

## REGULATION (EEC) No 258/72 OF THE COMMISSION

of 3 February 1972

## laying down detailed rules concerning the sale by tender of sugar by intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 1009/67/EEC<sup>1</sup> of 18 December 1967 on the common organization of the market in sugar, as last amended by Regulation (EEC) No 2727/71,<sup>2</sup> and in particular Articles 9 (8), 10 (3), 11 (2), 17 (4) and 38 thereof;

Whereas Council Regulation (EEC) No 447/68<sup>3</sup> of 9 April 1968 laying down general rules for intervention buying of sugar, as last amended by Regulation (EEC) No 2274/70,<sup>4</sup> provides that sugar shall be sold by intervention agencies either by tender or by another sales procedure, but by tender only when the sugar is intended for animal feed or export; whereas certain detailed rules concerning sale by tender were laid down by Commission Regulation (EEC) No 1987/69<sup>5</sup> of 8 October 1969 laying down detailed rules concerning the sale by tender of sugar by intervention agencies; whereas in view of changes which have been made to the rules governing denaturing and of the procedure followed for sales by tender for two sugar marketing years, in particular as regards removal and payment, important amendments have become necessary; whereas, in the interests of clarity, the detailed rules for the sale by tender of sugar by intervention agencies should therefore be incorporated in a new Regulation;

Whereas, to ensure equal treatment for all interested parties in the Community, invitations to tender issued by the intervention agencies must conform to uniform rules; whereas, in this connection, provision

must be made to ensure that the sugar is actually put to the intended use;

Whereas provisions for the tendering procedure may, to a large extent, be modelled on those contained in Regulations (EEC) No 394/70<sup>6</sup> and (EEC) No 100/72<sup>7</sup> and dealing respectively with the determination by that procedure of export refunds and denaturing premiums, taking into account the fact that the purpose of the procedure is to determine either the selling price to be paid for sugar by the successful tenderer, or the amount of the denaturing premium or the amount of the export refund;

Whereas, however, certain special rules should be laid down; whereas to facilitate participation by the greatest possible number of interested parties, provision should be made in particular for the possibility of fixing, with regard to the quantity of sugar offered for sale, a maximum quantity per tenderer; whereas, moreover, in view of the frequent fluctuations in sugar prices and quotations, the tenderer should not be bound by his tender if the award is made after the date and time specified by him;

Whereas, by reason in particular of storage costs and the rules in this respect provided for in Article 8 of Regulation No 1009/67/EEC, it is essential to specify when ownership of the sugar is transferred;

Whereas, for the purpose of determining the grade of the white sugar and the yield of the raw sugar sold; criteria must be adopted which are identical with those provided for in Commission Regulation (EEC) No 1280/71<sup>8</sup> of 18 June 1971 laying down detailed rules for the buying-in of sugar by intervention agencies, as last amended by Regulation (EEC) No 2417/71<sup>9</sup>; whereas equal treatment for all interested

<sup>1</sup> OJ No 308, 18.12.1967, p. 1.

<sup>2</sup> OJ No L 282, 23.12.1971, p. 8.

<sup>3</sup> OJ No L 91, 12.4.1968, p. 5.

<sup>4</sup> OJ No L 246, 12.11.1970, p. 3.

<sup>5</sup> OJ No L 253, 9.10.1969, p. 7.

<sup>6</sup> OJ No L 50, 4.3.1970, p. 1.

<sup>7</sup> OJ No L 12, 15.1.1972, p. 15.

<sup>8</sup> OJ N L 133, 19.6.1971, p. 34.

<sup>9</sup> OJ No L 250, 11.11.1971, p. 30.

parties may be ensured only by the introduction of uniform and precisely defined provisions for adjusting the selling price, the denaturing premium or the export refund as the case may be and correcting the export licence where the sugar is found to be of a quality other than that indicated in the invitation to tender;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Sugar;

HAS ADOPTED THIS REGULATION:

#### Article 1

1. This Regulation lays down detailed rules for the sale by tender of sugar bought in by intervention agencies.

2. An award to a successful tenderer shall be equivalent to the conclusion of a contract of sale for the quantity of sugar awarded. The award shall be made on the basis of:

- (a) the price to be paid by the successful tenderer, or
- (b) the amount of the denaturing premium, or
- (c) the amount of the export refund,

indicated in the tender.

