

## COMMISSION REGULATION (EC) No 2065/94

of 16 August 1994

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 1999/94

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1999/94 of 27 July 1994 on actions for the free supply of agricultural products to the people of Georgia, Armenia, Azerbaijan, Kyrgyzstan and Tajikistan<sup>(1)</sup>, 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<sup>(2)</sup>, as amended by Regulation (EC) No 3528/93<sup>(3)</sup>, and in particular Article 6 (2) thereof,

Whereas Regulation (EC) No 1999/94 provides for the free supply of agricultural products to Armenia, Azerbaijan, Georgia, Kyrgyzstan and Tajikistan; whereas, with a view to implementing that measure, 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 products held by intervention agencies and intended for export are subject to the provisions of Commission Regulation (EEC) No 3002/92<sup>(4)</sup>, as last amended by Regulation (EEC) No 1938/93<sup>(5)</sup>; 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, in application of Article 2 (4) of Regulation (EC) No 1999/94, no export refund shall be granted in respect of the exported products which are the subject of the supply;

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 1999/94, 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.

<sup>(1)</sup> OJ No L 201, 4. 8. 1994, p. 1.

<sup>(2)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(3)</sup> OJ No L 320, 22. 12. 1993, p. 32.

<sup>(4)</sup> OJ No L 301, 17. 10. 1992, p. 17.

<sup>(5)</sup> OJ No L 176, 20. 7. 1993, p. 12.

2. Such costs shall cover the supply of the goods loaded onto the means of transport from the loading bay of the intervention agency store to the maritime port of unloading or to a point of take-over to be determined in the notice of invitation to tender.

3. The invitations to tender may relate to the quantity of products to be removed from intervention stocks as payment for the supply of processed products from the same group of products.

### 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 provided, 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 (2) shall cover all costs relative 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 (3) 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 marking 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 (2) applies:

1. an amount per tonne (gross), expressed in ecus, for the complete supply of a lot;

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

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; in this case the tenderer undertakes, in writing, to communicate the dates on which these transshipments will take place at least 10 days before the transshipment;

5. a detailed calculation showing the composition of the price offered;

(e) indicate, where Article 2 (3) applies:

1. the proposed quantity of product, expressed in tonnes (net weight), to be exchanged for a tonne (net) of finished product;

2. the exact address of the packaging plant (where applicable) and store at which the goods are to be kept prior to dispatch;

(f) are accompanied by proof that the tenderer has lodged, for each lot, a tendering security in national currency equivalent to ECU 100/tonne in favour of the agency designated in the invitation to tender. Such proof shall be furnished by means of the original document issued by the guarantor;

(g) are accompanied by a written undertaking by the financial institution which will lodge the supply security.

2. Tenders not submitted in accordance with this Article or stating terms other than those laid down in this Regulation shall be rejected.

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

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

### Article 7

1. Where tenders are to be addressed to an intervention agency, the agency concerned shall notify the Commission of tenders received within 24 hours of the expiry of the time limit laid down for the submission of tenders.

2. 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.

3. As soon as possible after the adoption of the decision taken in accordance with paragraph 2, the Commission shall inform all 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.

4. The Commission shall inform the intervention agencies concerned of the results of the tender.

### Article 8

Within five working days of the notification of the award pursuant to Article 7, successful tenderers shall lodge supply securities, constituted in accordance with Title III of Commission Regulation (EEC) No 2220/85<sup>(1)</sup>, in favour of the designated intervention agency or the Commission. Proof of the lodging of a security shall be furnished by the original document issued by the guarantor.

Specific rules may be adopted in the case where a lot relates to several destinations and/or several products.

The amount of the supply security shall be fixed in each notice of 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.

### Article 10

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

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

- the export licences referred to in Article 14,
- the single administrative documents referred to in Article 14,

- where applicable, T 5 control copies,
- transport documents,
- the original of the take-over certificate for the quantities effectively delivered, issued by the recipient, endorsed by the control body at destination;

(b) in the case where Article 2 (3) applies:

- a certificate of quality furnished at the time of loading on the means of transport, under the responsibility of the body authorized for this purpose,
- the original take-over certificate issued by the successful tenderer for the transport of the supply.

2. In the case of invitations to tender pursuant to Article 2 (2), the supply costs shall be paid in respect of the quantity stated in the take-over certificate and certified by the body responsible for verification at destination on the certificate of conformity provided for in Article 11 (2).

