COMMISSION REGULATION (EC) No 851/94

of 15 April 1994

on the supply of common wheat to the People's Republic of Bangladesh as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management (1), as last amended by Regulation (EEC) No 1930/90 (2), and in particular Article 6 (1) (c) thereof,

Whereas Council Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food-aid policy and food-aid management (3) lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, by its Decision of 22 October 1992 on the supply of food aid to Bangladesh, the Commission allocated to this country 70 000 tonnes of cereals to be supplied free at port of landing — undischarged;

Whereas it is necessary to provide for the carrying-out of this measure in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid (4), as amended by Regulation (EEC) No 790/91 (5); whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, notably for logistical reasons, certain supplies are not awarded within the first and second deadlines for submission of tenders; whereas, in order to avoid republication of the notice of invitation to tender, a third deadline for submission of tenders should be opened,

HAS ADOPTED THIS REGULATION:

Article 1

A tendering procedure is hereby initiated for the award of a contract for the supply of common wheat to Bangladesh in accordance with the provisions of Regulation (EEC) No 2200/87 and with the conditions laid down in Annex I hereto.

The offer submitted shall be deemed to have been drawn up taking account of the charges and constraints resulting from specific clauses set out in the exchange of letters between the Commission and the recipient, published in part in Annex II. In particular, the laydays should be assessed on the basis of an average daily discharge rate of 2 400 tonnes in such a way that dispatch to be paid to the recipient by the EC will be for the account of the successful tenderer.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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, 15 April 1994.

For the Commission

René STEICHEN

Member of the Commission

(1) OJ No L 370, 30. 12. 1986, p. 1.
(2) OJ No L 174, 7. 7. 1990, p. 6.
(3) OJ No L 136, 26. 5. 1987, p. 1.
(4) OJ No L 204, 25. 7. 1987, p. 1.
(5) OJ No L 81, 28. 3. 1991, p. 108.

ANNEX I

LOTS A and B

1. **Operation Nos** [1]: 1686/92 (lot A), 1687/92 (lot B)
2. **Programme**: 1992
3. **Recipient** [2]: Bangladesh
4. **Representative of the recipient**: The Secretary, Ministry of Food, Bangladesh Secretariat, Dhaka, Bangladesh
5. **Place or country of destination** [5]: Bangladesh
6. **Product to be mobilized**: common wheat
7. **Characteristics and quality of the goods** [3]: see OJ No C 114, 29. 4. 1991, p. 1 (under II.A (1) (a))
8. **Total quantity**: 70 000 tonnes
9. **Number of lots**: two (lot A: 35 000 tonnes; lot B: 35 000 tonnes)
10. **Packaging and marking**: in bulk
11. **Method of mobilization**: the Community market
12. **Stage of supply**: free at port of landing — undischarged
13. **Port of shipment** : —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: Chittagong
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 16 — 29. 5. 1994
18. **Deadline for the supply**: 30. 6. 1994
19. **Procedure for determining the costs of supply**: tendering
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon on 3. 5. 1994 (Brussels time)
21. A. **In the case of a second invitation to tender**:
    (a) deadline for the submission of tenders: 12 noon on 17. 5. 1994 (Brussels time)
    (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 30. 5 — 12. 6. 1994
    (c) deadline for the supply: 14. 7. 1994

    B. **In the case of a third invitation to tender**:
    (a) deadline for the submission of tenders: 12 noon on 31. 5. 1994 (Brussels time)
    (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 13 — 26. 6. 1994
    (c) deadline for the supply: 28. 7. 1994
22. **Amount of the tendering security**: ECU 5 per tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** [1]:

    Bureau de l'aide alimentaire, a l'attention de Monsieur Vestergaard, bâtiment Loi 120, bureau 7/46, 200 rue de la Loi, B-1049 Bruxelles (telex AGREC 22037 B / AGREC 25670 B ; telefax (32 2) 296 20 05 / 295 01 32 / 296 10 97 / 295 01 30 / 296 33 04)
25. **Refund payable on request by the successful tenderer** [4]: refund applicable on 30. 4. 1994, fixed by Regulation (EC) No 680/94 (OJ No L 83, 26. 3. 1994, p. 43)

Notes :

(1) The operation should be mentioned in all correspondence.

(2) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.

(3) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

(4) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.

The amount of the refund, shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106) shall not apply to this amount.

(5) Commission delegation to be contacted by the successful tenderer : see OJ No C 114, 29. 4. 1991, p. 33.

ANNEX II

ALLOCATION OF FOOD AID TO BANGLADESH

1. **Discharging conditions**

The recipient shall unload the 70 000 tonnes of wheat as per the following conditions.

2. **Type of vessels to be fixed**

It is envisaged that two vessels (self-trimming bulk carriers) will be fixed, each carrying 35 000 tonnes of wheat. The vessels must have at least four hatches. Vessels to be geared and each crane/derrick to serve one or two hatches. The vessels must be capable of entering the Chittagong outer anchorage and, after necessary lighterage, be able to shift and berth, at recipient's option, at Chittagong jetties.

Charterers/shipowners must ensure that all certificated officers carry with them on board the original valid certificate of competency and that all vessels are manned strictly according to the *STCW* Convention 1978, failing which any delay to the vessel will be on owner's account.

