COMMISSION REGULATION (EC) No 2009/95

of 18 August 1995

laying down detailed rules for the free supply of agricultural products held in intervention stocks to Georgia, Armenia, Azerbaijan, Kyrgyzstan and Tajikistan pursuant to Council Regulation (EC) No 1975/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1975/95 of 4 August 1995 on actions for the free supply of agricultural products to the people of Georgia, Armenia, Azerbaijan, Kyrgyzstan and Tajikistan [1], and in particular Article 4 thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [2], as last amended by Regulation (EC) No 150/95 [3] and in particular Article 6 (2) thereof,

Whereas Regulation (EC) No 1975/95 provides for measures relating to the free supply of agricultural products to Armenia, Azerbaijan, Georgia, Kyrgyzstan and Tajikistan ; whereas, with a view to implementing those measures, the conditions applicable, and in particular the common detailed rules of participation in tenders for the execution of the supplies and the obligations to be met by successful tenderers should be laid down ;

Whereas free supplies are foreseen in the form of agricultural products from intervention stocks without further processing and of products not available from intervention stocks but belonging to the same group of products ; whereas, therefore, specific detailed rules should be laid down for supplies of processed products ; whereas provisions should be made in particular for such supplies to be paid for in raw materials from intervention stocks ;

Whereas, in the light of experience and the manifest difficulties previously encountered with the execution of operations of the same type, it is appropriate to provide that the award of the supply should not be determined systematically and uniquely on the basis of the lowest monetary offer, but may also take into consideration other fundamental elements proposed for the execution of the supply, presenting guarantees in particular for the proper conservation and hygienic condition of the products and for the conditions of their transport to the destination laid down ; whereas, for this purpose the offers must include all information necessary to evaluate the execution of the supply on the proposed terms ;

Whereas provisions must also be made for a system of controls and securities to ensure that the supply operation is properly conducted ; whereas, in order to take account of particular difficulties, it is appropriate to provide for the possibility to allow a certain tolerance in the case of losses ;

Whereas, products held by intervention agencies and intended for export are subject to the provisions of Commission Regulation (EEC) No 3002/92 [4], as last amended by Regulation (EEC) No 1938/93 [5] ; whereas, furthermore, proof that the products concerned have been taken over by the authorities of Georgia, Armenia, Azerbaijan, Kyrgyzstan and Tajikistan is to be provided by way of a special certificate ;

Whereas, in the case of tendering procedures which relate to the determination of the costs of packaging and/or transport of products made available from public intervention stocks, it is appropriate to use the closing date for the submission of tenders as the operative event for the agricultural conversion rate ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Joint Management Committees,

HAS ADOPTED THIS REGULATION :

Article 1

This Regulation shall apply to the free supply of agricultural products from intervention stocks or of foodstuffs belonging to the same group of products to Georgia, Armenia, Azerbaijan, kyrgyzstan and Tajikistan pursuant to Regulation (EC) No 1975/95, without prejudice to any additional provisions adopted for particular supplies.

Article 2

1. The costs of supply from the intervention stores to the appointed destination shall be determined by invitation to tender.

[1] OJ No L 191, 12. 8. 1995, p. 2.
[2] OJ No L 387, 31. 12. 1992, p. 1.
[3] OJ No L 22, 31. 1. 1995, p. 1.
[4] OJ No L 301, 17. 10. 1992, p. 17.
[5] OJ No L 176, 20. 7. 1993, p. 12.

(a) Such costs may relate to the supply of goods, from the loading bay of the intervention agency store, on the means of transport, to a point of take-over and delivery stage to be determined in the notice of invitation to tender.

(b) Such costs may relate to the supply of goods, from a Community port or railway station, on the means of transport, to a point of take-over and delivery stage to be determined in the notice of invitation to tender.

2. The invitation to tender may relate to the quantity of products to be removed physically from intervention stocks as payment for the supply of processed products from the same group of products to a delivery stage to be determined in the notice of invitation to tender.

Article 3

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

Article 4

Tenders shall be submitted in writing to the address fixed, and before the date and time specified, in the notice of invitation to tender.

Tenders must be placed inside two sealed envelopes. The inner envelope must bear, in addition to the address specified in the notice of invitation to tender, the number of the Regulation announcing the invitation to tender as well as the following: 'Submission from (business name) — To be opened only by the committee responsible for opening tenders'.

Article 5

1. Tenders submitted in response to invitations to tender for supplies as referred to in Article 2 (1) (a) or (b) shall cover all costs relating to the delivery. They shall be expressed in ecus per tonne (gross).

2. Tenders in response to invitations to tender for supplies as referred to in Article 2 (2) shall cover the quantities of products to be removed from intervention stocks as payment for the supply and, where applicable, for the costs of processing, packaging and making of a lot or group of lots specified in the notice of invitation to tender.

