COMMISSION REGULATION (EC) No 361/95

of 22 February 1995

opening an individual sale by invitation to tender for the export of vinous alcohol held by the Spanish intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine [1], as last amended by the Act of Accession of Austria, Finland and Sweden,

Having regard to Council Regulation (EEC) No 3877/88 of 12 December 1988 laying down general rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies [2],

Whereas Commission Regulation (EEC) No 377/93 [3], as last amended by Regulation (EC) No 3152/94 [4], lays down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies;

Whereas, in view of the cost of storing alcohol, an individual sale by invitation to tender should be opened for vinous alcohol obtained from the distillation operation referred to in Article 39 of Regulation (EEC) No 822/87 and held by the Spanish intervention agency;

Whereas this individual invitation to tender should be organized for the export of alcohol to Costa Rica where there is some guarantee that the market in alcohol and spirit drinks will not be disturbed, with a view to its end use as motor fuel;

Whereas, nevertheless, the amount of and the detailed rules for the guarantees and securities laid down for those individual invitations to tender should be adapted, given the large amount of alcohol being put up for sale; whereas a removal guarantee must ensure the export of the alcohol; whereas the amount of the performance guarantee must be increased, given the possibility of a large volume of alcohol being stored in the Caribbean and Central American countries concerned;

Whereas the tender prices expressed in ecus/hl, submitted under invitations to tender for vinous alcohol, must take account of any amendments made under the agrimonetary system established by 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 [5], as last amended by Regulation (EC) No 150/95 [6];

Whereas Commission Regulation (EEC) No 2192/93 [7] concerning the operative events for the agricultural conversion rates used in the wine sector and amending Regulation (EEC) No 377/93 specifies the agricultural conversion rates to be used to convert the payments and securities provided for in connection with individual invitations to tender into national currency;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

One individual sale by invitation to tender No 172/94 EC shall be held of a total quantity of 200 000 hectolitres of alcohol obtained from the distillation operation referred to in Article 39 of Regulation (EEC) No 822/87 and held by the Spanish intervention agency.

Article 2

The alcohol offered for sale:

— shall be for export outside the European Community,

— must be imported into and dehydrated in Costa Rica,

— must be used only as motor fuel.

Article 3

The location and reference numbers of the vats concerned, the quantity of alcohol contained in each vat, the alcoholic strength and the characteristics of the alcohol as well as certain specific conditions are given in the Annex hereto.

[1] OJ No L 84, 27. 3. 1987, p. 1.
[2] OJ No L 346, 15. 12. 1988, p. 7.
[3] OJ No L 43, 20. 2. 1993, p. 6.
[4] OJ No L 332, 22. 12. 1994, p. 34.
[5] OJ No L 387, 31. 12. 1992, p. 1.
[6] OJ No L 22, 31. 1. 1995, p. 1.
[7] OJ No L 196, 5. 8. 1993, p. 19.

Article 4

The sales shall take place in accordance with Articles 13, 14, 15, 16, 18 (5) and (6) and 30 to 38 of Regulation (EEC) No 377/93. However, notwithstanding Article 15 of Regulation (EEC) No 377/93, the final date for the submission of tenders for the invitations to tender referred to in this Regulation, shall fall between the eighth and the 25th day following the date of publication of the individual invitations to tender.

Article 5

1. The tendering security referred to in Article 15 of Regulation (EEC) No 377/93 shall be ECU 3,622 per hectolitre of alcohol at 100 % volume and shall be lodged for the total quantity of alcohol offered for sale under the invitation to tender referred to in Article 1 hereto.

Maintenance of the tender after the time limit for submitting tenders and the lodging of a removal guarantee shall constitute the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 [1] as regards the tendering security.

The tendering security shall be released immediately if the tender is not accepted or if the successful tenderer meets the conditions set out in the preceding subparagraph.

2. Within 20 days of receipt of the Commission's decision awarding the alcohol, the successful tenderer shall provide proof that a removal guarantee has been lodged with the intervention agency holding alcohol to ensure the export of the alcohol covered by the tender in question.

The removal guarantee shall be ECU 12,08 per hectolitre of alcohol at 100 % volume and shall be lodged for the total quantity offered for sale in the invitation to tender covered by this Regulation.

The removal guarantee shall be released by the intervention agency holding alcohol only for each quantity of alcohol for which proof is supplied that it was exported within the time limit laid down in Article 6 (4).

The export of alcohol awarded pursuant to this Regulation shall constitute a primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 as regards the removal guarantee.

3. The performance guarantee shall be ECU 30,19 per hectolitre of alcohol at 100 % volume.

Notwithstanding Article 17 of Regulation (EEC) No 377/93 that guarantee shall be lodged for the invitation to tender referred to in Article 1 of this Regulation for each quantity of alcohol which is subject to a removal order.