3. In the case of invitations to tender pursuant to Article 2 (3), the basic product for which a contract is awarded shall be made available to the successful tenderer on presentation of proof of lodging of the security provided for 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 may be reimbursed by the Commission on the basis of supporting documents.

### Article 11

1. Successful tenderers shall undergo any controls conducted by or on behalf of the intervention agency of the Member State in which the place of packaging, where applicable, and storage before dispatch is located, as designated by the successful tenderer in his offer. Such controls shall relate to the quantity, quality, identity, health status, and, where applicable, packaging and marking of the supply.

On completion of the controls, the agency shall issue a certificate of conformity. It is responsible financially and administratively if the quality delivered does not conform to the norms prescribed for intervention or to the description laid down in the call for tenders for the supply.

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 intervention agency or to the Commission.

<sup>(1)</sup> OJ No L 205, 3. 8. 1985, p. 5.

3. The control agencies or companies entrusted with verification shall take representative samples before loading in the Community and at destination, and shall keep them on behalf of the Commission.

4. In the case of overland transport, the agency referred to in paragraph 1 shall ensure that seals are affixed to the means of transport at the time of loading. In the case of transshipment, 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 transshipment, and shall seal the means of transport used after the transshipment.

5. The costs of the controls referred to in paragraph 1 and samples taken before loading shall be borne by the successful tenderer.

6. The costs of the controls referred to in paragraphs 2, 3 and 4 shall be borne by the Community.

#### Article 12

1. The security referred to in Article 6 (1) (f) shall be released if the tender is not accepted. The primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be :

- (a) a requirement not to withdraw the tender ;
- (b) the lodging of the supply security referred to in paragraph 2 for the quantity provided for in the notice of invitation to tender for each lot ;
- (c) taking over the quantities for which the security referred to in paragraph 2 has been lodged.

2. Before taking over the product, the successful tenderer shall lodge a security with the intervention agency or the Commission of an amount per tonne (net weight) fixed in the notice of invitation to tender, in respect of the quantities to be taken over for each lot.

The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be the supply of the full quantity of the product in a state substantially unchanged as compared with :

- the quality at the time of removal from the intervention store (supplies as provided for in Article 2 (2)), or with
- the quality specified in the notice of invitation to tender (supplies as provided for in Article 2 (3)).

3. Successful tenderers shall take over the goods in accordance with the rules of the intervention agency applicable to removal from storage.

4. Securities as defined in paragraph 2 shall 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 rules provided for in tender regulation, in the same condition as that in which they were taken over at the intervention store. Securities shall be forfeit on a pro rata basis in respect of quantities for which no proof has been presented.

5. When delays in delivery occur, an amount of ECU 1 per tonne shall be withheld from the security for each day of delay in respect of the quantities delivered late. If such delays exceed a period of 11 days, the amount deducted shall be increased to ECU 1,5 per tonne for each additional day of delay. These provisions shall apply where delivery delay is attributable to the successful tenderer.

6. Supply securities shall be released once the successful tenderers have provided proof of compliance with their obligations by presenting the documents referred to in Article 10 (1) and, in the case where Article 5 (2) applies, this compliance has been confirmed by the certificate provided for in Article 11 (2).

#### Article 13

The amount referred to at Article 6 (1) (d) (1), multiplied by the quantity effectively taken over, shall be paid to the successful tenderer at the date of the total take over of a lot or product upon presentation of the proof of the constitution of a security for an equivalent amount in favour of the intervention agency or the Commission.

#### Article 14

1. Section 20 of the export licences shall contain the remark : 'Council Regulation (EC) No 1999/94. Not eligible for export refunds.'

2. The single administrative document and the control document or T 5 control copy issued pursuant to Article 3 of Regulation (EEC) No 3002/92 shall include the following remarks :

- 'Commission Regulation (EC) No 2065/94 of 16 August 1994 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 1999/94',
- 'Not eligible for export refund'.

#### Article 15

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

- the additional clauses and conditions,
- the lots and names and addresses of stores,

- the minimum quantity of product to be removed from storage 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.
- 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*

2. In the case of invitations to tender as provided for in Article 2 (3), the notice shall specify in particular:

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, 16 August 1994.

*For the Commission*

Martin BANGEMANN

*Member of the Commission*