3. The price to be paid by the successful tenderer shall be:

- (a) the price indicated in the tender in the case of paragraph 2 (a);
- (b) the price indicated in the terms of the invitation to tender in the case of paragraph 2 (b) and (c).

#### Article 2

For the purposes of this Regulation,

1. 'intended use' means:

- (a) animal feed;
- (b) export;
- (c) other purposes which may be determined.

2. 'lot' means:

a quantity of sugar of the same quality, packaged in the same way and stored in the same place.

#### Article 3

1. For the purpose of putting the sugar up for tender, the following terms shall be determined:

- (a) the total quantity or the quantities put up for tender;
- (b) the intended use;
- (c) the time limit for the submission of tenders;
- (d) the price to be paid by the successful tenderer if the sugar is intended for animal feed or for export.

2. Additional terms may be determined, in particular:

- (a) the minimum price for sugar offered for sale for a purpose other than animal feed or export;
- (b) the maximum amount of the denaturing premium or the export refund, hereinafter called 'premium' and 'refund' respectively;
- (c) the minimum quantity per tenderer or per lot;
- (d) the maximum quantity per tenderer or per lot;
- (e) the special period of validity of the denaturing premium certificate or of the export licence, hereinafter called 'certificate' and 'licence' respectively.

#### Article 4

1. The invitation to tender shall be issued by the appropriate intervention agency for the quantities of sugar held by it.

2. The intervention agency shall draw up an invitation to tender. The invitation to tender shall be published in the *Official Journal of the European Communities*. The intervention agency may also publish the invitation to tender or have it published elsewhere.

3. Publication in the *Official Journal of the European Communities* shall take place at least ten days before the period for submission of tenders expires.

4. The invitation shall indicate in particular:

- (a) the name and address of the intervention agency issuing the invitation to tender;
- (b) the terms of the invitation to tender;
- (c) the time limit for the submission of tenders;

- (d) the lots of sugar put up for tender, and for each lot:
- the number;
  - the quantity;
  - the quality of the sugar in question;
  - the type of packaging;
  - the location of the warehouse in which the sugar is stored;
  - the delivery stage;
  - facilities, if any, for loading onto a means of transport by inland waterway, sea or rail.

The invitation to tender may contain other information.

5. The intervention agency shall make such arrangements as it considers necessary to enable interested parties who so request to examine the sugar offered for sale.

#### Article 5

1. If the situation on the sugar market in the Community so requires, a standing invitation to tender may be issued.

During the period of validity of the standing invitation to tender, partial invitations to tender shall be issued.

2. The standing invitation to tender shall be published only for the purpose of issuing it. The invitation as published may be amended or replaced during the period of validity of the standing invitation to tender. It shall be amended or replaced if the terms of the invitation to tender are changed during that period of validity.

3. The period for the submission of tenders for the first partial invitation to tender shall:

- (a) begin on the day on which the standing invitation to tender is published in the *Official Journal of the European Communities*; and
- (b) expire at 9.30 a.m. on the first Wednesday after the tenth day following publication.

4. The periods for the submission of tenders in response to the second and subsequent partial invitations to tender shall:

- (a) begin on the first working day following the expiry of the previous period; and
- (b) expire at 9.30 a.m. on the Wednesday of the following week.

5. In the event of a standing invitation to tender being issued, the provisions of the following Articles shall apply to all partial invitations to tender.

#### Article 6

1. Tenderers shall either deliver written tenders to the intervention agency against a receipt, or address tenders to the intervention agency by registered letter, telex or telegram.

2. Tenders shall indicate:

- (a) the invitation to which the tender relates;
- (b) the name and address of the tenderer;
- (c) the number of the lot;
- (d) the quantity to which the tender relates;
- (e) per 100 kg, either;
  - the price proposed, excluding internal charges, or
  - the amount of the premium proposed, or
  - the amount of the refund proposed
 in the currency of the Member State whose intervention agency issues the invitation.

The intervention agency may require additional information.

