

COMMISSION REGULATION (EEC) No 561/80

of 5 March 1980

on a standing invitation to tender in order to determine levies and/or refunds
on exports of white sugar

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
3330/74 of 19 December 1974 on the common organi-
zation of the market in sugar⁽¹⁾, as last amended by
Regulation (EEC) No 1396/78⁽²⁾, and in particular
Articles 12 (2), 17 (5), 19 (4) and 34 thereof,

Having regard to Council Regulation (EEC) No
608/72 of 23 March 1972 laying down rules to be
applied in the case of considerable price rises on the
world sugar market⁽³⁾, and in particular Article 1 (1)
thereof,

Whereas in view of the situation on the Community
and world sugar markets, a standing invitation to
tender should be issued for the exportation of white
sugar which, having regard to possible fluctuations in
world prices for sugar, must provide for the determina-
tion of export levies and/or export refunds;

Whereas the general rules governing invitations to
tender for the purpose of determining export refunds
for sugar were laid down by Council Regulation (EEC)
No 766/68 of 18 June 1980 laying down general rules
for granting export refunds on sugar⁽⁴⁾, as last
amended by Regulation (EEC) No 1489/76⁽⁵⁾;

Whereas in view of the specific nature of the transac-
tions in question special detailed rules of application
should be laid down in this Regulation, and those
provided for in Commission Regulation (EEC) No
394/70 of 2 March 1970 on detailed rules for granting
export refunds on sugar⁽⁶⁾, as amended by Regulation
(EEC) No 1467/77⁽⁷⁾, should not be applied; whereas,
for the same reasons, appropriate provisions should be
laid down with regard to export licences issued in
connection with the standing invitation to tender and
there should be a derogation from Commission Regu-
lation (EEC) No 2990/76 of 9 December 1976 on

special detailed rules for the application of the system
of import and export licences for sugar⁽⁸⁾, as last
amended by Regulation (EEC) No 1367/78⁽⁹⁾, from
Commission Regulation (EEC) No 193/75 of 17
January 1975 laying down common detailed rules for
the application of the system of import and export
licences and advance fixing certificates for agricultural
products⁽¹⁰⁾, as last amended by Regulation (EEC) No
2971/79⁽¹¹⁾, and from Commission Regulation (EEC)
No 645/75 of 13 March 1975 laying down common
detailed rules for the application of the export levies
and charges on agricultural products⁽¹²⁾, as amended
by Regulation (EEC) No 609/78⁽¹³⁾;

Whereas, therefore, the invitation to tender provided
for in Commission Regulation (EEC) No 1634/77 of
19 July 1977 on a standing invitation to tender in
order to determine export refunds for white sugar⁽¹⁴⁾,
as last amended by Regulation (EEC) No 1573/79⁽¹⁵⁾,
should be closed;

Whereas the measures provided for in this Regulation
are in accordance with the opinion of the Manage-
ment Committee for Sugar,

HAS ADOPTED THIS REGULATION :

Article 1

There shall be issued a standing invitation to tender
in order to determine export levies and/or export
refunds on white sugar, and during the period of
validity of this standing invitation there shall be
issued partial invitations to tender.

Article 2

1. The standing invitation to tender and the partial
invitations shall be conducted in accordance with
Regulation (EEC) No 766/68 and with the following
provisions. Regulation (EEC) No 394/70 shall not
apply.

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 170, 28. 3. 1978, p. 1.

⁽³⁾ OJ No L 75, 28. 3. 1972, p. 5.

⁽⁴⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽⁵⁾ OJ No L 167, 26. 6. 1976, p. 13.

⁽⁶⁾ OJ No L 50, 4. 3. 1970, p. 1.

⁽⁷⁾ OJ No L 162, 1. 7. 1977, p. 6.

⁽⁸⁾ OJ No L 341, 10. 12. 1976, p. 14.

⁽⁹⁾ OJ No L 166, 23. 6. 1978, p. 24.

⁽¹⁰⁾ OJ No L 25, 31. 1. 1975, p. 10.

⁽¹¹⁾ OJ No L 336, 29. 12. 1979, p. 34.

⁽¹²⁾ OJ No L 67, 14. 3. 1975, p. 16.

⁽¹³⁾ OJ No L 83, 30. 3. 1978, p. 19.

⁽¹⁴⁾ OJ No L 181, 21. 7. 1977, p. 35.

⁽¹⁵⁾ OJ No L 188, 26. 7. 1979, p. 44.

2. The standing invitation to tender shall remain open until a date to be determined subsequently.

Article 3

1. The Member States shall draw up a notice of invitation to tender which shall be published in the *Official Journal of the European Communities*. Member States may also publish the notice, or have it published, elsewhere.

2. The notice shall indicate in particular the terms of the invitation to tender.

3. The notice shall be published only for the purpose of opening the standing invitation to tender. It may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation are modified.

Article 4

1. The period during which tenders may be submitted in response to the first partial invitation to tender :

(a) shall begin on the day on which notice of the standing invitation to tender is published in the *Official Journal of the European Communities*;

(b) shall end on 12 March 1980 at 10 a.m.

2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations :

(a) shall begin on the first working day following the end of the preceding period ;

(b) shall end at 10 a.m. on the Wednesday of the following week.

