COMMISSION REGULATION (EC) No 878/2008

of 9 September 2008

opening a standing invitation to tender for the resale for industrial use of sugar held by the intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products [1], and in particular Article 43(d) in conjunction with Article 4 thereof,

Whereas:

(1) Article 39(1) of Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system [2] provides that the intervention agencies may sell sugar only after a decision to that effect has been adopted by the Commission. Given the continued existence of intervention stocks, it is appropriate to provide for the possibility to sell for industrial use sugar held by the intervention agencies.

(2) Such a decision was taken by Commission Regulation (EC) No 1476/2007 of 13 December 2007 opening a standing invitation to tender for the resale for industrial use of sugar held by the intervention agencies of Belgium, the Czech Republic, Spain, Ireland, Italy, Hungary, Slovakia and Sweden and amending Regulations (EC) Nos 1059/2007 and 1060/2007 [3]. Under that Regulation, tenders may be submitted for the last time between 10 and 24 September 2008.

(3) It is foreseeable that intervention stocks of sugar will continue to exist in most of the Member States concerned after expiry of that last possibility to submit tenders. In order to respond to the continued market needs, it is therefore appropriate to open a further standing invitation to tender to make these stocks available for industrial use.

(4) Pursuant to Article 42(2)(c) of Regulation (EC) No 952/2006, it is appropriate to fix a minimum quantity per tenderer or per lot.

(5) To allow comparison of tender prices for sugar of different qualities, the tender price should refer to sugar of the standard quality as defined in Part B of Annex IV to Regulation (EC) No 1234/2007.

(6) The intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden should communicate the tenders to the Commission. The tenderers should remain anonymous.

(7) To take account of the situation on the Community market, provision should be made for the Commission to fix a minimum selling price for each partial invitation to tender.

(8) The minimum selling price refers to sugar of the standard quality. Provision should be made to adjust the selling price in cases where the sugar is not of this quality.

(9) The quantities available for a Member State that can be awarded pursuant to this Regulation should take into account the quantities awarded pursuant to Commission Regulation (EC) No 877/2008 of 9 September 2008 opening a standing invitation to tender for the resale on the Community market of sugar held by the intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden [4].

(10) In order to ensure proper management of sugar in storage, provision should be made for a communication from the Member States to the Commission on the quantities actually sold.

(11) The provisions on processor's records, checks and penalties laid down by Commission Regulation (EC) No 967/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards sugar production in excess of the quota [5] should apply to the quantities awarded under this Regulation.

(12) To ensure that the quantities awarded pursuant to this Regulation are used as industrial sugar, financial penalties must be laid down for tenderers at a dissuasive level to avoid any risk of these quantities being used for other purposes.

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 178, 1.7.2006, p. 39.
[3] OJ L 329, 14.12.2007, p. 17.
[4] See page 3 of this Official Journal.
[5] OJ L 176, 30.6.2006, p. 22.

(13) The second paragraph of Article 59 of Regulation (EC) No 952/2006 provides that Commission Regulation (EC) No 1262/2001 [1] continues to apply to sugar accepted into intervention before 10 February 2006. However, for the resale of intervention sugar, this distinction is unnecessary and its implementation would create administrative difficulties for Member States. It is therefore appropriate to exclude the application of Regulation (EC) No 1262/2001 to the resale of intervention sugar pursuant to this Regulation.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

The intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden listed in Annex I shall offer for sale by standing invitation to tender for industrial use a maximum total quantity of 345 539 tonnes of sugar accepted into intervention and available for sale for industrial use.

The maximum quantities involved per Member State are set out in Annex I.

Article 2

1. The period during which tenders may be submitted in response to the first partial invitation to tender shall begin on 1 October 2008 and shall end on 15 October 2008 at 15.00 Brussels time.

The periods during which tenders may be submitted in response to the second and subsequent partial invitations shall begin on the first working day following the end of the preceding period. They shall end at 15.00 Brussels time on:

— 29 October 2008,

— 12 and 26 November 2008,

— 3 and 17 December 2008,

— 7 and 28 January 2009,

— 11 and 25 February 2009,

— 11 and 25 March 2009,

— 15 and 29 April 2009,

— 13 and 27 May 2009,

— 10 and 24 June 2009,

— 1 and 15 July 2009,

— 5 and 26 August 2009,

— 9 and 23 September 2009.

2. The tender price shall refer to white sugar and raw sugar of the standard quality as defined in Part B of Annex IV to Regulation (EC) No 1234/2007.

3. The minimum quantity of the tender per lot referred to in Article 42(2)(c) of Regulation (EC) No 952/2006 shall be 100 tonnes, unless the available quantity for that lot is less than 100 tonnes. In such cases the available quantity must be tendered.

4. Tenders shall be lodged with the intervention agency holding the sugar as set out in Annex I to this Regulation.

5. Tenders may be submitted only by processors within the meaning of Article 2(d) of Regulation (EC) No 967/2006.

Article 3

The intervention agencies concerned shall communicate to the Commission tenders submitted within two hours after the expiry of the deadline for the submissions laid down in Article 2(1).

The tenderers shall not be identified.

Tenders submitted shall be communicated in electronic form according to the model set out in Annex II.

When no tenders are submitted, the Member State shall communicate this to the Commission within the time limit fixed in the first paragraph.

Article 4

1. The Commission shall fix per Member State concerned the minimum selling price or decide not to accept the tenders in accordance with the procedure referred to in Article 195 of Regulation (EC) No 1234/2007.