3. A tender shall be valid only if:

- (a) proof is furnished before the period for the submission of tenders expires that the deposit required by the invitation to tender has been lodged;
- (b) it includes a declaration by the tenderer that, for the quantity of sugar for which he is the successful tenderer, either for a premium or for a refund, he will:
  - apply for a certificate and lodge the deposit required in this connection, where the invitation to tender relates to sugar intended for animal feed;
  - apply for a licence and lodge the deposit required in this connection, where the invitation to tender relates to sugar intended for export.

5. A tender may stipulate that it is to be treated as submitted only if the award:

- (a) relates to all or a specified part of the quantity indicated in the tender;
- (b) is made not later than a time and date specified by the tenderer.

6. A tender which is not submitted in accordance with the provisions of this Article, or which contains terms other than those indicated in the invitation to tender, shall not be taken into consideration.

7. Once a tender has been submitted it may not be withdrawn.

#### Article 7

1. The deposit required for the invitation to tender shall be:

- (a) 0.5 units of account per 100 kg of white or raw sugar, for the intended uses referred to in Article 2 (1) (a) and (c);
- (b) one unit of account per 100 kg of white or raw sugar, for the intended use referred to in Article 2 (1) (b).

2. The tenderer may lodge the deposit either in cash or in the form of a guarantee by an establishment complying with criteria laid down by the Member State in which the tender was submitted.

Each Member State shall notify the Commission of the types of establishment authorized to give such a guarantee and of the criteria referred to in the preceding subparagraph and the Commission shall in turn inform the other Member States.

#### Article 8

1. Tenders shall be examined in private session by the intervention agency. Persons present at the examination shall be sworn to secrecy.

2. The Commission shall be informed without delay of the tenders submitted.

#### Article 9

Where the terms of the invitation to tender do not specify either a minimum price or a maximum amount for the premium or the refund, these shall be fixed in accordance with the provisions of Article 40 of Regulation No 1009/67/EEC, after examination of the tenders, account being taken of market conditions and potential outlets. However, a decision may be taken to make no award.

#### Article 10

1. Except where a decision is taken to make no award in respect of the invitation to tender or a partial invitation to tender, and without prejudice to

the provisions of paragraphs 2 and 3, the award shall be made to any tenderer whose tender is not less than the minimum price or whose tender does not exceed the maximum amount of the premium or the refund.

2. For any one lot, the award shall be made to the tenderer who proposes either the highest price or the lowest amount of the premium or the refund.

If the lot is not completely accounted for by that tender, awards in respect of the remainder shall be made to the tenderers whose tenders contain either the next highest price or the next lowest premium or refund.

3. If, in respect of one lot or part of a lot, several tenderers propose either the same price or the same amount for the premium or the refund, the intervention agency shall award the quantity concerned:

- (a) either in proportion to the quantities indicated in the tenders in question;
- (b) or by dividing that quantity between the tenderers in agreement with them;
- (c) or by drawing lots.

#### Article 11

1. An award shall:

- (a) if the sugar is intended for animal feed:
  - confer the right to the issue, in respect of the quantity for which the premium is awarded, of a certificate showing in particular the premium specified in the tender;
  - entail the obligation to apply for such a certificate, in respect of that quantity, to the intervention agency to which the tender was submitted;
- (b) If the sugar is intended for export:
  - confer the right to the issue, in respect of the quantity for which the refund is awarded, of a licence showing in particular the refund specified in the tender and, in the case of white sugar, the grade specified in the invitation to tender;
  - entail the obligation to apply for such a licence, in respect of the quantity and, in the case of white sugar, in respect of that grade, to the intervention agency to which the tender was submitted.

Rights shall be exercised and obligations shall be fulfilled within eighteen days after the period for the submission of tenders has expired.

2. Rights and obligations arising from awards shall not be transferable.

#### Article 12

1. The intervention agency shall immediately notify all tenderers of the outcome of their participation in the tendering procedure. The agency shall also send statements of award to the successful tenderers.

2. Statements of award shall indicate at least:

- (a) the invitation to which the tender relates;
- (b) the number of the lot and the quantity in respect of which the award is made;
- (c) the price, the amount of the premium or the amount of the refund, as the case may be, accepted for the quantity referred to under (b).