3. By way of derogation from paragraph 2 (b), the period for the submission of tenders which would otherwise end on Wednesday 30 April 1980 shall end on Tuesday 29 April at 10 a.m.

4. The time limits laid down in the previous paragraphs shall be :

(a) brought forward by one hour in Ireland and in the United Kingdom during the period in which summer time does not apply in those Member States ;

(b) extended by one hour in the other Member States during the period in which summer time applies in those Member States.

Article 5

1. Tenders, which must be in writing, shall either be delivered by hand to the competent authority of a

Member State, against a receipt, or addressed to that authority by registered letter, telex or telegram.

2. The tender must indicate :

(a) the invitation to which the tender relates ;

(b) the name and address of the tenderer ;

(c) the quantity of white sugar to be exported ;

(d) the amount of the export levy or, where applicable, of the export refund, per 100 kilograms of white sugar, expressed in the currency of the Member State in which the tender is submitted ;

(e) the amount of the tender security to be lodged covering the quantity of sugar indicated in (c), expressed in the currency of the Member State in which the tender is submitted.

3. A tender shall be valid only if :

(a) the quantity of white sugar to be exported is not less than 250 tonnes ;

(b) proof is furnished, before expiry of the time limit for the submission of tenders, that the tenderer has lodged the security for tender indicated in the offer ;

(c) it includes a declaration by the tenderer that if his tender is successful he will within the period laid down in Article 12 (b) apply for an export licence in respect of the quantity of white sugar to be exported ;

(d) it contains all the information referred to in paragraph 2.

4. A tender may stipulate that it is to be regarded as having been submitted only if :

(a) the minimum export levy or, where applicable, the maximum export refund, is fixed on the day of expiry of the period for the submission of the tenders in question ;

(b) the contract awarded relates to all or a specific part of the quantity tendered for.

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

6. Once submitted, a tender may not be withdrawn.

Article 6

1. The security for tender shall be 3 ECU per 100 kilograms of white sugar to be exported.

2. The tenderer may provide the security either in cash or in the form of a guarantee furnished by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. Except in cases of *force majeure*, the security for the tender shall be released only :

(a) if a successful tenderer has within the period laid down in Article 12 (b) applied for an export licence ;

(b) in respect of any quantity for which no award has been made.

The security shall be released forthwith.

4. In case of *force majeure*, the competent authority of the Member State concerned shall take such action as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. Subject to paragraph 2, persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders shall be communicated to the Commission forthwith and in such manner that the tenderers remain anonymous.

Article 8

1. After the tenders received in respect of a partial invitation to tender have been examined, a maximum quantity may be fixed for that partial invitation.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 9

1. Account being taken of the current state and foreseeable development of the Community and world sugar markets, there shall be fixed either :

- a minimum export levy, or
- a maximum export refund.

2. Subject to Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of levy equal to or greater than such minimum levy.

Subject to Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

Article 10

1. Where a maximum quantity has been fixed for a partial invitation to tender :

— if a minimum levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest levy. If the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of levies quoted until the entire maximum quantity has been accounted for ;

— if a maximum refund is fixed, contracts shall be awarded in accordance with the first indent ; if after such awards a quantity is still outstanding, or if there are no tenders quoting a levy, contracts shall be awarded, in ascending order of refunds quoted until the entire maximum quantity has been accounted for, to tenderers quoting a refund.

2. However, where an award to a particular tenderer in accordance with the provisions of paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the maximum quantity being exceeded, then the quantity available shall be awarded as follows :

- by being divided among the tenderers concerned in proportion to the total quantities in each of their tenders, or
- by being apportioned among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them, or
- by the drawing of lots.

Article 11

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. In addition, that authority shall send successful tenderers a statement of award.

2. The statement of award shall indicate :

- (a) the invitation to which the tender relates ;
- (b) the quantity of white sugar to be exported ;
- (c) the export levy to be charged, or where applicable the export refund to be granted, per 100 kilograms of white sugar of the quantity referred to in (b).

Article 12

Every successful tenderer shall have :

- (a) the right to be issued, in respect of the quantity awarded, with an export licence indicating as appropriate the export levy or the export refund quoted in the tender ;

(b) the obligation to apply, within 10 days following the day of expiry of the period for the submission of tenders, for an export licence for that quantity; Article 5 (3) of Regulation (EEC) No 193/75 and Article 10 of Regulation (EEC) No 645/75 shall not apply in such cases.

This right and this obligation shall not be transferable.

Article 13

1. Article 9 of Regulation (EEC) No 2990/76 shall not apply to white sugar to be exported in accordance with this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth month following that in which the award in respect of that partial invitation to tender was made.

However export licences issued in connection with a partial invitation to tender held after 30 April 1980 shall be valid only until 30 September 1980.

3. By way of derogation from the first indent of Article 8 (1) (d) of Regulation (EEC) No 2990/76 the security for licences issued for the export of sugar covered by this Regulation shall amount to 9 ECU per 100 kilograms of white sugar.

Article 14

The standing invitation to tender provided for in Regulation (EEC) No 1634/77 shall be closed with effect from 6 March 1980.

Article 15

The Regulation shall enter into force on 6 March 1980.

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

Done at Brussels, 5 March 1980.

For the Commission

Finn GUNDELACH

Vice-President
