COMMISSION REGULATION (EC) No 1125/1999

of 28 May 1999

amending Regulation (EC) No 111/1999 laying down general rules for the application of Council Regulation (EC) No 2802/98 on a programme to supply agricultural products to the Russian Federation

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2802/98 of 17 December 1998 on a programme to supply agricultural products to the Russian Federation [1], and in particular Article 4(2) thereof,

(1) Whereas Commission Regulation (EC) No 111/1999 [2] lays down the general rules of application for the supply operations under the arrangements introduced by Regulation (EC) No 2802/98;

(2) Whereas changes need to be made to those general rules so as to take account of the technical arrangements made between the Russian Federation and the Commission after the entry into force of that Regulation, which relate in particular to the rules for the taking over of the products by the beneficiary country and to the control procedures implemented by the Commission to monitor execution of the supply operations;

(3) Whereas the provisions relating to certification of the conformity of the products processed from products originating in intervention stocks or mobilised on the Community market should be amended to take account of the organisation of the controls and the rules for take over of the product by the operator awarded the contract to transport the product outside the Community should be specified;

(4) Whereas, in order to facilitate operators' participation in the tendering procedure, it is advisable to relax some of the conditions initially stipulated for the submission of tenders and to specify some of the rules governing execution of the supply operations;

(5) Whereas the immediate application of the changes resulting from the technical arrangements concluded with the Russian authorities concerning the taking over of the products as well as of certain control provisions relating to the removal of the products or the release of securities in favour of the operators should be provided for;

(6) Whereas the measures provided for in this Regulation are in accordance with the opinion of all the relevant Management Committees,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 111/1999 is hereby amended as follows:

1. Article 4(3) is replaced by the following:

'3. The intervention agencies shall satisfy themselves that tenderers and the subcontractors, wholly-milled rice producers and slaughterhouses involved in the mobilisation of pigmeat indicated in their tenders have the technical and financial capacity to meet the obligations under the supply operations for which they submit tenders.';

2. Article 5(1)(e)(4) is replaced by the following:

'4. 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 outside the Community's customs territory; in such cases the tenderer undertakes to communicate in writing to the authorities and bodies indicated to the tenderer by the Commission, at least three days in advance, the dates on which the transhipments are to take place and the probable dates of the principal operations, in particular loading and arrival at destination;'

3. Article 5(1)(e)(6) is replaced by the following:

'6. the undertaking by the tenderer to submit, in the event of his tender being successful, the original of the insurance policy taken out to cover all risks relating to transport;'

4. Article 5(1)(f)(3) is replaced by the following:

'3. the name(s) and address(es) of the businesses producing the wholly-milled rice and of all subcontractors and forwarding agents to be used in the operation;'

5. in Article 5(1)(f), point (4) is deleted;

[1] OJ L 349, 24.12.1998, p. 12.
[2] OJ L 14, 19.1.1999, p. 3.

6. Article 5(1)(g)(1) is replaced by the following:

'1. the amount tendered per tonne (net), taking account of the cost of processing, packaging, transport and storage to the delivery stage specified in the invitation to tender;'

7. Article 5(1)(g)(3) is replaced by the following:

'3. the name(s) and address(es) of the slaughterhouses involved in the mobilisation of the products and of all subcontractors and forwarding agents to be used in the operation;'

8. in Article 5(1)(g), point (4) is deleted;

9. in Article 5(1)(i), 'in accordance with Annex III' is replaced with 'in accordance with Annex IV';

10. the final subparagraph of Article 5(1) is replaced by the following:

'The securities provided for in this Regulation shall be lodged by credit institutions approved by the Member States and included on the list drawn up by the Commission [1] in accordance with Articles 3(7) and 10(2) of Council Directive 77/780/EEC [2]. A security lodged by an approved institution not included on the list shall be admissible if the credit institution indicates in its security document the reference to the national decision granting it that approval. Securities must be accompanied by details of the person or persons authorised to sign the financial documents, including their official capacity and a specimen of their signature.';

11. Article 5(3) is replaced by the following:

'3. Tenders shall be valid for 15 days after the final date for the submission of tenders.';

12. the following subparagraph is added to Article 6(1):

'The intervention agency or agencies concerned shall, within the time limit specified in the previous subparagraph, forward to the Commission, for each lot, a complete copy of the two most favourable tenders received, accompanied by a copy of the security and of the financial undertaking mentioned in Article 5(1)(h) and (i) and the specimen signatures of the persons authorised to issue those documents.';

13. Article 6(3) is replaced by the following:

'3. The Commission shall inform the successful tenderer of the award of the contract as soon as possible and shall send a copy of that decision to the intervention agency or agencies which received the tenders.';

14. in Article 6, paragraph (5) is deleted;

15. Article 7(1) is replaced by the following:

'1. In the case of a supply operation as referred to in Article 2(1)(a) or (b), the successful tenderer shall lodge, within five working days of receiving notification of award of the tender, a supply security of an amount equal to the quantities to be removed for each ship or for each destination, multiplied by the unitary amount laid down in the notice of invitation to tender.