#### Article 13

1. Except in cases of *force majeure*, the sugar purchased shall be removed from store not later than four weeks following the date on which the statement referred to in Article 12 is received. By agreement between the successful tenderer and the intervention agency, a storage contract may be concluded within that time between the successful tenderer and the warehouse of the sugar in question, in lieu of removal from store.

However, the intervention agency may where necessary provide for a longer period for removing particular lots from store, when it is advised of technical difficulties regarding removal from storage.

2. In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

#### Article 14

1. Removal from store of the sugar purchased by the successful tenderer, or the conclusion of a storage contract in accordance with Article 13 (1), may not take place unless a removal order in respect of the quantity awarded is issued.

Removal orders may, however, be issued in respect of parts of that quantity.

Removal orders shall be issued by the intervention agency concerned on application by the interested party.

2. The intervention agency shall not issue a removal order unless it is proved that the successful tenderer has lodged a deposit to guarantee payment within the time required of the price for the sugar

awarded, or that he has effected some form of payment.

The deposit or the payment shall correspond to the price to be paid by the successful tenderer, in the currency of the Member State whose intervention agency issues the invitation, for the quantity of sugar in respect of which he has applied for a removal order.

#### Article 15

1. The price for the sugar awarded must be paid to the intervention agency's account not later than the thirtieth day following the day on which a removal order was issued.

2. Except in cases of *force majeure*, the deposit referred to in Article 14 (2) shall only be released in respect of the quantity for which the successful tenderer has, within the time limit referred to in paragraph 1, paid the purchase price in the currency of the Member State in which the intervention agency issues the invitation to the account of that agency. The deposit shall be released immediately.

3. In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

#### Article 16

1. Ownership of sugar which is the subject of an award shall be transferred when the sugar is removed from store.

2. The intervention agency and the successful tenderer may however agree on ownership being transferred at another stage. Where the intervention agency and the successful tenderer have reached an agreement pursuant to Article 13 (1), they may determine at what stage the transfer of ownership takes place.

Agreement on the transfer of ownership shall only be valid if it is concluded in writing.

#### Article 17

1. The provisions of Article 18 of Regulation (EEC) No 1280/71 shall apply for the purposes of determining the grade or the yield of the sugar in question at the time of removal from store.

2. The contracting parties may however agree, after the award has been made, that the grade or yield determined when the sugar was bought in by the intervention agency shall apply to sugar sold as a result of the invitation to tender.

*Article 18*

1. If application of the provisions of Article 18 of Regulation (EEC) No 1280/71 established that white sugar is of a grade lower than that indicated in the invitation to tender, the price for that sugar shall be adjusted in respect of the intended uses referred to in Article 2 (1) (b) and (c) of this Regulation by applying the provisions of Article 13 of that Regulation.

2. If it is found that white sugar intended for export is of a grade other than that indicated in the invitation to tender, the grade shown in the licence shall be corrected.

3. If application of the provisions of Article 18 of the abovementioned Regulation establishes that the yield of raw sugar is other than that indicated in the invitation to tender:

- (a) the price for that sugar shall be adjusted by applying the provisions of Article 14 of that Regulation;
- (b) the amount of the premium or the amount of the refund shall be adjusted by multiplying it by a coefficient equal to the yield found to exist divided by the yield indicated in the invitation.

*Article 19*

1. Except in cases of *force majeure*, the deposit required for the invitation to tender shall only be released in respect of the quantity:

(a) for which the successful tenderer:

- after fulfilling the required conditions, has applied either for a certificate or for a licence;
- has lodged the deposit or effected the payment referred to in Article 14 (2);
- has removed the sugar from store within the time limit laid down; or

(b) in respect of which no award is made.

2. The deposit shall be released immediately.

3. In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

*Article 20*

1. Regulation (EEC) No 1987/69 is hereby repealed.

2. Regulation (EEC) No 1987/69 shall, however, continue to apply to invitations to tender and, in the case of standing invitations to tender, to partial invitations to tender issued in pursuance of that Regulation.

*Article 21*

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, 3 February 1972.

*For the Commission*

*The President*

Franco M. MALFATTI