

COMMISSION REGULATION (EEC) No 1974/80

of 22 July 1980

laying down general implementing rules in respect of certain food-aid operations involving cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1547/79⁽²⁾, and in particular Article 28 thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 113/80⁽⁴⁾, and in particular Article 25 thereof,

Having regard to Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals intended as food aid⁽⁵⁾, and in particular Article 6 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⁽⁶⁾, as last amended by Regulation (EEC) No 2543/73⁽⁷⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Regulation (EEC) No 2750/75 laid down the criteria according to which products intended as Community food aid must be mobilized either from the stocks of an intervention agency, on the market of a specific Community region or, lastly, on the Community market as a whole; whereas Article 6 of that Regulation provides that for a Community operation the Commission must determine the conditions governing mobilization in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75 or, where appropriate, Article 27 of Regulation (EEC) No 1418/76;

Whereas it has been found advisable, in the light of experience gained in operating food-aid programmes, to bring the general rules for the implementation of food aid programmes more into line with international practice as regards supply at the fob and cif

stages and with the rules for interpreting commercial terms contained in 'Incoterms 1953'.

Whereas the general rules set out in Article 4 of Regulation (EEC) No 2750/75 provide that operations are to be carried out by inviting tenders in order to determine the supply costs and, where appropriate the purchase price of the cereals;

Whereas, however, Article 7 (3) of Regulation (EEC) No 2750/75 in respect of urgent Community action, and Article 1 of Regulation (EEC) No 696/76⁽⁸⁾ in respect of exceptional cases, provide that a procedure other than tendering may be used in order to expedite supply of the products; whereas under such circumstances the direct award procedure may be employed;

Whereas, therefore, the rules laid down in this Regulation must be applied to cereals and rice which are to be mobilized in accordance with the criteria fixed by Regulation (EEC) No 2750/75, by employing the tendering procedure or the direct award procedure, and which are to be delivered at the fob or cif stages, without prejudice to any specific provisions which may be adopted by the Commission;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

Where, pursuant to Article 6 of Regulation (EEC) No 2750/75, it is decided to undertake a Community operation for the purpose of supplying cereals, rice or products falling within those sectors as food aid, the general implementing rules laid down in this Regulation shall apply without prejudice to special provisions adopted, where appropriate, in specific cases.

The general rules laid down in this Regulation shall apply to operations to be carried out either at the fob stage or at the cif stage.

⁽⁸⁾ OJ No L 83, 30. 3. 1976, p. 8.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 188, 26. 7. 1979, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 16, 22. 1. 1980, p. 1.

⁽⁵⁾ OJ No L 281, 1. 11. 1975, p. 89.

⁽⁶⁾ OJ No 106, 30. 12. 1962, p. 2553/62.

⁽⁷⁾ OJ No L 263, 19. 9. 1973, p. 1.

Article 2

1. The intervention agency of the designated Member State shall be responsible for putting into operation the procedures for the mobilization and supply of the products.

2. Supply of the products shall be by contract awarded by tendering procedure.

However, where, in the exceptional circumstances referred to in Article 7 of Regulation (EEC) No 2750/75 and Article 1 of Regulation (EEC) No 696/76, it is decided to initiate a direct award procedure, the provisions set out in Title III shall apply.

TITLE II

Tendering procedure

Article 3

Where it is decided to employ a tendering procedure, a notice of invitation to tender drawn up in accordance with Annex I to this Regulation shall be published in the *Official Journal of the European Communities*, annexed to the Regulation opening the tendering procedure, not later than 10 days before expiry of the time limit for the submission of tenders.

Article 4

1. Tenders shall be submitted in writing and either handed in to the intervention agency designated in the notice of invitation to tender against a receipt or sent thereto by registered letter, telex or telegram.

Tenders must reach the competent intervention agency before 12 noon, local time, on the closing date for the submission of tenders specified in the invitation to tender.

2. Where the tendering procedure concerns several lots, each tender must relate to only one lot.

The tender shall be valid only if it relates to an entire lot.

3. The tender shall indicate :

- (a) the reference number of the tendering procedure ;
- (b) the name and address of the tenderer ;
- (c) the number and net weight of the lot to which the tender relates ;
- (d) a single port of shipment selected from the Community ports accessible to sea-going vessels ;
- (e) — the amount of the tender, expressed per tonne of product in the currency of the Member State where the tendering procedure is taking

place ; the tender must take into account in particular the costs listed in Annex II, and in the case of supply at the cif stage must indicate the shipping costs,

- the Member State in which the tenderer undertakes to complete the customs export formalities, where mobilization includes purchase of the goods on the Community market.

