

COMMISSION REGULATION (EEC) No 790/91

of 27 March 1991

amending Regulation (EEC) No 2200/87 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food aid policy and food aid management ⁽¹⁾, as last amended by Regulation (EEC) No 1930/90 ⁽²⁾, and in particular Article 5 thereof,

Whereas Council Regulation (EEC) No 3972/86 provides for the laying down of rules for the mobilization of products to be supplied as Community food aid; whereas the procedures must be laid down specifically to cover mobilization within the Community itself;

Whereas such rules were enacted in Commission Regulation (EEC) No 2200/87 ⁽³⁾; whereas some of these rules need to be revised or clarified in order to ensure that they are unambiguous and effective in their application;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Food Aid Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2200/87 is hereby amended as follows:

1. Article 18 (1) is replaced by the following:

'1. The sum to be paid to the successful tenderer shall not exceed the amount of the tender plus any costs as provided for in Article 19, less any drawbacks provided for in paragraph 2 or sums forfeit as provided for in Article 22 (7).

Where, in accordance with Article 7 (3) (h), the contract is awarded for the supply of a maximum quantity of a given product, the sum to be paid shall not exceed the sum indicated in the notice of invitation to tender, without prejudice to the application of

such drawbacks or forfeitures or payment of the costs provided for in Article 19.

The payment to the successful tenderer shall be without prejudice to refunds or levies applicable on export or other amounts provided for in the rules governing trade in agricultural products.'

2. Article 22 is replaced by the following:

Article 22

The securities lodged pursuant to Articles 8 and 12 and Article 18 (5) shall either be released or be forfeit, as appropriate, in accordance with the provisions laid down in this Article.

1. The tendering security provided for in Article 8 shall be released:

- (a) by means of written telecommunication from the Commission where the tender is not valid within the meaning of Article 7 or has not been accepted, or where no contract has been awarded pursuant to Article 9 (5) and (6);
- (b) when the successful tenderer has lodged the delivery security provided for in Article 12 (2).

2. The delivery security provided for in Article 12 shall be released in full by means of a communication from the Commission when the successful tenderer:

- (a) has presented proof that the security provided for in Article 18 (5) has been lodged and the Commission has received the paper request for advance payment;
- (b) has carried out the supply in compliance with all his obligations;
- (c) has been released from his obligations pursuant to the third paragraph of point 5 of Article 13 and the second subparagraph of Article 19 (2);
- (d) has not carried out the supply for reasons of *force majeure* recognized by the Commission.

3. Save in cases of *force majeure*, the delivery security provided for in Article 12 shall be partially and cumulatively forfeit as follows, without prejudice to the application of point 7 of this Article:

- in proportion to the percentage of the quantities not delivered, without prejudice to the tolerances referred to in Article 17 (4);

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 174, 7. 7. 1990, p. 6.

⁽³⁾ OJ No L 204, 25. 7. 1987, p. 1.

- by an amount up to 20 % of the overall sea transport cost as specified in the tender, where the vessel chartered by the successful tenderer for the purposes of the supply does not meet the conditions stipulated in Article 14 (2);
- by an amount up to 0,1 % of the value of quantities delivered after the stipulated date, for each day's delay.

The amounts specified in the first and third indents shall not be withheld if the failure which has taken place is not attributable to the successful tenderer and does not lead to a payment under insurance cover.

4. The advance payment security provided for in Article 18 (5):
 - (a) shall be released in full in the same way as the delivery security in the cases referred to in point 2 (b) and (c) of this Article;
 - (b) shall be partially forfeit in application *mutatis mutandis* of the provisions of point 3 of this Article.
5. The security in force shall be forfeit in full where the Commission, pursuant to Article 20, establishes that the supply has not been carried out.

6. The delivery security or the advance payment security shall be released in proportion to the quantities for which entitlement to payment of the balance has been established. It shall be forfeit for the remaining quantities.
7. The Commission shall deduct from the final amount to be paid the sums forfeit pursuant to points 3 and 6. At the same time the delivery security or the advance payment security shall be released in full.

Article 2

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

It shall apply to supplies for which the notice of invitation to tender is published on or after that date. It shall also apply to supply operations for which the successful tenderers concerned have not yet lodged, on the said date, the security provided for in Article 18 (5) of Regulation (EEC) No 2200/87.

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

Done at Brussels, 27 March 1991.

For the Commission

Manuel MARÍN

Vice-President