

REGULATION (EEC) No 2121/74 OF THE COMMISSION

of 9 August 1974

on the supply of butteroil as food aid to the World Food Programme

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 804/68 ⁽¹⁾ of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by Regulation (EEC) No 662/74 ⁽²⁾, and in particular Articles 6 (7) and 28 thereof;

Whereas Council Regulation (EEC) No 530/74 ⁽³⁾ of 4 March 1974 laying down general rules for the supply of milk fats as food aid to certain developing countries and certain international organizations provides *inter alia* that 15 000 metric tons of butteroil processed from butter held by the intervention agencies are to be made available to the World Food Programme, hereinafter called WFP;

Whereas under Article 2 of Regulation (EEC) No 530/74 the costs of processing, packaging and transport in respect of each supply are in principle to be put out to tender;

Whereas the procedure to be adopted for this purpose should in the main be taken over from that established by Commission Regulation (EEC) No 1365/74 ⁽⁴⁾ of 31 May 1974 on the supply of butteroil as food aid to certain developing countries;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

Where it is decided to supply butteroil fas to the WFP in accordance with Regulation (EEC) No

530/74, invitations to tender as provided for in Article 2 of that Regulation shall be organized in accordance with the detailed rules laid down in this Regulation.

Article 2

1. The intervention agency concerned shall give notice of an invitation to tender, indicating in particular:

- the location of the coldstore or stores where the butter which is to be manufactured into butteroil is held;
- the quantity of butteroil to be delivered;
- the Community ports to which butteroil may be delivered;
- the closing date and address for the receipt of tenders;
- the date on which delivery is to take place.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 10 days before the closing date for the submission of tenders.

3. The intervention agency shall take the measures necessary to enable prospective tenderers to examine at their own expense, before submitting a tender, samples of the butter.

Article 3

The invitation to tender shall be open only to processing undertakings approved for this purpose by the Member State on whose territory the processing is to take place. Only those undertakings capable of meeting the obligations provided for in this Regulation may be approved.

Article 4

1. Tenders, which shall be in writing, shall be submitted either by delivery by hand to the intervention agency against acknowledgement of receipt or by registered letter addressed to the

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 85, 29. 3. 1974, p. 51.

⁽³⁾ OJ No L 65, 7. 3. 1974, p. 1.

⁽⁴⁾ OJ No L 147, 1. 6. 1974, p. 46.

intervention agency. The intervention agency may also authorize the use of telex for the submission of tenders.

2. Where the invitation to tender is in respect of two or more lots, no tender may relate to more than one lot.

3. The tender shall indicate:

- (a) the name and address of the tenderer;
- (b) the price at which the tenderer undertakes to make the supply in question, expressed in the currency of the Member State in which the invitation to tender is made; such price shall include the purchase price of the butter on the terms laid down in Articles 9 and 13, the costs of processing, packing and delivering the butteroil and the cost of insuring the goods to their full value;
- (c) the coldstores or stores, chosen from the list of such stores in the notice of invitation to tender, at which the tenderer wishes to take delivery of the butter;
- (d) the Community port to which the butteroil is to be delivered, chosen from among the ports designated for the purpose of the invitation to tender in question.

4. A tender shall be valid only if it relates to an entire lot.

5. A tender shall not be valid unless accompanied by:

- (a) a document certifying the approval referred to in Article 3;
- (b) an undertaking from the tenderer that he will fulfil the obligations laid down in Articles 6 (3) and 10;
- (c) a declaration whereby the tenderer agrees to forgo any claim as to the quality or characteristics of any butter sold to him;
- (d) proof that before expiry of the period set for the submission of tenders the security referred to in Article 5 has been given.

Article 5

1. The security required for the invitation to tender shall be 10 units of account per metric ton of butteroil.

2. It shall take the form, at the option of the Member State concerned, either of a cheque made out in favour of the intervention agency, or of a bank guarantee which satisfies the criteria fixed by the Member State.

Article 6

1. The intervention agency shall make the necessary arrangements to enable the successful tenderer to take delivery at the coldstore indicated in his tender of the butter required for processing into butteroil.

2. Immediately on leaving the coldstore and until the moment when it leaves the geographical territory of the Community in the form of butteroil, the butter shall be placed under customs control or under an administrative control offering equivalent safeguards.

3. Butteroil delivered for the supply in question must be manufactured exclusively from butter of which delivery was taken for this purpose by the successful tenderer from the intervention agency.

Article 7

In the light of the tenders received and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum price, expressed in units of account, shall be fixed, or alternatively a decision shall be taken to make no award.

Article 8

1. A tender shall be refused if the price proposed, converted into units of account, is more than the maximum price fixed for the lot in question.

2. Subject as provided in paragraph 1, the successful tenderer shall for each lot be the one making the lowest offer. Where two or more valid offers specify identical amounts the award shall be made by drawing lots.

