

## III

(Notices)

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Azienda di Stato per gli interventi nel mercato agricolo (AIMA), Roma

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Bureau d'intervention et de restitution belge (BIRB), Bruxelles

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Direktoratet for Markedsordningerne (EF-D), København

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Agrarmarkt Austria, Wien

Maa- ja metsätalousministeriö, interventioyksikkö, Helsinki

Statens jordbruksverk (SJV), Jönköping

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

(No 1/1996)

(96/C 216/11)

## I. Subject

1. A standing invitation to tender will be held in order to determine levies and/or refunds on exports of white sugar falling within CN code 1701 99 10.
2. The standing invitation to tender shall be conducted in accordance with the provisions laid down in:
 

Article 17a of

  - Regulation (EEC) No 1785/81 <sup>(1)</sup>,
  - and
  - Regulation (EC) No 1464/96 <sup>(2)</sup>.

## II. Time limits

1. The standing invitation to tender shall remain open until a date to be determined later. During the period of validity of this invitation, partial invitations will be issued.

- 2.1. The period during which tenders may be submitted in response to the first partial invitation will begin on 1 August 1996 and will expire at 10.30 a.m. on 7 August 1996.
- 2.2. The period during which tenders may be submitted in response to subsequent partial invitations will expire at 10.30 a.m. on Wednesday each week.
- 2.3. The period during which tenders may be submitted in response to the second and subsequent partial invitations will begin on the first working day following the day on which the preceding period ends.
- 2.4. No partial invitations to tender will be issued on Wednesday, 25 December 1996, 1 January or 26 March 1997.
3. The time limits laid down in this notice are expressed in Belgian time.
4. Subject to its amendment or replacement, the terms of this notice will apply to every partial invitation to tender held during the period of validity of this standing invitation to tender.

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.<sup>(2)</sup> OJ No L 187, 26. 7. 1996, p. 42.