Removal of the goods may commence once the intervention agency has obtained proof that the supply security has been lodged in accordance with paragraph 4.';

16. the following Article 7a is added:

'*Article 7a*

1. With regard to supply operations concerning the production of wholly-milled rice and the mobilisation of pigmeat on the Community market, the successful tenderer shall be paid a lump sum of EUR 0,45 per tonne (net) per day for the rice and EUR 0,90 per tonne (net) per day for the pigmeat to cover all expenses (parking, insurance, security, securities, etc.) in the event that the transporter cannot take over the goods within the time limit set for reasons beyond his control.

2. With regard to a supply operation as referred to in Article 2(1)(a), the removal certificate shall be issued by the intervention agency within three working days from the end of the operations to remove all the quantities stored in a warehouse indicated in the Regulation governing the supply in question. The intervention agency shall be liable to pay the cost of late issuance of the certificate, that cost to be determined by applying an interest rate equal to the reference rate mentioned in Annex VII applicable in the member State concerned on the last day for the submission of tenders plus one and a half percentage points.';

17. in Article 9(1), the final subparagraph is replaced by the following:

'In the case of a supply operation concerning the production of wholly-milled rice or the mobilisation of pigmeat on the Community market, the removal certificate drawn up in accordance with Annex V and checked and signed by the control agency shall certify conformity of the product with the rules laid down for its supply.';

18. Article 9(5) is replaced by the following:

'5. In the case of the supply of beef/veal and pigmeat, the intervention agency holding the product and the successful tenderer, or, where applicable, the storekeeper for the account of the successful tenderer, shall undergo any controls requested and conducted by agents designated by the recipient country on Community customs territory.';

19. Article 9(6) is replaced by the following:

'6. The agency responsible for the controls shall seal the means of transport leaving Community customs territory at the time of loading. In the case of transhipment outside Community customs territory, the agency designated by the Commission shall verify that the seals on the means of transport arriving at the points of transhipment are intact, and shall seal the new means of transport used after transhipment.';

20. Article 10 is replaced by the following:

'*Article 10*

1. Applications for payment of the supply shall be submitted to the intervention agency referred to in Article 4 within two months of the end of the period laid down for the supply in the notice of invitation to tender. Except in cases of *force majeure*, where this provision is not complied with the amount of the payment shall be reduced by 10 % for the first month's delay and 5 % for each month thereafter.

2. Applications for payment shall be accompanied by the following supporting documents:

(a) where Article 2(1)(b) applies:

— a copy of the transport documents,

— the original of the take-over certificate issued by the control agency designated by the Commission and signed by the representative of the recipient country given in the Annex to the regulation opening the invitation to tender for the supply. That document shall be drawn up in accordance with Annex I,

— the certificate of conformity at the delivery stage referred to in Article 9(7),

— according to the case, a copy of the export licence or the export declaration where an export licence is not required under the legislation for the common organisation of the market;

(b) where Article 2(1)(a) applies, in addition to the documents indicated under (a) above applications shall be accompanied by the control document referred to in Article 14(2).

3. In the case of supplies as referred to in Article 2(1)(a) or (b), payment of the tender shall be made in respect of the quantity stated in the take-over certificate issued by the control agency designated by the Commission and signed by the representative of the recipient country indicated in the Annex to the regulation opening the invitation to tender for the supply. That document shall be drawn up in accordance with Annex I.

4. In the case of supplies as referred to Article 2(2), the quantity of intervention product awarded shall be made available to the successful tenderer on presentation of proof of lodging of the security pursuant to Article 7(2).

5. In the case of supplies as referred to Article 2(3), payment of the tender of the successful tenderer for mobilisation of the product shall be made on presentation of the removal certificate drawn up in accordance with Annex V, issued by the designated transporter and signed by the control agency referred to in Article 9(1) after complete loading of the lot.

6. Where take over by the recipient's representative at the delivery stage is delayed owing to circumstances beyond the control of the successful tenderer, the additional costs borne by the latter shall be reimbursed by the recipient country following an examination of the supporting documents.

