COMMISSION REGULATION (EEC) No 3263/81

of 16 November 1981

laying down rules covering sales by tender or at prices fixed in advance of dried figs and dried grapes held by storage agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2194/81 of 27 July 1981 laying down the general rules for the system of production aid for dried figs and dried grapes [1], and in particular Article 6 (2) thereof,

Having regard to Council Regulation (EEC) No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture [2], as last amended by Regulation (EEC) No 2923/81 [3], and in particular Article 4 (3),

Whereas, pursuant to Article 6 (2) of Council Regulation (EEC) No 2194/81, if the market situation so requires it may be decided that the storage agencies shall sell at prices fixed in advance dried figs or dried grapes on terms that take account of the market trend and ensure equal access to the products and equal treatment of purchasers;

Whereas equal access to the products and equal treatment of purchasers can be ensured if, when the selling price is fixed in advance, the storage agencies accept all applications received on any one day simultaneously until supplies are exhausted;

Whereas, where the selling price is determined by means of an invitation to tender, these principles can be respected by giving the notice of invitation to tender appropriate publicity;

Whereas, since the object of the tendering procedure is to obtain the best price, the award must go to the highest tender; whereas there should also be provision for the case in which more than one tender is submitted at the same price for the same quantity; whereas, however, the highest price can be accepted only if it corresponds to the actual market situation; whereas minimum selling prices should therefore be determined in accordance with a Community procedure, having due regard to the tenders received;

Whereas, to ensure efficiency in the disposal of stored products, minimum sale quantities should be laid down;

Whereas invitations to tender and applications must include sufficient information to allow proper identification of the products concerned;

Whereas the submission of an application or a tender is facilitated if prospective purchasers are permitted to inspect the products; whereas it should consequently be provided that the parties concerned waive in advance their right to lodge any complaint in respect of the quality and characteristics of the product which may be assigned to them;

Whereas fulfilment of the obligations contracted must be guaranteed through the lodging of a security which can be partly or wholly forfeited depending on the gravity of the breaches involved; whereas the additional cost involved when a contract is only partly executed justifies complete forfeiture when less than 60 % of the quantity initially contracted for is taken over;

Whereas it should be left to Member States to adopt their own positions as to the gravity of breaches of certain subsidiary obligations included in sale contracts, having regard to their great diversity;

Whereas, so that these operations may be carried out expeditiously, it should be laid down that the rights and obligations involved in a sale contract or a tender must be exercised or fulfilled within certain time limits;

Whereas Member States should inform the Commission at regular intervals of the quantities sold so that the Commission may be able to assess the progress of disposal;

[1] OJ No L 214, 1. 8. 1981, p. 1.
[2] OJ No L 106, 29. 4. 1977, p. 27.
[3] OJ No L 291, 12. 10. 1981, p. 1.

Whereas in order to facilitate the sale procedures mentioned above, dates must be fixed for the determination of the exchange rate used to convert prices fixed in advance into national currency and to determine the minimum sale price and convert it into national currency;

Whereas under Article 4 (2) of Council Regulation (EEC) No 1134/68 [1], the sums defined therein are paid on the basis of the conversion rate which obtained at the time when the operation or part thereof was carried out; whereas Article 6 of the abovementioned Regulation defines the time when an operation is carried out as the date on which occurs the event defined by Community rules, or, in the absence of and pending adoption of such rules, by the rules of the Member State concerned, as a result of which the amount involved in the operation becomes due and payable; whereas, however, under the terms of Article 4 (3) of Regulation (EEC) No 878/77 exceptions may be granted to the abovementioned provisions;

Whereas the Management Committee for Products Processed from Fruit and Vegetables has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

In cases where Article 6 (2) of Regulation (EEC) No 2194/81 is applied storage agencies appointed by the Member States shall sell dried fruit purchased under Article 3 of that Regulation in accordance with the provisions of this Regulation.