## III. Tenders

1. This notice invites interested parties to submit, for each partial invitation to tender, tenders for the export levy and/or export refund for the sugar referred to in Title I above.
  - 2.1. Tenders must be submitted in writing and must be handed in against a receipt, or sent by registered post, telex, telegram or telefax message, to one of the following addresses at the latest by the time and date stipulated in II.2 above:
    - Intervention Board for Agricultural Produce, Lancaster House, Hampshire Court, UK-Newcastle upon Tyne NE4 7YE, (telex 848 302; tel.: 091 273 9696, Ext. 5279; telefax: 091 226 1839),
    - Irish Sugar Intervention Agency, Department of Agriculture, Agriculture House, Kildare Street, IRL-Dublin 2, (telex: AGRI 242 80 and AGRI 51 182; tel.: 78 90 11; telefax: 01/61 62 63),
    - Fonds d'intervention et de régularisation du marché du sucre, 120, boulevard de Courcelles, F-75017 Paris, (telex: FIRS Paris 644 597, 650 411; tel.: 47 66 51 80; telefax: 47 63 18 44),
    - Bundesanstalt für Landwirtschaft und Ernährung, Referat 325, Adickesallee 40, D-60322 Frankfurt am Main, (Telex Nr. 411 727; Tel.: (0 69) 15 64-0; telefax: (0 69) 15 64/624/793; teletext: 699 7633, 699 7624),
    - Azienda di Stato per gli interventi nel mercato agricolo, Via Palestro 81, I-00185 Roma, (telex: 613 003, Minagrin per l'AIMA; tel.: (39-6) 47 49 91; telefax: (39-6) 445 39 40),
    - Hoofdproduktchap voor Akkerbouwprodukten, Stadhoudersplantsoen 12, NL-2517 JL Den Haag (Telex 325 79; tel. (070) 370 87 08; telefax: (070) 346 14 00, (070) 370 84 44),
    - Bureau d'intervention et de restitution belge, Rue de Trèves 82, B-1040 Bruxelles (telex 240 76, 655 67; tel.: 287 24 11, telefax: 230 25 33, 280 03 07),
    - Direktoratet for Markedsordningerne, EF-direktoratet, Nyrobsgade 26, DK-1602 København V, (telex 15 137; tel. (45) 33 92 70 00; telefax: (45) 33 92 69 48),
    - Υπηρεσία Διαχείρισης Αγορών Γεωργικών Προϊόντων, Αχαρνών 5, Αθήνα, (telex 221 734, 221 735, 221 738; telefax: 31/22 82 21 Hellenic Sugar Industry, Thessaloniki, Hellas),
    - Servicio Nacional de Productos Agrarios, C/Beneficencia, 8, E-28004 Madrid, (telex SENPA E 234 27; tel. 347 63 10, 522 43 87; telefax: 521 098 32),
    - Ministério di Comércio e Turismo, Direcção-Geral do Comércio, Av. da República, 79, P-1100 Lisboa Codex (Tel.: 1/796 37 23, Fax 1/793 22 010, 1/796 37 23),
    - Agrarmarkt Austria, Dresdnerstraße 70, A-1200 Wien (Tel.: 1/33 151; Telefax: 1/33 151/199),
    - Maa- ja metsätalousministeriö, Interventioyksikkö, Liisankatu 8, PL 232 FIN-00171 Helsinki (tel. (90) 1601); telefax (90) 160 97 90,
    - Statens jordbruksverk, Vallgatan 8, S-551 82 Jönköping (telex: 709 91 SJV-S; tel. (46) 36-15 50 00; telefax (46) 36-19 05 46).
  - 2.2. Tenders not submitted by telex, telegram or telefax message must reach the address concerned in double sealed envelopes. The inner envelope, also sealed, must carry the words: "Tender under standing invitation to tender to determine levies and/or refunds on exports of white sugar, No 1/1996 — Confidential".
3. The tender must indicate:
  - (a) the reference number of the invitation to tender (No 1/1996);
  - (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 export refund, per 100 kilograms of white sugar, expressed in ecus to three decimal places;

- (e) the amount of the security to be lodged covering the quantity of sugar referred to under (c), expressed in the currency of the Member State in which the tender is submitted.
4. A tender will be valid only if:
- (a) before the expiry of the time limit for the submission of tenders, the security referred to under IV, or proof that this security has been lodged, has been furnished to one of the addresses listed under III.2.1 chosen by the tenderer for the submission of the tender;
- (b) it is in respect of at least 250 tonnes of white sugar;
- (c) it includes a declaration by the tenderer that if his tender is successful he will apply within the time limit specified under V.6.1 (b), for an export licence or licences in respect of the quantities of white sugar to be exported;
- (d) it includes a declaration by the tenderer that the product for export is white sugar of fair, sound and marketable quality, falling within CN code 1701 99 10;
- (e) it includes a declaration by the tenderer that if his offer is successful he will:
- where the obligation to export created by the export licence referred to under V.6.1 (b) is not fulfilled, supplement the security by the payment of the amount referred to in VI.3,
- and
- within 30 days following the expiry of the export licence in question notify the agency which issued the licence of the quantity or quantities in respect of which the licence was not used;
- (f) it includes all the particulars specified in III.3.
5. The tender, as well as the proofs and declarations referred to in points 3 and 4, must be in the official language, or one of the official languages, of the Member State in which the tender is submitted.
6. A tender which is not submitted in accordance with this notice, or which contains terms other than those in this notice, will not be considered.
7. Once submitted, a tender cannot be withdrawn.
8. A tender may stipulate that it is to be regarded as having been submitted only if:
- (a) a decision is taken on the minimum amount of export levy, or the maximum amount of the export refund, on the day on which the period for the submission of tenders expires;
- (b) the award of the tender is for the entire quantity or for a specific part thereof.