Article 6

1. Tenders shall be valid only where they:

(a) quote the precise reference to the Regulation announcing the individual invitation to tender;

(b) give the name and address and in particular the telex and/or fax number of the tenderer, who must be established in the Community;

(c) cover an entire lot (net weight);

(d) indicate, where Article 2 (1) (a) or (b) applies:

(1) the total amount or amounts, expressed in ecus, for the complete supply, or for a lot (net weight), and the amount in ecus per tonne (gross) tendered for each destination allowing for all of the possible departure points foreseen in the invitation to tender,

(2) indicate the names and addresses of all forwarding agents and subcontractors to be used in the operation, on Community territory as well as in third countries,

(3) specify the means of transport to be used, indicating all technical details (capacity, age, type of equipment, etc.),

(4) specify the route, including border crossing points and indicating any points at which the goods are to be transferred from one means of transport to another; in this case the tenderer undertakes to communicate, in writing, at least 10 days beforehand, the dates on which these transhipments will take place as well as the probable dates of the principal operations and in particular the loading and arrival at destination etc.,

(5) include a detailed calculation showing the composition of the price offered,

(6) where similar operations have already been carried out to the destinations in question, indicate the tonnage and the products concerned;

(e) indicate, where Article 2 (2) applies:

(1) the proposed quantity of product, expressed in tonnes (net weight), to be exchanged for one tonne (net) of finished product under the conditions and to the delivery stage specified in the invitation to tender,

(2) state the exact address(es) of the packaging plant(s) and store(s) at which the goods are to be kept prior to dispatch,

(3) the name(s) and address(es) of all subcontractors, handlers and forwarding agents used in the operation,

(4) the amount in ECU per tonne per day required to cover all costs (waiting, insurance, security, guarantees, etc.) in the event that the transporter is unable to take over the goods within the permitted time limits,

(5) a detailed description of the manner in which the packaging will be carried out as well as the principal characteristics of the materials employed;

(f) are accompanied by proof that the tenderer has lodged, for each lot, a tendering security in accordance with Article 8 (1) of Title III of Commission Regulation (EEC) No 2220/85 [1], constituted in national currency in favour of the Community, for the amount per tonne indicated in the invitation to tender. Such proof shall be furnished by means of the original document issued by the financial institution providing the security drawn up in accordance with the model set out in Annex — in which any amendment or additional condition may lead to the refusal of the offer;

(g) are accompanied by the original of the written undertaking by the financial institution which will provide the supply security referred to in Article 8;

(h) are valid for at least 15 days following the deadline for the submission of tenders.

2. Tenders submitted which are not in accordance with the conditions of the present Article, or which only conform partially to the conditions of the tender Regulation or which contain conditions other than those laid down in this Regulation may be rejected.

3. Offers submitted by telefax or telex are inadmissable.

4. Once submitted, tenders may be neither changed nor withdrawn after expiry of the time limit laid down for submission of tenders.

5. The amounts in ECU referred to in paragraph 1, in Article 8 and in Article 13 shall be converted into national currency using the agricultural conversion rate applicable on the final date for submission of tenders.

Article 7

1. On the basis of the tenders submitted, the Commission may decide, with regard to each lot:

— not to make any award, or

— to award the supply contract on the basis of the price or quantities offered and other elements of the tender which provide the best assurances that the delivery will take place in good technical and hygienic conditions within the time limits laid down.

2. As soon as possible after the adoption of the decision taken in accordance with paragraph 1, the Commission shall inform the tenderers, by written telecommunication if necessary, of the outcome of their participation in the tendering procedure, and shall notify the successful tenderers of the supply which has been awarded to them.

3. The Commission shall inform the intervention agencies concerned of the details relating to the successful tenderer.

[1] OJ No L 205, 3. 8. 1985, p. 5.

4. For the execution of the operation, except in cases of urgency, only the Commission has the power to give instructions on the execution thereof following the take over by the operators.

Article 8

1. For a supply such as referred to in Article 2 (2), within five working days of the notification of the award pursuant to Article 7, the successful tenderer shall lodge in favour of the Community, a supply security, equivalent to the net quantities to be taken over for each lot multiplied by the unitary amount fixed in the invitation to tender, constituted in accordance with Article 8 (1) of Title III of Regulation (EEC) No 2220/85.

2. For a supply such as referred to in Article 2 (1) (a) or (b), at least three working days before the removal, the successful tenderer shall lodge in favour of the Community, a supply security, constituted in accordance with Article 8 (1) of Title III of Regulation (EEC) No 2220/85, for the quantities to be removed for each ship or for each destination, multiplied by the unitary amount fixed in the invitation to tender.