TITLE I

Sales at prices fixed in advance

Article 2

1. The purchase application shall be submitted to the storage agency in writing. It shall be deemed valid for consideration on the day when the security specified in paragraph 2 is received.

2. In order to be deemed valid for consideration, the application must:

(a) specify the name and address of the purchaser;

(b) give an accurate description of the product;

(c) specify the quantity applied for and the price fixed;

(d) include a declaration whereby the applicant waives all claims as to the quality and characteristics of the product which may be assigned to him.

The application may also name, in order of preference, the store or stores where the products applied for are stored.

The application must be supported by a document certifying that a security has been lodged for the benefit of the agency appointed by the Member State.

3. The purchase application shall be rejected if the security is not lodged for the benefit of the agency appointed by the Member State, within five working days following its submission in accordance with paragraph 1.

Article 3

1. The storage agency shall deem valid for consideration each day all complete applications presented in accordance with Article 4. Applications deemed valid for consideration on any particular day shall be considered as having been submitted simultaneously.

2. Save in exceptional circumstances applications shall be accepted within five working days following their submission until stocks are exhausted.

Where, taken together, the applications received at the same time exceed the quantity available, the storage agency may allocate the quantity available, where appropriate in agreement with the purchasers concerned, or draw lots.

3. The storage agency shall, within the time limit provided for in paragraph 2, notify each applicant of the decision taken on his application.

Article 4

1. The date of submission of the complete application shall be the day on which it is received by the storage agency, provided that this occurs not later than 2 p.m. local time.

2. Complete applications which reach the storage agency concerned on a day which is not a working day for that agency, or on a working day for that agency but later than the hour referred to in paragraph 1, shall be deemd to have been submitted on the first working day following the day on which they were received.

Article 5

The exchange rate applied to sale prices fixed in advance in ECU shall be the representative rate in force on the day on which the application is deemed valid for consideration under Article 3 (1).

[1] OJ No L 188, 1. 8. 1968, p. 1.

TITLE II

Sale at a price determined by an invitation to tender

Article 6

When it is decided to sell fruit by tender the storage agency concerned shall draw up a notice of invitation to tender and immediately forward copies of it to the Commission and the Member States. Publicity arrangements shall include posting at the offices of the storage agency.

Article 7

Each invitation to tender shall include the following information :

(a) description of the products and the date before which they were bought in ;

(b) the name(s) and address(es) of the storage agency or agencies ;

(c) for each storage agency the quantities of each product offered for tender, the qualities of these ;

(d) the closing date and the address for the submission of tenders ;

(e) where appropriate, a statement that tenders may be submitted by telex.

Article 8

1. Tenders shall be submitted in writing to the storage agency against acknowledgement or by letter addressed to the storage agency. The storage agency may allow a tender to be submitted by telex.

2. In order to be deemed valid for consideration, the tender must specify :

(a) the name and address of the tenderer ;

(b) a description of the products and the quantity for which the tender is made ;

(c) the price offered per tonne, expressed in the currency of the Member State whose storage agency has issued the invitation to tender ;

(d) a statement by the tenderer waiving all claims in respect of the quality and characteristics of a product awarded to him ;

(e) any additional information required by the invitation to tender. The tender must be accompanied by a document certifying that a security has been lodged with the agency appointed by the Member State, or established to the satisfaction of that agency.

Tenders shall be valid only if proof is provided, before expiry of the time limit for submission of tenders, that a security, or evidence thereof, has been lodged for the benefit of the agency designated by the Member State.

Article 9

The tenders shall be examined in the presence of the competent authorities of the Member State concerned not more than three days following expiry of the time limit for their being lodged. These authorities will transmit to the Commission a list showing for each lot put up for sale the offer prices received ;

Article 10

In the light of the tenders received, minimum selling prices shall be fixed for the products in question in accordance with the procedure laid down in Article 20 of Regulation (EEC) No 516/77, or a decision shall be taken not to make an award. Decisions fixing minimum selling prices shall be notified without delay to the Member State concerned.