3. Each tenderer shall be immediately notified by the intervention agency of the result of his participation in the invitation to tender.

4. The intervention agencies shall immediately inform the Commission of the names of the successful tenderer or tenderers.

5. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 9

1. The purchase price of the butter shall be 176 units of account per 100 kg, ex coldstore.

2. Subject as provided in Article 13 all butter supplied to a successful tenderer shall be paid for by him and it shall be removed within 45 days following the date fixed by the intervention agency for delivery of the butteroil.

Article 10

1. Every successful tenderer shall on the date fixed by the WFP deliver at the port specified in the tender a quantity of butteroil equal to the quantity likewise therein specified and meeting the requirements as to quality and packaging laid down in the Annex to this Regulation.

The goods shall be regarded as delivered when they are deposited in the port of shipment at a point designated by the WFP or its agent.

2. The tenderer shall submit to all quality controls effected at the port by the WFP representative. He shall supply for this purpose a list setting out the numbers of the manufacturing lots constituting the supply and specifying the number of cartons concerned.

Article 11

Where the processing of the butter into butteroil takes place in the Member State of sale, the following provisions shall apply:

1. At the time of the manufacture and packing of the butteroil, the competent agency of the Member State in question shall carry out checks to ensure compliance with the requirements laid down in

- Article 3 (b) of Regulation (EEC) No 530/74 and in
- Article 6 (3) of this Regulation.

2. If on concluding these checks the agency concerned finds that the relevant conditions have been fulfilled, it shall issue to the successful tenderer a certificate to this effect.

Article 12

Where the processing of the butter and/or delivery of the butteroil takes place in a Member State other than that of sale, proof that the butter has been processed in accordance with the requirements referred to in subparagraph (1) of Article 11 and/or that the butteroil has been delivered shall be furnished by production of the control copy provided for in Article 1 of Commission Regulation (EEC) No 2315/69 ⁽¹⁾ of 19 November 1969 concerning the use

of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods, as last amended by Regulation (EEC) No 690/73 ⁽²⁾.

Sections 101, 103 and 104 on the control copy shall be completed. Section 104 shall be completed by deleting as necessary and entering against the second indent one of the following endorsements:

1. If the butter is to be processed in a Member State other than that of sale:

'Beurre destiné:

- (a) à être transformé en butteroil
- (b) puis à être livré au titre de l'aide alimentaire au PAM (règlement (CEE) n° 530/74)';

'Butter bestimmt:

- (a) zur Verarbeitung zu butteroil
- (b) alsdann zur Lieferung als Nahrungsmittelhilfe an das WFP (Verordnung (EWG) Nr. 530/74)';

'Burro destinato:

- (a) ad essere trasformato in butteroil
- (b) ad essere consegnato a titolo di aiuto alimentare al PAM (Regolamento (CEE) n. 530/74)';

'Boter bestemd:

- (a) om te worden verwerkt tot butteroil
- (b) om nadien te worden geleverd als voedselhulp aan het WFP (Verordening (EEG) nr. 530/74)';

'Butter to be:

- (a) processed into butteroil, and subsequently
- (b) delivered as food aid to the WFP (Regulation (EEC) No 530/74)';

'Smør bestemt til:

- (a) fremstilling af butteroil
- (b) herefter til levering som fødevarerhjælp til WFP (forordning (EØF) nr. 530/74)';

Where verification that the butteroil has been delivered as specified in (b) is to take place in a

⁽¹⁾ OJ No L 295, 24. 11. 1969, p. 14.

⁽²⁾ OJ No L 66, 13. 3. 1973, p. 23.

Member State other than that where processing as specified in (a) takes place, the customs office which verifies such processing shall return the control copy to the customs office of departure, indicating that it has only verified that the goods have been processed as specified in (a), and shall issue to the person concerned in respect of the butteroil so obtained one or more control copies as referred to in Article 1 of Regulation (EEC) No 2315/69. On such copy or copies: sections 101, 103, 104 and 106 shall be completed; in section 103 there shall be entered the net weight of the butteroil after processing as specified in (a); section 104 shall contain one of the endorsements set out in subparagraph 2 below; in section 106 there shall be entered:

- the number of the control copy from the customs office of departure and the name of that office;
- the weight of the butter used to produce the quantity of butteroil entered in section 103.

The customs office which verifies that delivery as specified in (b) has taken place shall endorse the control copy from the office which verified that the goods had been processed as specified in (a) and shall return this copy via this latter office to the office of departure in the Member State of sale.