7. In the case of transport by truck on the roads of the Russian Federation, the tenderer shall, in application of the undertaking given as a result of his tender, forward to the Russian authorities the invoices for the costs determined in accordance with the technical appendix to the Memorandum of Understanding referred to in Article 15.';

21. in the second subparagraph of Article 12(2), point (b) is replaced by the following:

'(b) in the case of supplies as provided for in Article 2(2) and (3), by presenting the removal certificate drawn up in accordance with Annex V, issued by the transporter and signed by the control agency mentioned in Article 9(1).';

22. Article 12(3) is replaced by the following:

'3. Where delays occur at the stage laid down for the supply, the supply security shall be forfeited in respect of those quantities not taken over within the time limits or delivered outside of the time limits, up to an amount of EUR 0,75 per tonne per day of delay. With effect from the 11th day of delay the amount forfeited shall be increased to EUR 1,00 per tonne per additional day. These provisions shall apply where the delay in take over or delivery is attributable to the successful tenderer.';

23. Article 12(4) is replaced by the following:

'4. In the case of supplies as provided for in Article 2(1)(a) or (b), the supply security shall be released in accordance with the conditions laid down above or in instalments of 20 % each time proof is presented that 20 % of the quantity of a lot has been delivered.';

24. in Article 13, the following subparagraph is added:

'The payment-on-account security shall be released when the conditions laid down for the payment of the balance of the supply, in application of Article 10, have been met.';

25. Article 14 is replaced by the following:

'*Article 14*

1. The export licences requested and delivered for the execution of the supplies, in application where appropriate of the legislation for the common organisation of the market, shall contain in Box 20 the following entry:

"Council Regulation (EC) No 2802/98. Not eligible for export refunds."

2. The export declaration and the control document issued pursuant to Article 3 of Regulation (EEC) No 3002/92 shall indicate the following:

"Commission Regulation (EC) No 111/1999 laying down general rules for the application of Council Regulation (EC) No 2802/98 on a programme to supply agricultural products to the Russian Federation. Not eligible for export refunds."

3. When the export of the product is subject to the presentation of an application for an export licence, the application shall be accompanied by the proof that the applicant is a successful tenderer of a supply under Regulation (EC) No 2802/98. Such proof shall be provided by a copy of the decision to award the contract referred to in Article 6(3).

Export licences shall be issued only if proof is provided that the supply security has been lodged in accordance with Article 7. Lodging of that security shall be deemed to constitute the lodging of the licence security, By way of derogation from Title III, Section 4, of Regulation (EEC) No 3719/88, it shall be released under the conditions laid down in Article 12(2).';

26. Annex II is replaced by Annex A to this Regulation;

27. in Annex IV, the final subparagraph is replaced by the following:

"Our guarantee will be issued in accordance with Article 7 of and Annex III to Regulation (EC) No 111/1999.";

28. Annex B to this Regulation is added as Annex VII.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

It shall apply to invitations to tender opened after its entry into force with the exception of the provisions mentioned under Article 1, points 17, 20, 21, 23 and 24 which are applicable to all of the tenders.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX A

'ANNEX II

Break-down of tender in EUR/tonne [1]

1. Handling and loading costs
2. Forwarding costs
3. Costs of placing fob
4. Sea freight
5. Cost of loading onto wagons
6. Rail costs prior to transhipment
7. Cost of transhipment onto wagons
8. Rail costs after transhipment to Russian border
9. Cost of land transport by truck to Russian border
10. Cost of insurance to cover all risks relating to transport
11. Cost of bank guarantees
12. Administrative costs (certificates, customs documents, etc.)
13. Miscellaneous costs

Total EUR/tonne .....

[1] If the tender is to be admissible, pursuant to Article 5(1)(e)(5), it must contain a figure for the relevant headings in this Annex, taking account of the type of supply operation.'

ANNEX B

'ANNEX VII

Reference interest rate referred to in Article 7(a)(2)

— Belgium: Interest rate on three-month Treasury certificate (European Central Bank)
— Denmark: Three-month interbank interest rate (Danish Central Bank)
— Germany: Three-month interest rate (European Central Bank)
— Greece: Three-month ATHIBOR (Reuters)
— Spain: Three-month interbank interest rate (Spanish Central Bank)
— Finland: Three-month HELIBOR (European Central Bank)
— France: Three-month PIBOR (European Central Bank)
— Ireland: Three-month interbank fixed rate (European Central Bank)
— Italy: Three-month interbank interest rate (FT)
— Luxembourg: Interest rate on three-month Treasury certificate (European Central Bank)
— Netherlands: Three-month interbank interest rate (European Central Bank)
— Austria: Three-month VIBOR (European Central Bank)
— Portugal: Three-month interbank interest rate (Portuguese Central Bank)
— Sweden: Three-month STIBOR (European Central Bank)
— United Kingdom: Three-month interbank interest rate'