4. The tender shall be accompanied by :

- (a) proof that the security referred to in Article 5 was furnished before expiry of the time limit fixed for the submission of tenders ;
- (b) an undertaking by the tenderer to comply with the tendering conditions ;
- (c) an undertaking by the tenderer to apply as soon as possible for an export licence as provided for in Article 6 of Regulation (EEC) No 2042/75 in respect of any quantities for which he is awarded a contract ;
- (d) where the invitation to tender relates to the supply of goods at the cif stage, an undertaking by the tenderer to transport the goods by sea in vessels listed in the larger classes in recognized classification registers, not more than 15 years old, and attested by a competent body as meeting hygiene requirements ;
- (e) where the invitation to tender relates to the supply of products drawn from intervention stocks, an undertaking by the tenderer to supply those products without substitution.

5. A tender which is not submitted in accordance with the provisions of this Article or which contains conditions other than those laid down in respect of the tendering procedure shall not be valid.

6. A tender may not be withdrawn.

Article 5

1. Tenders submitted shall be considered only if security is furnished to serve as a guarantee that the tenderer will fulfil his obligations. The amount of this security shall be laid down in the Regulation opening the tendering procedure.

2. The security shall be furnished, at the option of the tenderer, in cash or in the form of a guarantee given by a credit establishment which satisfies the criteria laid down by the Member State to which the intervention agency responsible for conducting the tendering procedure belongs.

Each Member State shall communicate the criteria referred to in the preceding subparagraph to the Commission, which shall inform the other Member States thereof.

Article 6

Tenders shall be opened and read in public by the competent department of the intervention agency responsible for conducting the tendering procedure, immediately after the time limit for the submission of tenders has expired.

Article 7

1. Without prejudice to paragraphs 2 and 3, the contract shall be awarded within 48 hours to the tenderer who has submitted the most favourable tender, having regard, where appropriate, to the adjustment referred to in Article 8.

2. Where the most favourable tender is submitted by more than one tenderer the intervention agency shall award the contract to one of those tenderers by drawing lots.

3. If the tenders do not appear to be in line with the prices normally prevailing on the market, the intervention agency may, with the agreement of the Commission, decide not to award the contract.

4. The intervention agency shall communicate the results of the tendering procedure to all the tenderers by letter or telex sent not later than the first day following the award decision.

Article 8

1. For the purpose of comparing tenders relating to the mobilization of the product on the Community market each tender shall be corrected by the monetary compensatory amount, if any, applicable on the closing date for the submission of tenders to exports from the Member State specified in the tender in accordance with the second indent of Article 4 (3) (e).

The correction shall be made by:

- increasing the tenders specifying a Member State with negative monetary compensatory amounts,
- reducing the tenders specifying a Member State with positive monetary compensatory amounts.

2. The monetary compensatory amount shall, where appropriate, be converted into the currency of the Member State in which the tendering procedure is opened by using:

- where the currencies in question are maintained within a maximum spread at any one time of 2.25 %, the conversion rate resulting from their central rate,
- in other cases, the average of the spot exchange rates between the currencies concerned recorded in the Member State in which the tendering procedure is opened during a period running from Wednesday of one week to Tuesday of the following week and immediately preceding the closing date for the submission of tenders. Such average shall be communicated to the Member States by the Commission.

TITLE III

Direct award procedure*Article 9*

Where it is decided to determine the supply costs by a direct award procedure the intervention agency designated for the purpose shall, after ensuring competition between several tenderers, conclude the contract on the basis of the most favourable terms.

Where the product is mobilized on the Community market the tenders shall, where appropriate, be compared in accordance with the provisions laid down in Article 8.

Article 10

1. The provisions laid down in connection with the tendering procedure in Article 4 (3) concerning the submission of tenders, in Article 4 (4) (b), (c), (d) and (e) concerning the undertakings required from the tenderer and in Article 5 concerning the furnishing of a security, shall apply *mutatis mutandis* to the direct award procedure.

2. The provisions laid down in Titles IV, V and VI below shall apply *mutatis mutandis* in the case of a direct award procedure.

TITLE IV

Obligations of the successful tenderer and conditions relating to the supply of products*Article 11*

1. The successful tenderer must fulfil his obligations in accordance with the conditions laid down in the Regulation opening the tendering procedure and comply with the undertakings referred to in Article 4 (4) (b), (c), (d) and (e).

2. The successful tenderer may not on his own initiative cancel the operation for which he has been awarded the contract.

3. The rights and obligations arising from the award shall not be transferable.

Article 12

In the case of fob delivery the following provisions shall apply:

1. The successful tenderer shall agree with the recipient country or its agent, within the specified period, the date on which the goods are to be made available at the port of shipment specified in his

tender. The successful tenderer shall inform the recipient of the berth at which the goods are to be made available at the port. He shall immediately communicate these particulars to the intervention agency referred to in Article 17.

2. Where the product is drawn from intervention stocks the successful tenderer shall determine the schedule for removal of the goods in agreement with the intervention agency concerned, taking into account, where appropriate, the storage contracts concluded between the intervention agency and the storer.
3. The successful tenderer shall deliver the goods on board the vessel designated by the recipient in accordance with a loading schedule adopted in agreement with the latter having regard to the custom at the port. The successful tenderer shall load and stow the merchandise on board the vessel at his own expense.
4. He shall bear all the risks, in particular of loss or deterioration of the goods, until they have effectively passed the ship's rail at the port of shipment.
5. In the case of a product drawn from intervention stocks, the successful tenderer shall insure it until shipment has effectively taken place.

The contract shall include a clause whereby, in the event of loss or deterioration of the goods, the insurer is to pay the intervention agency responsible for payment compensation related to the value of the product, namely the intervention price or, in the case of wheat of breadmaking quality, the reference price, applicable on the date of taking delivery of the quantity in question.

6. Where the recipient is able to take delivery of the goods neither on the date specified in paragraph 1 nor on any other date within the period fixed for delivery the intervention agency responsible for paying the successful tenderer shall, with the prior agreement of the Commission, extend the said period. Without prejudice to the application of Article 18 (1), the successful tenderer shall be required to comply with any extension which does not exceed 60 days.

In the event of an extension exceeding 60 days the successful tenderer shall, at his request, be released from his obligations by the intervention agency which shall so inform the Commission immediately.

7. Where the recipient is unable to take delivery of the goods at the port of shipment referred to in paragraph 1, the intervention agency responsible for payment shall, at the recipient's request and with the prior agreement of the Commission, authorize shipment to take place at another port,

without prejudice to the application of Article 18 (2).

Article 13

In the case of cif delivery the following provisions shall apply:

1. The successful tenderer shall contract on the usual terms at his own expense for the carriage of the goods by the usual route to the port of destination specified in the Regulation opening the tendering procedure.
2. The successful tenderer shall provide at his own expense a marine insurance policy covering all risks of carriage endorsed to the order of the recipient, for an amount at least equal to the amount of the tender.
3. Where the goods are drawn from intervention stocks, the successful tenderer shall be required to comply with the obligation referred to in Article 12 (2) relating to the schedule for removal of the goods, as well as the obligation to take out the special insurance referred to in paragraph 5 of that Article.
4. The successful tenderer shall communicate to the recipient, as soon as they come to his knowledge, the name of the vessel, the loading date and the presumed date of arrival at the port of discharge. He shall stipulate in the transport document that the captain must advise the recipient at least 72 hours in advance of the date of arrival at the port of discharge.
5. The successful tenderer shall be responsible for the costs arising from placing the goods on board the vessel. He shall bear the freight and unloading charges, including wharfage and lighterage charges.
6. Any demurrage at the port of destination shall be charged to the successful tenderer.
7. The successful tenderer shall furnish the recipient without delay with the clean non-negotiable bill of lading, endorsed to the order of the recipient, for the port of destination specified, accompanied by:
 - a copy of the insurance policy, referred to in paragraph 3 and, where appropriate, the charter party,
 - the attestation of inspection for conformity referred to in Article 15, and
 - the health certificate referred to in Article 4 (4) (d).
8. The successful tenderer shall bear all the risks relating to the goods, in particular of loss or deterioration to which goods are subject, until they have effectively passed the ship's rail at the port of shipment.

Article 14

The successful tenderer shall as soon as possible give the following information to the intervention agency responsible for payment referred to in Article 17:

- (a) the date on which the goods were made available for delivery to the port of shipment;
- (b) in the case of a cif delivery, the name of the vessel and its flag, the loading date, the departure date of the vessel, the proposed arrival date and the actual date of arrival at destination;
- (c) following the dispatch of each consignment, a declaration showing the quantities shipped and the quality of the product and of the packing where the goods are bagged;
- (d) any delay in loading and any incident occurring during carriage of the goods which may have come to his notice.

Article 15

1. With a view to delivery at the proposed stage the goods must be recognized as satisfying the requirements stipulated in the Regulation opening the tendering procedure. For this purpose the intervention agency of the country of shipment shall arrange for a check at the port at the time of loading on the nature, quality and packaging of the goods. Following inspection an attestation shall be issued. The costs relating thereto shall be borne by the successful tenderer.

Samples intended for analysis shall be taken and the inspection shall be carried out in accordance with the trade practices in force in the country of shipment. The successful tenderer and the recipient's representative shall be invited to take part in the operation.

2. The quantities delivered shall be determined when the goods are placed under customs control.

Where the goods are to be delivered in bulk, a tolerance of minus 2 % of the weight to be delivered shall be allowed.

3. If the inspection referred to in paragraph 1 gives rise to a dispute, the intervention agency shall arrange for a second inspection by a service different from that mentioned in paragraph 1, the findings of which shall be final. The costs relating thereto shall be borne by the losing party.

4. Where the inspection provided for in the preceding paragraphs reveals that the goods do not satisfy the requirements stipulated, they must be refused and replaced. Where some quantities are missing the successful tenderer must make up the cargo.

Article 16

1. A taking-over certificate shall be issued by the recipient immediately following loading at the port of

shipment when the inspections referred to in Article 15 have established conformity. The said document shall attest the place and date of taking over and give a description of the goods loaded in accordance with the requirements.

2. Where the recipient fails to issue the certificate, the intervention agency of the country of shipment shall issue the successful tenderer with a certificate, drawn up in accordance with Annex III, on the basis of the following supporting documents:

- the export licence with the quantity entered,
- the corresponding customs declarations,
- the attestation relating to the satisfactory outcome of the inspection referred to in Article 15 (1).

In the case of a cif delivery, the successful tenderer must also submit the health attestation referred to in Article 4 (4) (d), as well as a copy of the marine insurance policy and a certified true copy of the non-negotiable bill of lading and, where appropriate, of the contract of affreightment.

TITLE V

Conditions relating to payment and release of the security

Article 17

1. Payment to the successful tenderer shall be made:

- in the case of a tendering procedure concerning the supply of intervention products, by the intervention agency of the Member State which held the products,
- in the case of a tendering procedure concerning the mobilization of the product on the Community market, by the intervention agency of the Member State in which the customs export formalities are completed.

2. The amount to be paid shall be that of the tender plus, where appropriate, the costs referred to in Article 18.

If at the time of shipment some quantities are missing, the amount of the tender to be paid shall be reduced in proportion to the quantities actually taken over by the recipient.

3. The amount referred to in paragraph 2 shall be paid to the successful tenderer only on presentation of the original of the taking-over certificate or a certified true copy thereof and the supporting documents referred to in Article 16 (2).

However, if the said taking-over certificate is not issued by the recipient, the intervention agency shall

make payment on the basis of the certificate and the supporting documents referred to in Article 16 (2).

4. The amount referred to in paragraph 2 shall be paid in the currency of the Member State which is responsible for payment. For this purpose this amount shall be converted by using, as appropriate, the conversion rate or the average of the exchange rates referred to in Article 9 (2).

Article 18

1. If the recipient makes the vessel available outside the period of loading specified or if the vessel is unsuitable for the cargo or if the circumstances referred to in the second subparagraph of Article 12 (6) arise, the costs resulting therefrom shall be determined in agreement with the Commission by the intervention agency and borne by the latter.

Such additional costs may *inter alia* be the following :

- storage and insurance costs,
- costs of financing based on the normal rate prevailing in the Member State responsible for payment.

Such costs shall be calculated for the period from the day following the end of the period fixed for shipment until the date on which loading is effectively completed.

2. Where, pursuant to Article 12 (7) the port of shipment is changed, the intervention agency responsible for payment shall agree with the successful tenderer any reduction or increase in the costs initially specified. If the costs initially specified are increased, the intervention agency concerned shall bear the increase with the prior agreement of the Commission.

Article 19

Except in the case of *force majeure* the successful tenderer shall bear all the financial consequences of the non-delivery of the goods under the conditions laid down if the recipient had made delivery possible under such conditions.

The costs resulting from the non-delivery of the goods following a case of *force majeure* shall be borne by the intervention agency.

Article 20

1. The security referred to in Article 5 shall be released to :

- every tenderer whose tender was not successful or was not accepted,
- the successful tenderer in respect of the quantities delivered, having regard to the 2 % tolerance specified in the second subparagraph of Article 15 (2) in accordance with the provisions governing this

delivery and on presentation of the original of the taking-over certificate referred to in Article 16 or a certified true copy or, where appropriate, the certificate and supporting documents referred to in Article 16 (2),

- the successful tenderer in respect of quantities not delivered through the fault of the recipient,
 - the successful tenderer in respect of quantities not delivered on account of *force majeure*,
 - the successful tenderer whose agreement was not obtained to an extension of the time limit fixed for shipment exceeding 60 days, under the conditions set out in Article 12 (6).
2. The security shall be released immediately.

TITLE VI

Final provisions

Article 21

Where the same food-aid operation involves several intervention agencies in different Member States, the latter shall communicate to each other with the minimum delay all the information necessary for carrying out their respective tasks and for the successful conclusion of the operation.

Article 22

1. The intervention agencies which take part in a food-aid operation shall communicate without delay to the Commission the information relating to the implementation of the procedures for which they are responsible and in particular those specified in the following paragraphs.

2. The intervention agency which organizes a tendering procedure or which concludes a direct contract shall forward without delay to the Commission the list of firms whose tenders were considered in accordance with Article 9, shall communicate in respect of each of them the tenders submitted, shall indicate the name and the business name of the successful tenderer or the direct contractor and shall forward in the last case a copy of the contract.

3. The agency responsible for payment shall communicate without delay to the Commission the information referred to in Article 14 and any other information which comes to its notice.

4. The intervention agency of the country of shipment shall forward without delay to the Commission the findings of the inspection referred to in Article 15. This agency shall take the necessary measures to check that the goods taken over by the recipient leave the geographical territory of the Community from the port indicated.

If exportation does not take place within 15 days calculated from the date on which the taking-over

certificate referred to in Article 16 (1) was issued by the recipient or, failing that, the certificate referred to in paragraph 2 of that Article, the agency concerned shall inform the Commission thereof by communicating all the available information on the reasons why the goods were not exported.

Article 23

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, 22 July 1980.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX I

1. Programme
2. Recipient
3. Place or country of destination
4. Product to be mobilized
5. Total quantity
6. Number of lots
7. Intervention agency responsible for conducting the procedure
8. Method of mobilizing the product : (market — intervention)
9. Characteristics of the goods : quality of the goods
10. Packaging :
 - in bags ⁽¹⁾
 - in bulk
 - quality of the bags
 - net weight of the bags
 - marking of the bags : letters at least 5 cm high
11. Port of shipment
12. Delivery stage : (fob/cif)
13. Port of landing : (to be indicated in the case of cif delivery)
14. Procedure to be applied in order to determine supply costs :
 - (tendering procedure)
 - (direct award procedure)
15. In the case of a tendering procedure the deadline for the submission of tenders at 12 noon
16. Shipment period
17. Security

(¹) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

*ANNEX II***COSTS TO BE TAKEN INTO ACCOUNT IN THE TENDER ⁽¹⁾****A. Tender involving the supply of intervention products**

1. Transport costs to the place of delivery
2. Costs arising from the unloading or landing at the place of delivery and where appropriate, the costs relating to all the operations which immediately precede the shipping, loading or transshipment operation
3. Costs relating to the completion of the customs formalities
4. Weighing, inspection and analysis costs
5. Packaging costs
6. Ancillary costs to be borne by the shipper
7. Costs relating to the insurance referred to in Article 12 (3)
8. Freight and marine insurance

B. Tender involving the mobilization of the product on the Community market

1. Price of the product and the packaging
2. Costs arising from loading and transportation to the place of delivery
3. Costs arising from loading or landing at the place of delivery and, where appropriate, the costs relating to all the operations which immediately precede the loading, shipping or transshipment operation
4. Costs relating to the completion of the customs formalities
5. Weighing, inspection and analysis costs
6. Ancillary costs to be borne by the shipper
7. Freight and marine insurance

⁽¹⁾ These lists are not exhaustive.

ANNEX III

TAKING-OVER CERTIFICATE

Recipient :

I the undersigned :
(Name ; forename ; business name)

acting on behalf of

certify that delivery has been taken of the goods listed below :

- Cereals or products
- Net tonnage accepted :
- Packaging :
 - in bulk :
 - in bags :
- Number of bags : at kg net
marking :
- number of marked empty bags :
- Port of shipment :
- Name of vessel :
- Date of shipment :

The quality of the goods delivered is in accordance with that fixed.