#### IV. Security

- 1.1. A security of ECU 11 per 100 kilograms of sugar to be exported under this standing invitation to tender must be lodged by each tenderer.
- 1.2. Without prejudice to VI.3, the security referred to in 1.1 shall in the case of successful tenderers and at the time of the application referred to in V.6.1 (b) become the security for the export licence.
- 2.1. The security may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by a bank approved by the Member State concerned and expressed in the currency of that Member State.
- The guarantee must be made out in favour of the competent authority concerned.
- 2.2. However, for a tender submitted to the competent authority in Germany, the security must be in favour of the Federal Republic of Germany. For a tender submitted to the competent authority in the other Member States, the guarantee may also be given by a financial institution approved by the Member State concerned. The guarantee must be made out in the official language, or in one of the official languages, of the Member State in which the tender is submitted.
- 3.1. Except in case of *force majeure* the security shall be released:
- (a) to unsuccessful tenderers in respect of the quantity for which no award has been made;
- (b) to successful tenderers who have not applied for their export licence within the period laid down in V.6.1 (b), to the extent of ECU 10 per 100 kilograms of white sugar.

However, this part of the releaseable security will be reduced by the amount representing the difference existing as applicable:

— between the maximum amount of the export refund fixed for the partial invitation in question and the maximum amount of the export refund fixed for the following partial invitation when the latter amount is higher than the former,

— or between the minimum amount of the export levy fixed for the partial invitation in question and the minimum amount of the export levy fixed for the following partial invitation when the latter is lower than the former;

(c) to successful tenderers, for the quantity for which they have fulfilled, within the meaning of Article 29 (b) and the first subparagraph of Article 30 (1) (b) under (i) of Regulation (EEC) No 3719/88<sup>(1)</sup> as last amended by Regulation (EC) No 2137/95<sup>(2)</sup>, the export obligation resulting from the licence referred to in V.6.1 (b) in accordance with the terms of Article 33 of that Regulation.

3.2. The part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In case of *force majeure* the competent authority will determine the measures necessary in view of the circumstances put forward by the party concerned.

#### V. Award of contracts

1. After examination of the offers a maximum quantity may be fixed for each of the partial invitations to tender.

2. It may be decided that no award should be made under a specific partial invitation to tender.

3.1. Except where point 2 applies, and without prejudice, to points 4 and 5, where a minimum export levy is fixed an award will be made to the tenderer or tenderers who quote either the same levy as the minimum levy or a higher figure.

3.2. Except where point 2 applies, and without prejudice to points 4 and 5, where a maximum export refund is fixed, an award will be made to the tenderer or tenderers who quote either the same refund as the maximum refund or a lower figure, or to every tenderer quoting an export levy.

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

— in the case of a minimum levy, an award will be made to the tenderer quoting the highest export levy. If the maximum quantity is not totally accounted for by this award, then further awards will be made, until the entire quantity is fully accounted for, to those tenderers quoting the next highest export levy,

— in the case of a maximum refund, and where there are offers for export levies, awards will be made in accordance with the preceding indent. After all offers for export levies have been accepted, or where there are no such offers, awards will be made to the tenderers quoting a refund, in ascending order of refunds, until the entire maximum quantity is fully accounted for.

5.1. Where, however, the provisions in point 4 governing awards would result in the maximum quantity being exceeded because of the acceptance of a particular offer, an award will be made to the tenderer concerned only in respect of that quantity necessary to use up the balance of the maximum quantity remaining.

5.2. Where offers quote the same export levy or refund and would, if accepted for the full quantity in respect of which they have been submitted, cause the maximum quantity to be exceeded, awards will be made:

— either pro rata to the total quantities specified in each of the tenders,

— or by successful tenderer, up to a maximum tonnage to be determined for each of them,

— by drawing lots.

<sup>(1)</sup> OJ No L 331, 2. 12. 1988, p. 1.

<sup>(2)</sup> OJ No L 214, 8. 9. 1995, p. 21.