The successful tenderer shall provide proof that a performance guarantee has been lodged with the intervention agency by the date of issue of a removal order for the quantity of alcohol in question at the latest.

The guarantee shall be released in accordance with Article 34 (3) (b) of Regulation (EEC) No 377/93.

Article 6

1. The intervention agency holding alcohol and the successful tenderer shall agree on a (detailed) timetable for the physical removal of the alcohol. The timetable shall be notified to the Commission in the month following receipt of the Commission's decision awarding the alcohol to permit coordination of removal operations in accordance with this Regulation.

2. The successful tenderer shall pay for the alcohol he is awarded and accept responsibility for the risk of theft, loss and destruction and the cost of storage of the alcohol covered by the invitation to tender referred to in this Regulation by 26 June 1995 at the latest.

3. After receiving payment for a quantity of alcohol calculated to the nearest hectolitre of alcohol at 100 % volume, the intervention agency holding the alcohol shall issue a removal order for the relevant quantity of alcohol. Ownership of the alcohol for which a removal order is issued shall be transferred on issue of the order and the relevant quantities shall be considered as being withdrawn on that date.

Each removal order shall cover a quantity of at least 5 000 hectolitres except in the case of the last removal in each Member State.

4. The alcohol awarded under the invitation to tender provided for in this Regulation must be exported within a time limit of four months from the date of issue of the last removal order relating thereto.

Article 7

To be valid, tenders must indicate the place where end use of the alcohol awarded is to take place and must include an undertaking by the tenderer to the effect that the alcohol will be sent to that destination and used for that purpose. The tender shall also include proof that the tenderer has binding commitments with an operator in the motor fuel sector in the third country listed in Article 2 who was undertaken to dehydrate the alcohol awarded in that country and to export it for use solely as motor fuel.

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

Article 8

Notwithstanding the first subparagraph of Article 36 (2) of Regulation (EEC) No 377/93, the alcohol contained in the vats indicated in the communication from the Member States referred to in Article 36 of Regulation (EEC) No 377/93 and covered by the invitation to tender referred to in Article 1 of this Regulation may be substituted by the intervention agency holding the alcohol concerned in agreement with the Commission or mixed with other alcohol delivered to the intervention agency until a removal order is issued for that alcohol, in particular for logistical reasons.

Article 9

1. Successful tenderers for individual invitations to tender No 172/94 EC may, by common agreement, exchange a quantity of alcohol stored in the designated vats in a Member State for the purposes provided for in those invitations to tender.

2. Such exchange shall not affect the obligations of the tenderers concerned, particularly as regards the price to be paid and the time limit for removal and use of the alcohol awarded to them indicated in the invitation to tender concerned.

3. Successful tenderers who wish to make such an exchange must give prior notice to the intervention agencies concerned.

4. If such exchange affects the planned timetable for physical removal of the alcohol, that timetable shall immediately be amended and that amendment notified to the Commission.

5. Such exchange shall not change the total quantities of alcohol placed on sale for invitations to tender No 172/94 EC.

Article 10

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, 22 February 1995.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

INDIVIDUAL INVITATION TO TENDER No 172/94 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
SPAIN	Villarrobledo	25	11 897	39	Raw alcohol
	Villarrobledo	22	39 014	39	Raw alcohol
	Villarrobledo	17	42 241	39	Raw alcohol
	Villarrobledo	20	41 813	39	Raw alcohol
	Tarancón	C-6	11 563	39	Raw alcohol
	Tarancón	D-6	26 317	39	Raw alcohol
	Tarancón	C-7	27 155	39	Raw alcohol
	Total		200 000		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2 per litre or the equivalent thereof in Spanish pesetas, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in the non-member country listed in Article 2 of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 200 000 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

   Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

   — be sent by registered mail to the Commission of the European Communities, 200 rue de la Loi, B-1049 Brussels, or

   — be submitted at the reception of the Loi 120 building of the Commission of the European Communities, 130 rue de la Loi, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 172/94 EC (alcohol), DG VI-E-2 — to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 6 March 1995.

5. Tenders must state the name and address of the tenderer and must:

   (a) include a reference to individual sale by tender No 172/94 EC;

   (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;

   (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, specify the final destination of the alcohol awarded and include proof of a commitment with an operator for dehydration and use solely as motor fuel.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

   — SENPA, Beneficencia 8, E-28004 Madrid (tel.: 347 65 00; telex: 23427 SENPA; fax: 521 98 32).

   This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

IV. Award of contract

The successful tenderer must provide proof that a performance guarantee of ECU 30,19 per hectolitre of alcohol at 100 % vol has been lodged with each intervention agency concerned by the date of issue of a removal order for the quantity of alcohol in question at the latest.