3. Proof of the constitution of the securities referred to in paragraphs 1 and 2 shall be provided by means of the original document issued by the financial institution providing the security. These securities shall be constituted in national currency in accordance with the model set out in Annex — in which any unilateral amendment or additional condition risks leading to the refusal of the offer.

4. The amount of the security shall be laid down in each invitation to tender.

Article 9

Except in cases of *force majeure*, successful tenderers shall bear all risks to which the goods may be subject, and in particular their loss or deterioration, up to the appointed supply stage.

The Commission may, in order to take account of particular difficulties, allow a tolerance in so far as unidentifiable losses are concerned.

Article 10

1. Applications for payment of the supply shall be accompanied by:

(a) in the case where Article 2 (1) (b) applies:

— the transport documents,

— the original of the take-over certificate for the quantities effectively delivered, issued by the recipient and endorsed by the control body at destination,

— the certificate of conformity as provided for in Article 11 (2);

(b) in the case where Article 2 (1) (a) applies, in addition to the documents specified under (a) the request must be accompanied by:

— the export licences referred to in Article 14;

— the single administrative documents referred to in Article 14.

2. In the case of invitations to tender such as referred to in Article 2 (1) (a) or (b), the supply costs shall be paid in respect of the quantity stated in the take-over certificate and certified by the agency responsible for verification at destination.

3. In the case of invitations to tender such as referred to Article 2 (2), the basic product awarded shall be made available to the successful tenderer on presentation of proof of lodging of the security referred to in Article 8.

4. If take-over at the delivery stage is delayed owing to circumstances beyond the control of the successful tenderer, the additional costs incurred by the successful tenderer may possibly be reimbursed by the Commission following an examination of the supporting documents.

5. Payments in respect of unloading and transport as well as demurrage and dispatch to be effected in favour of Georgian administrations must be executed in accordance with the terms and conditions which will be fixed in a Memorandum to be established between the Georgian authorities and the Commission. This Memorandum will be communicated to successful tenderers at the time of the award of the supply.

Article 11

1. Successful tenderers shall undergo any controls conducted by or on behalf of the Commission at the time of production, packaging, storage where applicable, and loading. Such controls shall relate to the quantity, quality, identity, health status, and, where applicable, packaging and marking of the supply. The results of these controls are opposable by all interested parties to the extent that the latter have had the possibility to participate in the controls.

On completion of the controls, a certificate of conformity shall be issued. If the quality delivered by the intervention agency does not conform to the minimum norms prescribed for intervention, Article 2 (3) (c) of Commission Regulation (EEC) No 3597/90 [1] shall apply.

2. Verification of conformity of the supply as regards quantity, quality and, where applicable, health status, packaging and marking shall be carried out in the country of destination by a control agency or company designated by the Commission. A certificate of conformity, or where applicable non-conformity, specifying the details and results of the controls carried out, shall be issued to the successful tenderer on completion of such verification and shall also be forwarded directly to the Commission.

3. The control agencies or companies entrusted with verification shall take and analyse representative samples on behalf of the Commission at the time of loading in the Community and at destination. Additional samples, to be used in the case of disputes, shall be retained on behalf of the Commission.

4. The agency responsible for the controls referred to in paragraph 1 shall seal the means of transport at the time of loading. In the case of transhipment, a control agency or company, designated by the Commission, shall carry out a verification of the integrity of the seals on the means of transport arriving at the points of transhipment, and shall seal the means of transport used after the transhipment.

5. The costs of the controls shall be borne by the Community.

Article 12

1. For the security referred to in Article 6 (1) (f), the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 are the following:

(a) a requirement not to withdraw the tender;

(b) the lodging of the supply security referred to in paragraph 2 in accordance with the terms laid down in Article 8;

(c) additionally, for a tender such as referred to in Article 2 (2), the physical removal from the intervention stores of the quantities awarded. After the expiry of the time limit allowed for the removal, for those quantities which have not yet been removed, the security will be forfeited in accordance with Article 23 (2) of Regulation (EEC) No 2220/85, and the right to removal will be lost.

2. For the security referred to in Article 8, the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be the following:

(a) the supply of the full quantity of the product of a quality substantially unchanged as compared with:

— that at the time of removal from the intervention store (supply as provided for in Article 2 (1) (a)),

— that recorded in the certificate of conformity (supply as provided for in Article 2 (1) (b)),

[1] OJ No L 350, 14. 12. 1990, p. 43.

— the quality specified in the notice of invitation to tender (supply as provided for in Article 2 (2)).

(b) where applicable, under the conditions laid down in Article 10 (5), the payment of unloading, transport and other connected costs to the Georgian authorities.

3. The security referred to in paragraph 1 shall be released :

— if the offer is not accepted,

— for a tender as provided for in Article 2 (1) (a) or (b), upon presentation of the security referred to in Article 8,

— for a tender as provided for in Article 2 (2), upon presentation of the certificate of removal issued by the intervention agency for the totality of the quantities awarded.