3. **Discharging facilities**

Vessels will furnish at the discharge port, free of expenses to the recipient, winches and/or cranes and the power to drive them, gins and falls in good working condition and will also supply sufficient lights for night work, as on board, on deck and in the holds, if required. Vessels will provide winchmen at load and discharge ports at their own expense.

4. **Vessels' ETA information**

Master to wireless/cable nominees of the recipient, namely Movements Chittagong — telex 642237 CMS C BJ — (simultaneously informing Bengalship Chittagong — telex 66277 BSC BJ — and Movestore Dhaka — telex 642230 CMS BJ) for orders regarding discharge 10 days prior to their arrival at the discharge port, i.e. Chittagong, and state ETA and draft. Orders for discharging will be transmitted to the vessel within five days of the receipt of master's request.

Master to give following notice to the recipient's nominees, i.e. Movements Chittagong, Bengalship Chittagong and Movestore Dhaka:

(a) upon sailing from load port vessels must state:

(i) quantity loaded;

(ii) arrival draft;

(iii) TPI (tonnes per inch).

(b) 10 days ETA Chittagong port,
five days ETA Chittagong port,
72 hours, 48 hours and 24 hours ETA Chittagong port.

5. **Places of discharging**

It is envisaged that, at recipient's option, up to a maximum of 40 % of the Bill of Lading quantity may be discharged by lighter vessel at Chittagong outer anchorage. All lighterage at Chittagong outer anchorage will be carried out by the recipients at their own cost and time (including freight or lighter vessels from Chittagong outer anchorage to Mongla).

6. **Discharging rate and discharging port time counting**

The cargo is to be discharged by the recipient free of risk and expense to the vessel at the rate of 2 400 tonnes at Chittagong per weather working day of 24 consecutive hours. Time from 12 noon on Thursday or 5 p.m. on a day preceding a holiday until 9 a.m. on Saturday or next working day not to count as laytime even if used. The rate of discharge is based on the abovementioned minimum number or more workable hatches. If, however, the number of workable hatches is less than the specified minimum number of hatches, discharging rate will be reduced proportionately.

Notice of readiness is to be tendered and accepted after vessel arrives at the Chittagong outer anchorage and laytime to commence 24 hours after NOR tendered during office hours, whether the vessel is in berth or not. At discharge port, cost of shifting from anchorage to anchorage, anchorage to berth and berth to berth on owner's/charterer's account and time used for such shifting not to count as laytime.

Although stevedores appointed by recipients, all discharging operations to be carried out under masters' direction/approval. All necessary trimming will be at owner's time and expense.

At Chittagong anchorage, if a lighter vessel is required to cast off from the mother ship, due to heavy swell and/or bad wheather, all time lost will not count as laytime. The time will stop counting from the time the lighter vessel casts off and will start counting again from the time the lighter ship is re-tied alongside the mother ship.

7. **Lighterage at discharge port**

All necessary lighterage at Chittagong outer anchorage will be carried out by the recipients at their own cost and time. For vessels unable to enter the Chittagong outer anchorage, due to excessive draft, lighterage may be carried out at Kutubdia anchorage by the charterer's/owners at their expense and such lighterage to be treated as transhipment and lighters engaged to be discharged on identical terms as the mother vessel, and time used for lighterage at Kutubdia not to count as laytime. Collision damage, if any, during lighterage to be settled directly between the owners of the mother and the lighter vessels (notwithstanding whether engaged by both owners/charterer's for Kutubdia lighterage, or by the recipients for outer anchorage lighterage). In case of unsafe anchorage at Chittagong anchorage, any lighterage at Kutubdia is not for charterer's/owner's account.

Master of the vessel(s) at all times to extend full cooperation to the recipients and/or their nominees/ agents/stevedores/lighterage contractors in order to expedite discharge. Lighter vessels to supply suitable fenders to avoid damage.

8. **Demurrage/Despatch**

Should the vessel(s) not be discharged at the rate herein stipulated demurrage shall be paid by the recipient at the rate stipulated in the charter party subject to a maximum of US$ 8 000 per day or part thereof.

For working time saved at the port of discharge, despatch money shall be paid to the recipient at the rate of 50 % of the rate of demurrage stipulated in the charter party, subject to a maximum of US$ 4 000 per day saved.

Demurrage of despatch at the discharge port, if any, at the amounts specified above, shall be paid, as the case may be, by the recipient to the Commission or by the Commission to the recipient. Afterwards settlement of despatch/demurrage, if any, between supplier and the Commission will take place.

Laytime to be non-reversible.

9. **Miscellaneous**

Overtime expenses, if any, on account of port and customs personnel, will be for the account of the party (owner/their agents or receiver/their agents) ordering the same, but if ordered by the Port Authorities, to be on the receiver's account on 50 : 50 basis. Overtime expenses for vessel's crew and officers always to be on the owner's account.

At the port of discharge opening/closing of hatches on all occasions to be for owner's account and time not to count as laytime. First opening and last closing of hatches at port of discharge to be done by vessel's crew at all times.

Whatever the respective destination of the goods found damaged, they must be disposed of/destroyed as per port rules prior to sailing out of the vessels.

Dock worker management board's levy is not for charterer's account.

In case of lack of coordination or of facilities between the supplier and the recipient through no fault of either part, the Commission will take special and adequate measures for financing the operations.

In the case where some extra costs requested by the supplier are to be pre-financed by the recipient, they may be directly paid by the Commission on the recipient's behalf to the said supplier.