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COMMISSION REGULATION (EC) No 958/2006

of 28 June 2006

on a standing invitation to tender to determine refunds on exports of white sugar for the 2006/07 marketing year

(OJ L 175, 29.6.2006, p. 49)

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COMMISSION REGULATION (EC) No 958/2006

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on a standing invitation to tender to determine refunds on exports of white sugar for the 2006/07 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ([1]), and in particular Articles 23(4) and 40(1)(g) thereof,

Whereas:

(1) In view of the situation on the Community and world sugar markets, a standing invitation to tender should be opened as soon as possible for the export of white sugar in respect of the 2006/07 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export refunds.

(2) The general rules governing invitations to tender for the purpose of determining export refunds for sugar established by Article 32 of Regulation (EC) No 318/2006 should be applied.

(3) In trade between the Community, on the one hand, and Bulgaria and Romania, on the other hand, import duties and export refunds still apply for certain sugar products and the level of export refunds is considerably higher than import duties. With the above countries due to join the European Union, this difference may result in speculative trade movements.

(4) In order to prevent any abuse associated with the reimport or reintroduction into the Community of sugar sector products that have qualified for export refunds, no export refund should be fixed for the countries of the western Balkans.

(5) In view of the specific nature of the operation, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender, in particular as regards the deadline for the issue of the licences, their period of validity, the amount of the security and the quantity for which the obligation to export resulting from the licence is met. However, Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ([2]) and Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products ([3]) must continue to apply.

(6) The provisions of this Regulation replace, as regards the partial invitations to tender in July 2006, those of Commission Regulation (EC) No 1138/2005 of 15 July 2005 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2005/06 marketing year ([4]). For the sake of

([1]) OJ L 58, 28.2.2006, p. 1.
([2]) OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 410/2006 (OJ L 71, 10.3.2006, p. 7).
([3]) OJ L 16, 20.1.1989, p. 19. Regulation as last amended by Regulation (EC) No 910/2004 (OJ L 163, 30.4.2004, p. 63).
([4]) OJ L 185, 16.7.2005, p. 3.

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transparency and legal clarity, therefore, that Regulation should be repealed with effect from 1 July 2006.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

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1. A standing invitation to tender shall be opened in order to determine export refunds on white sugar covered by CN code 1701 99 10 for all destinations excluding Andorra, Gibraltar, Ceuta, Melilla, the Holy See (Vatican City State), Liechtenstein, Communes of Livigno and Campione d'Italia, Heligoland, Greenland, Faeroe Islands, the areas of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control, Albania, Croatia, Bosnia and Herzegovina, Serbia [1], Montenegro and the former Yugoslav Republic of Macedonia. During the period of validity of this standing invitation, partial invitations to tender shall be issued.

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2. The standing invitation to tender shall be open until 27 September 2007.

Article 2

1. The notice of invitation to tender shall be published in the *Official Journal of the European Unio*n. On this basis, the Member States shall draw up a notice of invitation to tender which they may publish or have published elsewhere.

2. The notice shall indicate, in particular, the terms of the invitation to tender.

3. The notice may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation to tender are modified during that period.

Article 3

1. The period during which tenders may be submitted in response to the first partial invitation to tender shall:

(a) begin on 5 July 2006;

(b) end on Thursday 13 July 2006 at 10.00, Brussels local time.

2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations shall:

(a) begin on the first working day following the end of the preceding period;

(b) end at 10.00, Brussels local time, on:

— 27 July 2006,

— 10 and 31 August 2006,

— 14 and 28 September 2006,

— 5 and 19 October 2006,

[1] Including Kosovo, under the auspices of the United Nations, pursuant to UN Security Council Resolution 1244 of 10 June 1999.

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— 9 and 23 November 2006,

— 7 and 21 December 2006,

— 11 and 25 January 2007,

— 8 and 22 February 2007,

— 8 and 29 March 2007,

— 19 and 26 April 2007,

— 10 and 24 May 2007,

— 14 and 28 June 2007,

— 12 and 19 July 2007,

— 9 and 30 August 2007,

— 13 and 27 September 2007.

Article 4

1. Tenders in connection with this tendering procedure:

(a) must be in writing and must be delivered by hand to the competent authority in a Member State, against a receipt; or

(b) must be addressed to that authority either by registered letter or telegram;

(c) must be addressed to that authority by telex, fax or electronic mail, where the authority accepts such forms of communication.

2. Tenders shall be valid only if the following conditions are met:

(a) tenders shall contain:

(i) the reference number of the invitation to tender and of the partial invitation to tender;

(ii) the name, address and VAT registration number of the tenderer;

(iii) the quantity of white sugar to be exported;

(iv) the amount of the export refund, per 100 kilograms of white sugar, expressed in euro to three decimal places;

(v) the amount of the security to be lodged in accordance with Article 5(1) covering the quantity of sugar indicated in (iii), expressed in the currency of the Member State in which the tender is submitted;

(b) the quantity to be exported is not less than 250 tonnes of white sugar;

(c) proof is furnished before expiry of the time-limit for the submission of tenders that the tenderer has lodged the security indicated in the tender;

(d) tenders include a declaration by the tenderer that if their tender is successful they will, within the period laid down in the second subparagraph of Article 11(2), apply for an export licence or licences in respect of the quantities of white sugar to be exported;

(e) tenders include a declaration by the tenderer that if the tender is successful they will:

(i) where the obligation to export resulting from the export licence referred to in Article 11(2) is not fulfilled, supplement the security by payment of the amount referred to in Article 12(3);

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(ii) within 30 days following the expiry of the export licence in question, notify the authority which issued the licence of the quantity or quantities in respect of which the licence was not used.