Article 11

1. Tenders for less than the minimum selling price referred to in Article 10 shall be refused.

2. Subject as provided in paragraph 1, contracts shall be awarded to the highest tenderers. Where more than one tender at the same price is received for the same quantity and where the quantities applied for exceed the quantity available, the storage agency may allocate the quantity available, where appropriate in agreement with the tenderers, or draw lots.

Article 12

Each tenderer shall be notified by the storage agency concerned of the result of his participation in the invitation to tender. This information shall be sent within five working days of the communication by telex to the Member States of the decision fixing the minimum prices.

Article 13

The exchange rate used to convert

— tenders into ECU, and

— minimum sale prices into national currency,

shall be the representative rate in force on the closing day for the submission of tenders.

TITLE III

General provisions

Article 14

Storage agencies shall make all necessary arrangements to enable prospective tenderers to inspect the products for sale before making their applications or submitting their tenders.

Article 15

The application or tender shall be in one of the official languages of the Community.

However, storage agencies may require that applications or tenders submitted in a language which is not a language of the Member State concerned be accompanied by a translation.

Where a storage agency avails itself of this right, it shall inform the Commission and the Member States at least 10 days in advance. The special conditions of this requirement shall be communicated to traders through the normal channels.

Article 16

1. The security referred to in Articles 2 (2) and 8 (2) shall be 4·50 ECU per 100 kilograms.

The security shall be lodged, at the choice of the applicant or tenderer, in cash or in the form of a guarantee provided by an establishment meeting the criteria fixed by the Member State in which the storage agency concerned is situated. The agency with which the security is lodged may accept a bankers cheque as security.

2. The security shall be released at once;

(a) in the case of sale at a price fixed in advance:

— if the application is not accepted,

— when the purchaser has fulfilled the obligations laid down in this Regulation and the terms of the sale contract;

(b) in the case of sale by tender:

— if the tender is not accepted,

— when the successful tenderer has fulfilled the obligations laid down in this Regulation and the terms of the sale contract.

3. The security shall, subject to the provisions of Article 17 be released when the quantity taken over amounts to more than 95 % of the quantity covered by the sale contract.

Article 17

1. If the purchaser does not pay for the product within the time limit specified in Article 19 (1) the contract shall, without prejudice to the provisions or paragraphs 2 and 3, be cancelled by the agency in respect of the quantity not paid for.

2. Except in cases of *force majeure* the security shall be forfeit:

(a) in proportion to the quantity not paid for within the specified time limit, if the quantity paid for is not less than 60 % and not more than 95 % of the quantity covered by the contract;

(b) in total, if the quantity paid for is less than 60 % of the quantity covered by the contract.

3. In cases of failure to comply with the other obligations laid down in the contract, the competent authority of the Member State concerned may declare the security totally or partly forfeit, depending on the seriousness of the breach concerned. The competent authorities of the Member States shall notify the Commission of cases where the preceding subparagraph is applied, specifying the circumstances involved and the action taken.

Article 18

The minimum quantity of product per application or tender shall be:

— in the case of dried grapes, 20 tonnes net weight,

— in the case of dried figs, 10 tonnes net weight.

Article 19

1. The purchaser shall take delivery of the product within one month of the acceptance date referred to in Article 3 (2) or of the notification referred to in Article 12. The costs and risks in respect of additional storage for all quantities not taken over within this period through default on the part of the purchaser shall be borne by the purchaser.

2. Delivery shall be taken of the goods in accordance with storage agency rules for release from storage.

Article 20

The price shall be paid as and when the goods are taken over and in proportion to the quantities to be withdrawn, at the latest the day before each removal. Any necessary adjustments shall be made within five working days of the date of receipt of the final invoice.

Article 21

The Member States shall supervise the various phases of the selling procedure and shall inform the Commission at the beginning of every fortnight of the quantities sold during the previous fortnight.

Article 22

This Regulation shall enter into force on 17 November 1981.

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

Done at Brussels, 16 November 1981.

For the Commission

Poul DALSAGER

Member of the Commission