6.1. The successful tenderer will have:

(a) the right to receive in the circumstances referred to under (b), in respect of the quantity for which an award has been made, an export licence specifying, as appropriate, the export levy or refund quoted in the tender;

(b) the obligation to lodge, in accordance with the relevant provisions of Regulation (EEC) No 3719/88, an application for an export licence in respect of that quantity not later than:

— the last working day preceding the date of the partial invitation to tender to be held in the following week,

or

— if no partial invitation to tender is to be held that week, the last working day of the following week;

(c) the obligation to export the tendered quantity and if this obligation is not fulfilled in accordance with Article 29 (b) and Article 30 (1) (b) (i) of Regulation (EEC) No 3719/88, to pay, where applicable, the amount referred to in VI.3.

6.2. This right and these obligations are not transferable.

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

7.2. Statements of award will indicate, *inter alia*:

(a) the reference number of the invitation to tender (No 1/1996);

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

(c) the export levy to be charged, or the export refund to be granted, expressed in ecus per 100 kilograms of white sugar of the quantity referred to in (b).

8. The value of the ecu will be determined in conformity with Articles 2 and 3 of Council Regulation (EEC) No 3813/92 <sup>(1)</sup>, as last amended by Regulation (EC) No 150/95 <sup>(2)</sup>.

## VI. Export licences

1. The first subparagraph of Article 9 of Regulation (EC) No 1464/95 <sup>(3)</sup>, as amended by Regulation (EC) No 2136/95 <sup>(4)</sup>, and Article 12 of Regulation (EEC) No 120/89 <sup>(5)</sup>, as amended by Regulation (EEC) No 1431/93 <sup>(6)</sup>, shall not apply to white sugar exported in accordance with this notice.

2.1. Export licences issued as a result of a partial invitation will be valid from the day of issue until the end of the fifth month following that in which the partial invitation took place.

2.2. However, export licences issued in respect of the partial invitations held after 1 May 1997 will be valid only until 30 September 1997.

2.3. The export licences issued in respect of the partial invitations held between 7 August and 30 September 1996 will be usable only from 1 October 1996.

The competent authorities in the Member State which issued the export licence may, at the written request of the holder of that licence, extend its validity to 15 October 1997 at the latest where technical difficulties arise which prevent the export being carried out by the expiry date of the licence laid down in 2.2, provided that the export is not subject to the rules laid down in Article 4 or 5 of Regulation (EEC) No 565/80 <sup>(7)</sup>.

3. Except in the case of *force majeure*, if the obligation to export resulting from the export licence applied for is not fulfilled in accordance with Articles 29 (b)

<sup>(1)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(2)</sup> OJ No L 22, 3. 1. 1995, p. 1.

<sup>(3)</sup> OJ No L 144, 28. 6. 1995, p. 14.

<sup>(4)</sup> OJ No L 214, 8. 9. 1995, p. 19.

<sup>(5)</sup> OJ No L 16, 20. 1. 1989, p. 19.

<sup>(6)</sup> OJ No L 140, 11. 6. 1993, p. 27.

<sup>(7)</sup> OJ No L 62, 7. 3. 1980, p. 5.

and 30 (1) (b) (i) of Regulation (EEC) No 3719/88 and if the security referred to in IV.1.1 is less than:

- (a) the export levy indicated in the licence, reduced by the levy referred to in the second paragraph of Article 20 (1) of Regulation (EEC) No 1785/81 <sup>(1)</sup> in force on the last day of validity of the said licence;

or

- (b) the sum of the export levy indicated in the licence and the refund referred to in Article 17a (2) of Regulation (EEC) No 1785/81 in force on the last day of validity of the said licence;

or

- (c) the export refund referred to in Article 17a (2) of Regulation (EEC) No 1785/81 in force on the last day of validity of the licence reduced by the refund indicated on the said licence;

then, for the quantity in respect of which the said obligation was not fulfilled, the licence holder will be charged an amount equal to the difference between the result of the calculation made under (a), (b) or (c), as the case may be, and the security referred to in IV.1.1.