4. The security referred to in paragraph 2 shall be released when the successful tenderer provides proof of compliance with his obligations :

(a) for a tender as provided for in Article 2 (1) (a) or (b), by presenting the documents referred to in Article 10 (1) (a) or (b) as appropriate.

It shall be forfeited :

— pro rata for the quantities in respect of which the proof has not been supplied,

— where applicable, up to the amounts which have not been paid to the Georgian authorities.

(b) for a tender as provided for in Article 2 (2), upon presentation of :

— a certificate of conformity supplied at the time of loading on the means of transport under the responsibility of the agency or company authorised for this purpose,

— the export licence referred to in Article 14,

— the single administrative documents referred to in Article 14,

— the certificate of analysis supplied by the agency or company authorised for this purpose in accordance with the provisions of Article 11 (1).

It shall be forfeited :

— for quantities which do not conform,

— for quantities lost as a result of packaging which is inappropriate for the type of transport foreseen,

— up to an amount of one ECU per tonne per day for the quantities not loaded, when the loading rate stipulated by the invitation to tender has not been respected.

5. When delays occur in the take over by the transporter or in the delivery by the transporter or producer, the security referred to in Article 8 is forfeited, in respect of those quantities not taken over within the time limits or delivered outside of the time limits, up to the amount of ECU 0,75 per tonne per day. With effect from the eleventh day the amount forfeited shall be increased to ECU 1,00 per tonne per day. These provisions shall apply where the delay in the take over or the delivery is attributable to the successful tenderer.

6. For a tender as provided for in Article 2 (1) (a) or (b), the security referred to in Article 8 may be released in accordance with the conditions laid down in the notice of invitation to tender or in instalments of 20 %, each time proof is presented that 20 % of a lot has been delivered in accordance with the conditions laid down in the tender regulation, in the same condition as that in which they were taken over at the intervention store or at the take over stage fixed in the invitation to tender.

Article 13

Where Article 2 (1) (a) or (b) applies, the successful tenderer may request a payment on account equal to 90 % of the amount established by multiplying the net quantities effectively taken over for a product, a destination and a delivery date by the unitary amounts specified in his offer. This sum shall be paid to the successful tenderer, upon presentation of, the removal certificate issued by the intervention agency of the Member State in which the place of loading is situated or by the control agency responsible for the controls referred to in Article 11 (1), and a security equivalent to the sum thus calculated in favour of the Commission drawn up in accordance with the model set out in Annex.

Article 14

1. Section 20 of the export licences shall contain the remark :

'Council Regulation (EC) No 1975/95. Not eligible for export refunds.'

2. The single administrative document and the control document issued pursuant to Article 3 of Regulation (EEC) No 3002/92 shall include the following remarks :

— 'Commission Regulation (EC) No 2009/95 of 18 August 1995 laying down detailed rules for the free supply of agricultural products held in intervention stocks to Georgia, Armenia, Azerbaijan, Kyrgzystan and Tajikistan pursuant to Council Regulation (EC) No 1975/95'.

— 'not eligible for export refund.'

Article 15

1. Notices of invitation to tender shall specify in particular:

— the additional terms and conditions,

— the lots and names and addresses of stores,

— the minimum quantity of product to be removed per store,

— the main physical and technical characteristics of the various lots,

— the places and precise delivery stages laid down for the supply at destination,

— the time limits laid down for the supply.

2. In the case of invitations to tender as provided for in Article 2 (2), the notice shall specify in particular:

— the lot or group of lots to be taken over in payment for the supply,

— the characteristics of the processed product to be supplied, namely type, quantity, quality, packaging, etc.

Article 16

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, 18 August 1995.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

Tendering Security No ..... (*)
Supply Security No ..... (*)
Payment Security No ..... (*)

Commission Regulation (EC) No 2009/95.

In accordance with Regulation (EC) No 1975/95.

Tenderer :

Product/quantity :

Destination :

Amount of the security :

We the undersigned ..... (name and address of the bank), represented by Mr ..... (position), hereby guarantee irrevocably in favour of the European Community (EC) the amount of :

Currency and amount in figures
(Amount and currency in letters)

in order to guarantee that the company ..... (name and address) will carry out its obligations which result from the tender of ..... /..... /..... relating to ..... (No and title of the tender Regulation).

The present guarantee is :

1. of unlimited validity ;
2. payable to the EC upon its first request, on the basis of the simple declaration that the company ..... has not respected its obligations ;
3. released only by the EC by :
   — the return of the original of the present guarantee
   — the explicit release (possibly in part) by the EC.

Done at ..... Date ..... / ..... / .....

To be attached : A list of the persons authorized to sign the guarantees with specimen signatures.

(*) As applicable.