and Lithuanian authorities 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 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, means:

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

(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 provided for in Article 8.

2. The security provided for in Article 5 (3) (b) 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 provided for 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 to the Estonian, Latvian and Lithuanian authorities 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 purpose.

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 I of the Annex of 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 134 are added:

'134. Commission Regulation (EEC) No 2388/92 of 13 August 1992 laying down detailed rules applicable to the free supply of food products to the populations of Estonia, Latvia and Lithuania as provided for in Council Regulation (EEC) No 2335/92 [134].

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

[134] OJ No L 233, 15. 8. 1992, p. 6.'

Article 14

1. With a view to the invitation to tender provided for in Article 1 (2) of this Regulation, the intervention agencies concerned shall publish at least five 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 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 lots or groups of lots to which the tender must relate, with the names and addresses of the stores and the places of supply to which the lots must be delivered,

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

— 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 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 15

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 1991.

Article 16

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, 13 August 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission