COMMISSION REGULATION (EEC) No 434/82

of 25 February 1982

on a standing invitation to tender for the mobilization of Community white sugar for the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) as 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 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as amended by Regulation (EEC) No 192/82 [2], and in particular Articles 18, 19 and 39 thereof,

Having regard to Council Regulation (EEC) No 3827/81 of 21 December 1981 on the supply of sugar to the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) as food aid [3], and in particular Article 1 (3) and (4) thereof,

Having regard to Council Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy [4], as last amended by Regulation (EEC) No 2543/73 [5], and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 1 (1) of Regulation (EEC) No 3827/81 provides for the supply to UNRWA of white sugar produced and in free circulation within the Community; whereas that white sugar should be of standard quality as defined in Council Regulation (EEC) No 793/72 of 17 April 1972 fixing the standard quality for white sugar [6];

Whereas Article 2 of Regulation (EEC) No 3827/81 lays down that the Community shall meet the costs of the sugar and of its transport to the port of unloading;

Whereas, for purposes of mobilization of the goods by tender, the appropriate rules of the common organization of the markets in the sugar sector governing invitations to tender should be followed;

Whereas Commission Regulation (EEC) No 1371/81 of 19 May 1981 laying down detailed rules for the application of monetary compensatory amounts [7], as amended by Regulation (EEC) No 2898/81 [8], provides that no monetary compensatory amounts shall apply where products which are the subject of Community food-aid operations and are mobilized on the Community market are exported to third countries;

Whereas it should be laid down that export refunds and levies are not applicable to this invitation to tender;

Whereas tenders may be submitted by tenderers established in various Member States of the Community and may relate to sugar to be mobilized in those Member States; whereas, in view of the situation regarding the currencies of Member States and in order to ensure that tenders are closely comparable, account should be taken of the effect upon each tender of the position of the currency of the Member States where the customs export formalities will be completed;

Whereas the Monetary Committee will be consulted; whereas, owing to the urgency of the matter the proposed measures should be adopted under the conditions laid down in Article 3 (2) of Council Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy, as last amended by Regulation (EEC) No 2543/73;

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. A standing invitation to tender shall be issued for the supply to UNRWA, as Community food aid, of a total quantity of 3 405 tonnes of white sugar produced and in free circulation within the Community and, during the period of that standing invitation, partial invitations to tender shall be issued. The said quantity shall be split into three lots: A 1 to A 3.

[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No L 21, 29. 1. 1982, p. 1.
[3] OJ No L 392, 31. 12. 1981, p. 1.
[4] OJ No 106, 30. 10. 1962, p. 2553/62.
[5] OJ No L 263, 19. 9. 1973, p. 1.
[6] OJ No L 94, 21. 4. 1972, p. 1.
[7] OJ No L 138, 25. 5. 1981, p. 1.
[8] OJ No L 287, 8. 10. 1981, p. 1.

2. The standing invitation shall relate to the price of each of Lots A 1 to A 3 to be delivered to the port of unloading, on quayside or in lighter or in containers on quayside. The said lots shall be made up as stated in the Annex. The sugar must be of standard quality as defined in Article 1 of Regulation (EEC) No 793/72.

3. No export levy or refund shall apply in respect of the quantity referred to in paragraph 1.

Article 2

Partial tenders during the period of the standing invitation shall be organized in accordance with Regulation (EEC) No 3827/81 and with the following provisions.

Article 3

The standing invitation to tender shall remain open until the date of the partial tender at which are awarded contracts for the prices of the lots referred to in Article 1 or, if necessary, the price of the remaining lot. In that case the standing invitation shall thereupon be automatically suspended with effect from that date.

Article 4

1. Tenders in respect of the first partial award may be submitted from the day of publication of the standing invitation to tender in the *Official Journal of the European Communities* until 10 March 1982 at 10.30 a.m.

2. For subsequent partial awards tenders may be submitted :

(a) from the first working day following the expiry of the preceding period for the submission of tenders ;

(b) until the Wednesday of the following week at 10.30 a.m.

3. By way of derogation from paragraph 2 (b), the period for the submission of tenders which would otherwise end on :

(a) Wednesday, 17 March 1982 shall end on Thursday, 18 March 1982 at 10.30 a.m. ;

(b) Wednesday, 28 April 1982 shall end on Tuesday, 27 April 1982 at 10.30 a.m. ;

(c) Wednesday, 5 May 1982 shall end on Thursday, 6 May 1982 at 10.30 a.m. ;

(d) Wednesday, 14 July and Wednesday, 21 July 1982 shall end on Tuesday, 13 July and Tuesday, 20 July 1982 at 10.30 a.m.

4. The time limits laid down in this Article are expressed in Belgian time.

Article 5

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

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

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

Article 6

1. Tenderers may either deliver written tenders in person to the competent authority of the Member State in question against a receipt, or address them to the competent authority by registered letter, telex or telegram.

2. Tenders shall state :

(a) the reference number of the invitation to tender ;

(b) the reference number of the lot ;

(c) the name and address of the tenderer ;

(d) the price proposed for the lot in question, expressed in the currency of the Member State referred to in (e) ;

(e) the Member State in which the tenderer, in the event of his being successful, intends to complete the customs formalities for the export of the sugar ;

(f) the amount of the security for tender to be lodged at least for the relevant lot expressed in the currency of the Member State where the tender is submitted.

3. A tender shall be valid only if :

(a) it relates to the price referred to in Article 9 ;

(b) before the time limit for the submission of tenders, proof is furnished that the security for tender referred to in Article 7 has been provided ;

(c) it includes a declaration by the tenderer that, if awarded a contract he will deliver the sugar in accordance with the provisions laid down and export it from the Member State referred to in paragraph 2 (e) ;

(d) it includes all the particulars specified in paragraph 2.

4. Any tender which is not submitted in accordance with the provisions of this Article or which contains terms other than those indicated in the notice of invitation to tender, shall not be considered.

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

Article 7

1. The security for tender shall be 70 250 ECU for Lot A 1, 50 000 ECU for Lot A 2 and 50 000 ECU for Lot A 3.

2. The security shall be provided at the tenderer's choice, either in cash or in the form of a guarantee by an establishment complying with the criteria laid down by the Member State in which the tender is submitted.

3. Except in case of *force majeure,* the security shall be released only if :

(a) the successful tenderer has delivered the sugar to the port of unloading on quayside or in lighter or in containers on quayside, in accordance with the prescribed conditions, and after production of copy No 1 of the export licence duly endorsed and stamped by the competent authority of the Member State referred to in Article 6 (2) (e);

(b) the tender is not accepted.

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

5. In the case referred to in paragraph 3 (a), the security shall be released when final payment is made as provided in Article 10 (1); in the case referred to in paragraph 3 (b) the security shall be released forthwith.

Article 8

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

2. The tenders shall be communicated, without names attached thereto, to the Commission without delay.

3. In order that the tenders may be directly comparable, each one shall be adjusted as necessary by the monetary compensatory amount applicable to white sugar, on the closing date for the submission of tenders, for exports from the Member State referred to in Article 6 (2) (e). Such adjustment shall be made by :

— increasing the price in the case of tenders specifying a Member State whose currency has depreciated,

— reducing the price in the case of tenders specifying a Member State whose currency was appreciated.

The rates used for converting the tenders thus corrected into ECU would be :

— in the case of currencies held at any given moment within a band of 2·25 %, the central rate,

— in all other cases, the average spot exchange rates during a period from the Wednesday of one week to the Tuesday of the following week being the period immediately preceding the final date for the submission of tenders.

Article 9

1. The price shall be for delivery at the port of unloading, sugar in bags on quayside or in lighter or in containers on quayside, for the destination of each of the lots stated in the Annex.

2. The sugar shall be supplied in new jute bags having the following specifications :

(a) of a minimum weight of 450 g and a net content of 50 kg lined inside with polyethylene of a minimum thickness of 0·04 mm, or

(b) of a minimum weight of 420 g and a net content of 50 kg lined outside with polyethylene of a minimum thickness of 0·05 mm.

The bags shall be clearly and indelibly marked on the outside : 'White sugar / Gift of the European Economic Community to UNRWA / For free distribution to Palestine refugees'.

3. The sugar in question must have been produced and put into free circulation within the Community.

4. The sugar must be delivered not later than the date and at the ports stated in the Annex. For the purposes of this paragraph delivery shall be considered as having been effected when the ship has entered the specified port of unloading with the goods still on board.

If all contracts are not awarded for the prices of the lots of sugar at the first partial award, the date of delivery shall be deferred for a period equal to that running from the date of the first partial award until the date of the partial award at which contracts are awarded.

5. Sampling and analysis shall be carried out by experts approved by the authorities of the Member State referred to in Article 15 (1). All costs of weighing, sampling and quality control at the time of loading shall be paid by that Member State. That State shall collect from the successful tenderer a fixed charge in respect of the said costs: 1 699 ECU for Lot A 1, 1 209 ECU for Lot A 2 and 1 209 ECU for Lot A 3, which charges the tenderer should therefore include in his tender. The fixed charge shall be paid at the time of exportation.

Article 10

1. Without prejudice to Article 15 (2), the competent authority of the exporting Member State shall make a provisional payment to the successful tenderer equal to 90 % of the price quoted in his tender, on production by him of proof that the relevant lot of sugar has arrived, within the meaning of Article 9 (4), at the specified port of unloading. This proof shall consist of a certificate from UNRWA or a specialized international control and surveillance agency approved by UNRWA. The certificate shall be made out in particular on the basis of the relevant transport documents together with an estimate of the quantity of sugar in question.

In addition, the tenderer shall submit one copy of the shipping document to the competent authority referred to in the first subparagraph.

Final payment shall be made as soon as the said authority has received the documents drawn up by UNRWA certifying that the sugar has been delivered to the stipulated port of unloading on quayside or in lighter or in containers on quayside, in accordance with the prescribed conditions. Those documents shall be sent directly by UNRWA to the said authority as soon as possible.

2. If the export formalities in respect of the sugar are completed in a Member State other than that in which the contract was awarded to the successful tenderer, the competent authority of the exporting Member State shall for the purposes of Article 7 immediately inform the authority which awarded the contract of final payment in accordance with paragraph 1.

Article 11

After examination of the tenders, the maximum price for each of the lots of sugar for delivery shall be fixed in accordance with the procedure laid down in Article 41 of Regulation (EEC) No 1785/81. A decision may, however, be taken to make no award in respect of a partial tender.

Article 12

1. Except where a decision is taken to make no award in respect of a partial tender, and without prejudice to paragraph 2, the contract shall be awarded to the tenderer whose tender, when converted into ECU, is the lowest for the relevant lot after taking into account tenderer adjustment referred to in Article 8 (3).

2. Where there is more than one acceptable tender at the same price for the same lot, the successful tenderer shall be chosen by drawing lots.

Article 13

1. Every successful tenderer shall have:

(a) the right to receive, from the Member State in which the tender was submitted, an export licence in respect of the relevant quantity specifying that the monetary compensatory amounts on exports to third countries do not apply and bearing the endorsement: 'Supplies to UNRWA for export from (exporting Member State indicated in the tender) without levy or refund — Regulation (EEC) No 434/82';

(b) subject as otherwise provided in this Regulation, the right to receive payment of the price quoted in the tender for the lot in question;

(c) the obligation to apply to the Member State referred to in (a) for a licence as aforesaid for the sugar in question and to deliver that sugar in accordance with the terms of the notice of invitation to tender.

2. The rights and obligations arising from the award of a contract shall not be transferable.

Article 14

1. The competent authorities shall immediately notify all tenderers of the outcome of their tenders and shall also send a statement of award to every successful tenderer.

2. The statement of award shall specify at least:

(a) the reference number of the invitation to tender;

(b) the reference number of the lot;

(c) the price accepted expressed in the currency of the exporting Member State.

Article 15

1. The successful tenderer shall be responsible for all operations arising from the award of a contract pursuant to this Regulation, and must in particular inform the competent authority of the exporting Member State and UNRWA as soon as possible of:

(a) the name of the vessel and the date of loading;

(b) the expected date of arrival of the vessel at the port of unloading.

The said authority must communicate that information to the Commission as quickly as possible and, where appropriate, to the authority which awarded the contract.

2. Without prejudice to Article 7 (3) the price accepted shall be reduced by 0·12 ECU per 100 kilograms of sugar per day if the sugar is delivered after the prescribed date, except where late delivery is recognized by the competent authority which awarded the tender as due to *force majeure*.

3. If the sugar is of a quality lower than the standard quality it shall be rejected at the tenderer's risk.

Article 16

This Regulation shall enter into force on 26 February 1982.

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

Done at Brussels, 25 February 1982.

For the Commission

Poul DALSAGER

Member of the Commission

ANNEX

Reference No of lot	Port of shipment	Quantity (tonnes)	Quality	Port of unloading	Deadline for delivery (1)
A 1	Community ports	1 405	2	Lattakia or Tartous (Syria)	30. 4. 1982
A 2	Community ports	1 000	2	Aquaba (Jordan)	30. 4. 1982
A 3	Community ports	1 000	2	Ashdod (2) (Israel)	30. 4. 1982

(1) Without prejudice to the second subparagraph of Article 9 (4) of this Regulation.

(2) In the case of this port, the lot must be pre-slung, and presented in packings 1·10 m long, 1·10 m wide and 1 m high or delivered in 20-foot containers with a maximum of 50 containers per vessel.