4. For this standing invitation, the cancellation procedure provided for in Article 13 (2) of Regulation (EEC) No 3719/88 cannot be invoked.
5. If the tenderer intends to apply for advanced fixing of the agricultural conversion rate under this standing invitation, the provisions of the second indent of Article 13 (1) of Regulation (EEC) No 1068/93 <sup>(2)</sup>, as last amended by Regulation (EC) No 1053/95 <sup>(3)</sup>, shall not apply.

## VII. Adjustment of the refunds or the levies

1. If the intervention prices or the storage levies fixed in ecus pursuant to Regulation (EEC) No 1785/81 are

amended during the interval between the day of expiry of the period for submission of tenders and the day of export, the amounts of the export refunds and the export levies fixed under the terms of this invitation to tender before 1 July 1997, for the sugar exported from that date, shall be adjusted.

2. For the adjustment referred to in point 1:

(a) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1997 which is greater than that in force on 30 June 1997, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus per 100 kilograms existing between the intervention price for white sugar applicable with effect from 1 July 1997 and the intervention price for that sugar in force on 30 June 1997;

(b) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1997 which is lower than that in force on 30 June 1997, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus per 100 kilograms existing between the intervention price for white sugar in force on 30 June 1997 and the intervention price for that sugar applicable with effect from 1 July 1997.

3. For the calculation of the differences referred to in point 2, the intervention prices in question shall be increased by the corresponding storage levy referred to in the second subparagraph of Article 8 (2) of Regulation (EEC) No 1785/81.

4. Where the amount of the storage levy only varies from one marketing year to another, the refund shall be adjusted by applying the provisions of paragraph 2 (a) or (b), as appropriate.

5. For the purpose of applying this title, the Member State issuing the relevant export licence shall at the time of issue complete the section headed 'Special particulars' by adding the following: 'to be adjusted in accordance with adjudication Regulation (EC) No 1464/96 for exports which took place after 30 June 1997.'

6. Upon presentation by the holder of the export licence concerned, or by the assignee when the licence has been transferred, to the Member State that issued it and before the customs formalities for the quantities concerned have been carried out, that Member State shall enter the refund rate after adjustment in the section 'special particulars' and shall duly certify and stamp that section.

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ No L 108, 1. 5. 1993, p. 106.

<sup>(3)</sup> OJ No L 107, 12. 5. 1995, p. 4.

### VIII. Disputes

Any dispute between the successful tenderer and the competent authority to whom the tender was submitted will:

1. Fall exclusively within the jurisdiction:

- of the Tribunal de Grande Instance de Paris, in all instances, even proceedings involving the introduction of third parties and proceedings involving several defendants, in the case of FIRS,
- of the courts of Frankfurt am Main, in the case of BLE,
- of the courts of Rome, in the case of AIMA,
- of the 'College van Beroep voor het Bedrijfsleven', Juliana van Stolberglaan 2, The Hague, in the case of the HPA,
- of the courts of Brussels, as court of last instance, in the case of the BIRB,
- of the courts of Copenhagen, in the case of the EF-D,

- of the courts of Athens, in the case of the ΥΔΑΓΕΠ,
- of the courts of Madrid, in the case of Senpa,
- of the courts 'da Comarca' of Lisbon, in the case of Ministério do Comércio e Turismo,
- of the courts of Wien, in the case of the AMA,
- of the court Uudenmaan läänioikeus, in the case of Maa- ja metsätalousministeriön, interventiokeskös.

2. Be settled:

- according to English law, in the case of IBAP,
- according to Irish law, in the case of ISIA,
- according to Swedish law, in the case of SJV.

### IX.

Standing invitation to tender No 1/1995 (OJ No C 193, 27. 7. 1995, p. 25) shall be closed on 1 August 1996.

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