2. If the butter is processed into butteroil in the Member State of sale and is to be delivered in another Member State:

'Butteroil destiné à être livré à titre de l'aide alimentaire au PAM (règlement (CEE) n° 530/74)';

'Als Nahrungsmittelhilfe zu lieferndes butteroil an das WEP (Verordnung (EWG) Nr. 530/74)';

'Butteroil destinato ad essere consegnato a titolo di aiuto alimentare al PAM (regolamento (CEE) n. 530/74)';

'Butteroil bestemd om te worden geleverd als voedselhulp aan het WVP (Verordening (EEG) nr. 530/74)';

'Butteroil to be delivered as food aid to the WFP (Regulation (EEC) No 530/74)';

'Butteroil bestemd til levering som fødevarerhjælp til WFP (forordning (EØF) nr. 530/74)';

The customs office which verified delivery shall endorse the control copy and return it to the office of departure in the Member State of sale.

Article 13

1. Upon presentation:

- of the documents referred to in subparagraph (2) of Article 11 and in Article 14, where both processing of the butter and delivery of the butteroil have taken place in the Member State of sale,

- of the documents referred to in subparagraph (1) of Article 12 and in Article 14, where processing has taken place in a Member State other than that of sale,

- of the documents referred to in subparagraph (2) of Article 11, in subparagraph (2) of Article 12 and in Article 14, where processing has taken place in the Member State of sale and delivery has taken place in another Member State,

the competent agency of the Member State of sale shall release each successful tenderer from his obligation to pay the purchase price of the butter supplied to him — save in respect of any amount whereby such price exceeds that at which the tenderer undertook to supply the butteroil — and shall within 15 days, reckoned from the day on which the abovementioned supporting documents are produced, pay to him an amount equal to the difference, where this is in favour of the tenderer, between the aforesaid two prices.

2. The competent agency of the Member State of sale shall in addition pay to the WFP in respect of each consignment of butteroil, within 60 days of the date on which the WFP takes delivery thereof, a flat-rate contribution of 80 units of account per metric ton of butteroil delivered towards the cost of transporting and distributing such butteroil.

Article 14

On delivery of the butteroil at the port of embarkation the representative of the WFP shall give the successful tenderer, as agent for the Community, a letter certifying that the WFP has taken delivery of the said butteroil.

Article 15

Except in cases of *force majeure* every successful tenderer shall accept all financial liability devolving upon the Community by reason of failure to deliver the butteroil at the place and by the time appointed, provided always that the WFP has made it possible for the butteroil to be so delivered.

Costs incurred by reason of failure to deliver the butteroil as a result of *force majeure* shall be borne by the competent agency of the Member State of sale.

Article 16

1. Except in cases of *force majeure*, the security required under Article 5 shall be discharged only in the following circumstances:

- (a) if the tender has been refused;
- (b) if the tenderer has not withdrawn his tender before the contract is awarded and has produced

to the intervention agency the documents required under the first, second or third indent as the case may be of Article 13 (1).

2. Discharge of the security shall take place immediately.

3. In cases of *force majeure*, the intervention agency selling the butter shall take such decision as may be necessary having regard to the circumstances invoked.

Article 17

No refund or compensatory amount (whether monetary or accession) shall be applicable in respect of butter and butteroil to which this Regulation relates.

Article 18

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, 9 August 1974.

For the Commission

The President

François-Xavier ORTOLE

ANNEX

I. Quality requirements for butteroil

Characteristics: concentrated milk fat with a minimum pure fat content of 99.8 %.

Compositional characteristics:

moisture content and non-milk fat constituents: maximum 0.2 %

fats: minimum 99.8 %

free fatty acids: maximum 0.5 % (oleic acid)

Peroxide/kg: maximum 1 unit (in milliequivalents of oxygen per kg)

Flavour: fresh

Smell: no foreign odours

II. Packaging of butteroil

1. The butteroil is to be packed in metal canisters fully filled and hermetically sealed in an atmosphere of nitrogen. The canisters should be strong enough to withstand a long sea journey. Their composition must not be such as to be harmful to human health or to cause a change in the colour, taste or odour of their contents.

Each canister must be sealed by double-seaming so as to be fully leak-tight.

2. The canisters must be packed into cartons containing either:

(a) 4 canisters of 5 kg each, or

(b) 1 canister of 20 kg.

The cartons must have a rupture-strength of least 29 kg/cm².

Cartons containing 4 canisters of 5 kg must also contain separators of duplex cardboard of a rupture-strength of at least 13 kg/cm².

Each carton must be firmly sealed by means of adhesive applied to the entire surface area of the upper and lower flaps.

3. A label to be affixed to each canister must bear the following particulars in the language or languages of the recipient country:

(a) the description: 'Butteroil',

(b) the words:
'Gift of the European Economic Community,
delivered by the World Food Programme',

(c) net weight,

(d) month and year of manufacture,

(e) name of the processing undertaking — in the form of a code number.

In addition to the above, there must be indicated vertically on the two sides of each carton the manufacturer's lot number and the number of cartons making up the lot.

III. Special provisions

In the case of certain specific destinations for projects involving supplies for the reconstitution of milk, special requirements may be laid down in the Regulation opening the relevant individual invitation to tender.