3. A tender may stipulate that it is to be regarded as having been submitted only if one or both of the following conditions is/are met:

(a) the maximum export refund is fixed on the day of the expiry of the period for the submission of the tenders in question;

(b) the tender, if successful, relates to all or a specified part of the tendered quantity.

4. A tender which is not submitted in accordance with paragraphs 1 and 2, or which contains conditions other than those indicated in the present invitation to tender, shall not be considered.

5. Once submitted, a tender may not be withdrawn.

Article 5

1. A security of EUR 11 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer.

Without prejudice to Article 12(3), where a tender is successful this security shall become the security for the export licence at the time of the application referred to in Article 11(2).

2. The security referred to in paragraph 1 may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

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

(a) in the case of unsuccessful tenderers in respect of the quantity for which no award has been made;

(b) in the case of successful tenderers who have not applied for the relevant export licence within the period referred to in the second subparagraph of Article 11(2), at a rate of EUR 10 per 100 kilograms of white sugar;

(c) in the case of successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 31(b) and 32(1)(b)(i) of Regulation (EC) No 1291/2000, the export obligation resulting from the licence referred to in Article 11(2) of this Regulation in accordance with the terms of Article 35 of Regulation (EC) No 1291/2000.

In the case referred to under (b) of the first subparagraph, the releasable part of the security shall be reduced, as applicable, by the difference between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation, when the latter amount is higher than the former.

Except in cases of *force majeure*, the part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In cases of *force majeure*, the competent authority of the Member State concerned shall take such action for the release of the security as it considers necessary having regard to the circumstances invoked by the party concerned.

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Article 6

1. Tenders shall be examined in private by the competent authority concerned. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders submitted in accordance with this Regulation shall be communicated, if eligible, to the Commission by the Member States without the tenderers being mentioned by name and must be received by the Commission within one hour and thirty minutes of the expiry of the deadline for the weekly submission of tenders stipulated in the notice of invitation to tender.

Where no tenders are submitted, the Member States shall notify the Commission of this within the same time-limit.

Article 7

1. After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 8

1. If the Commission decides to make an award under the partial tendering procedure, it shall fix, in accordance with the procedure referred to in Article 39(2) of Regulation (EC) No 318/2006, the maximum amount of the export refund. This amount shall be fixed in the light of the current state and foreseeable development of the Community and world sugar markets.

2. Without prejudice to Article 9, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund.

Article 9

1. Where a maximum quantity has been fixed for a partial invitation to tender, contracts shall be awarded to the tenderer whose tender quotes the lowest refund. If the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in ascending order of export refunds quoted until the entire maximum quantity has been accounted for.

2. Where an award to a particular tenderer in accordance with paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenders quote the same refund, and awards to all of them would result in the maximum quantity being exceeded, the quantity available shall be allocated to the tenderers concerned in one of the following ways:

(a) by division among the tenderers concerned in proportion to the total quantities in each of their tenders, or

(b) by apportionment among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them, or

(c) by drawing of lots.

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Article 10

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. It shall also send statements of award to the successful tenderers.

2. Statements of award shall indicate at least:

(a) the procedure to which the tender relates;

(b) the quantity of white sugar to be exported;

(c) the amount, expressed in euro, of the export refund to be granted per 100 kilograms of white sugar of the quantity referred to in (b).

Article 11

1. Every successful tenderer shall have the right to receive, in the circumstances referred to in paragraph 2, an export licence covering the quantity awarded, indicating the export refund quoted in the tender.

2. Every successful tenderer shall be obliged to lodge, in accordance with the relevant provisions of Regulation (EC) No 1291/2000, an application for an export licence in respect of the quantity that has been awarded to it, the application not being revocable in derogation from Article 12 of Regulation (EEC) No 120/89.

The application shall be lodged not later than:

(a) the last working day preceding the date of the partial invitation to tender to be held the following week;

(b) if no partial invitation to tender is due to be held that week, the last working day of the following week.

3. Every successful tenderer shall be obliged to export the tendered quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 12(3).

4. The rights and obligations referred to in paragraphs 1, 2 and 3 shall not be transferable.

Article 12

1. For the purposes of determining the period of validity of the licences, Article 23(1) of Regulation (EC) No 1291/2000 shall apply.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth calendar month following that in which the partial invitation was issued.

However, export licences issued in respect of the partial invitations held from 1 May 2007 will be valid only until 30 September 2007.

3. Except in cases of *force majeure*, the holder of the licence shall pay the competent authority a specific amount in respect of the quantity for which the obligation to export resulting from the export licence referred to in Article 11(2) has not been fulfilled, if the security referred to in Article 5(1) is less than the difference between the export refund referred to in Article 33(2)(a) of Regulation (EC) No 318/2006 in force on the last day of validity of the licence, and the refund indicated on that licence.

The amount to be paid referred to in the first subparagraph shall be equal to the difference between the difference referred to in the first subparagraph and the security referred to in Article 5(1).

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Article 13

Regulation (EC) No 1138/2005 is hereby repealed.

Article 14

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

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