2. For intervention sugar which is not of the standard quality, Member States shall adjust the actual selling price by way of application *mutatis mutandis* of, respectively, Article 32(6) and Article 33 of Regulation (EC) No 952/2006. In this context, the reference, in Article 32 of Regulation (EC) No 952/2006, to Annex I to Council Regulation (EC) No 318/2006 [2] shall be interpreted as a reference to Part B of Annex IV to Regulation (EC) No 1234/2007.

[1] OJ L 178, 30.6.2001, p. 48. Regulation repealed by Regulation (EC) No 952/2006.

[2] OJ L 58, 28.2.2006, p. 1. Regulation (EC) No 318/2006 is to be replaced by Regulation (EC) No 1234/2007 as from 1 October 2008.

3. The available quantity for a lot shall be reduced by the quantities awarded the same day for that lot by Regulation (EC) No 877/2008.

Where an award at a minimum selling price set pursuant to paragraph 1 would result in the available quantity for the Member State concerned being exceeded, that award shall be limited to such quantity as is still available.

Where awards for a Member State to all tenderers offering the same selling price would result in the quantity for that Member State being exceeded, then the quantity available shall be awarded as follows:

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

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

(c) by drawing of lots.

4. On the fifth working day at the latest after the Commission fixes the minimum selling price, the intervention agencies involved shall communicate to the Commission, according to the model set out in Annex III, the quantity actually sold by partial invitation to tender.

Article 5

1. Articles 11, 12 and 13 of Regulation (EC) No 967/2006 shall apply *mutatis mutandis* to processors in respect of the quantities of sugar awarded under this Regulation.

2. At the request of the successful tenderer, the competent authority of the Member State which granted his approval as processor within the meaning of Article 2(d) of Regulation (EC) No 967/2006 may permit a quantity, in white sugar equivalent, of sugar produced under quota to be used for the purposes of production of the products referred to in the Annex to Regulation (EC) No 967/2006 in place of the same quantity, in white sugar equivalent, of intervention sugar awarded. The competent authorities of the Member States concerned shall coordinate checks and monitoring of such an operation.

Article 6

1. Each successful tenderer shall supply proof, to the satisfaction of the competent authorities of the Member State, that the quantity awarded by a partial invitation to tender has been used for the purposes of production of the products referred to in the Annex to Regulation (EC) No 967/2006 and in accordance with the approval referred to in Article 5 of Regulation (EC) No 967/2006. This proof shall consist of the computerised recording in the records during or at the end of the production process of the quantities of the products concerned.

2. If processors have not supplied the proof referred to in paragraph 1 by the end of the fifth month following the month of award, they shall pay, for each day of delay, a sum of EUR 5 per tonne of the quantity concerned.

3. If processors have not supplied the proof referred to in paragraph 1 by the end of the seventh month following the month of award, the quantity concerned shall be considered to be over-declared for the purposes of applying Article 13 of Regulation (EC) No 967/2006.

Article 7

By way of derogation from the second paragraph of Article 59 of Regulation (EC) No 952/2006, Regulation (EC) No 1262/2001 shall not apply to the resale, as referred to in Article 1 of this Regulation, of sugar accepted into intervention before 10 February 2006.

Article 8

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

It shall apply from 1 October 2008. It shall expire on 31 March 2010.

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

Done at Brussels, 9 September 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

Member States holding intervention sugar

Member State	Intervention agency	Quantities held by the intervention agency and available for the sale on the internal market (in tonnes)
Belgium	Bureau d'intervention et de restitution belge Rue de Trèves, 82 B-1040 Bruxelles Tél. (32-2) 287 24 11 Fax (32-2) 287 25 24 Belgisch Interventie- en Restitutiebureau Trierstraat 82 B-1040 Brussel Tel. (32-2) 287 24 11 Fax (32-2) 287 25 24	9 360
Czech Republic	Státní zemědělský intervenční fond Oddělení pro cukr a škrob Ve Smečkách 33 110 00 PRAHA 1 Tel.: (420) 222 87 14 27 Fax: (420) 222 87 18 75	30 687
Ireland	Intervention Section On Farm Investment Subsidies & Storage Division Department of Agriculture & Food Johnstown Castle Estate Wexford Tel. (353) 5363437 Fax (353) 9142843	12 000
Italy	AGEA — Agenzia per le erogazioni in agricoltura Ufficio ammassi pubblici e privati e alcool Via Palestro, 81 I-00185 Roma Tel. (39) 06 49 49 95 58 Fax (39) 06 49 49 97 61	225 014
Hungary	Mezőgazdasági és Vidékfejlesztési Hivatal (MVH) Soroksári út 22–24. H-1095 Budapest Tel. (36-1) 219 45 76 Fax: (36-1) 219 89 05 vagy (36-1) 219 62 59	21 650
Slovakia	Pôdohospodárska platobná agentúra Oddelenie cukru a ostatných komodit Dobrovičova, 12 SK – 815 26 Bratislava Tel. (421-2) 57 512 415 Fax (421-2) 53 412 665	34 000
Sweden	Statens jordbruksverk Vallgatan 8 S-551 82 Jönköping Tfn (46-36) 15 50 00 Fax (46-36) 19 05 46	12 762

ANNEX II

FORM

Model for the communication to the Commission as referred to in Article 3

Standing invitation to tender for the resale of sugar held by the intervention agencies

Regulation (EC) No 878/2008

Member State selling intervention sugar	Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/100 kg
1	2	3	4	5
	1			
	2			
	3			
	etc.			

ANNEX III

FORM

Model for the notification to the Commission as referred to in Article 4(4)

Partial invitation to tender of … for the resale of sugar held by the intervention agencies

Regulation (EC) No 878/2008

Member State selling intervention sugar	Quantity actually sold (in tonnes)
1	2