Commission Regulation (EC) No 990/2006 of 30 June 2006 opening standing invitations to tender for the export of cereals held by the intervention agencies of the Member States

COMMISSION REGULATION (EC) No 990/2006

of 30 June 2006

opening standing invitations to tender for the export of cereals held by the intervention agencies of the Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals[(1)], and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93[(2)] lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Commission Regulation (EEC) No 3002/92[(3)] lays down common detailed rules for verifying the use and/or destination of products from intervention.

(3) Given the current situation of the market in cereals, in view of the quantities of cereals available in intervention stocks and the prospects for export of those cereals to third countries, standing invitations to tender should be opened for the export of cereals held by the intervention agencies of the Member States. Each of them should be considered to be a separate invitation to tender.

(4) To ensure that the operations and their monitoring are properly effected, special monitoring arrangements adapted to the cereals sector should be laid down. To that end, securities should be lodged to ensure that the objectives laid down by the legislation are achieved without excessive cost to the operators.

(5) Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93 as regards the price to be paid, the time limits for submission of tenders and the amount of the securities, and in Regulation (EEC) No 3002/92 as regards the entries to be made on the export licence, the removal orders and, where applicable, the T5 copy.

(6) To forestall reimportation, exports under this invitation to tender should be limited to certain third countries.

(7) Pursuant to Article 7(2) of Regulation (EEC) No 2131/93, the lowest transport costs between the place of storage and the place of loading at the port or place of exit are reimbursed to the successful tenderer. For Member States which do not have sea ports, pursuant to Article 7(2a) of that Regulation the successful exporting tenderer may be reimbursed the lowest transport costs between the place of storage and the actual place

of exit, up to a certain ceiling. This provision should be applied for the Member States concerned and the conditions for its application should be laid down.

(8) With a view to the sound management of the system, provision should also be made for the electronic transmission of the information required by the Commission.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1 Subject to this Regulation, the intervention agencies of the Member States shown in Annex I shall issue standing invitations to tender in accordance with Regulation (EEC) No 2131/93 for the export of each type of cereal held by them. The maximum quantities of the different cereals covered by these invitations to tender are shown in Annex I.

[[F1]2 For common wheat and rye, each invitation to tender shall cover a maximum quantity for export to third countries with the exception of Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Liechtenstein, Montenegro, Serbia[(4)] and Switzerland.

For barley, each invitation to tender shall cover a maximum quantity for export to third countries with the exception of Albania, Bosnia and Herzegovina, Canada, Croatia, the former Yugoslav Republic of Macedonia, Liechtenstein, Mexico, Montenegro, Serbia[(4)], Switzerland and the United States of America.**]**

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 386/2007 of 10 April 2007 amending and adapting Regulation (EC) No 990/2006 opening standing invitations to tender for the export of cereals held by the intervention agencies of the Member States.

Article 2

1 No export refund or tax or monthly increase shall be granted on exports carried out under this Regulation.

2 Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

3 Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender, without monthly increase.

4 For the Czech Republic, Luxembourg, Hungary, Austria and Slovakia, the lowest transport costs between the place of storage and the actual place of exit situated outside their territory shall be reimbursed to the successful tenderer, in accordance with Article 7(2a) of Regulation (EEC) No 2131/93, up to the ceiling set in the invitation to tender.

Article 3

1 Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2 Tenders submitted in response to each invitation to tender opened under this Regulation need not be accompanied by export licence applications submitted under Article 49 of Commission Regulation (EC) No 1291/2000[(5)].

Article 4

1 Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time-limit for submission of tenders under the first partial invitation to tender shall be 09.00 (Brussels time) on 6 July 2006.

The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Thursday at 09.00 (Brussels time), with the exception of 3 August 2006, 17 August 2006, 24 August 2006, 2 November 2006, 28 December 2006, 5 April 2007 and 17 May 2007, i.e. weeks when no invitation to tender shall be made.

The last partial invitation to tender shall expire at 09.00 (Brussels time) on 28 June 2007.

2 Tenders must be lodged with the intervention agencies concerned at the addresses shown in Annex I.

Article 5

The intervention agency concerned, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. Each intervention agency may be represented by a proxy, provided this is not the storer.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage.

In the event of a dispute over the results of analyses, the results shall be forwarded electronically to the Commission.

Article 6

1 The successful tenderer must accept the lot as established if the final result of the sample analyses indicates a quality:

a higher than that specified in the notice of invitation to tender;

b higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences do not exceed the following limits:

— one kilogram per hectolitre as regards specific weight, which must not, however, be less than 75 kg/hl for common wheat, 64 kg/hl for barley and 68 kg/hl for rye,

— one percentage point as regards moisture content,

— half a percentage point as regards the impurities referred to in points B.2 and B.4 of Annex I to Commission Regulation (EC) No 824/2000[6],

— half a percentage point as regards the impurities referred to in point B.5 of Annex I to Regulation (EC) No 824/2000, the percentages admissible for noxious grains and ergot remaining unchanged, however.

2 If the final result of the analyses carried out on the samples indicates a quality higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender and the difference exceeds the limits set out in paragraph 1(b), the successful tenderer may:

a accept the lot as established, or

b refuse to take over the lot concerned.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 990/2006. (See end of Document for details)*

In the case of (b), the successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency concerned are immediately notified using the form in Annex II.

3 Where the final result of sample analyses indicates a quality below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency concerned are immediately notified using the form set out in Annex II.

Article 7

Should the cases mentioned in point (b) of the first subparagraph of Article 6(2) and in Article 6(3) arise, the successful tenderer may ask the intervention agency to supply an alternative lot of cereals of the requisite quality, at no extra cost. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof electronically, using the form set out in Annex II.

If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of the first request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency concerned have been immediately informed electronically using the form set out in Annex II.

Article 8

1 If the cereals are removed before the results of the analyses provided for in Article 5 are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress the tenderer might have against the storer.

2 The costs of taking the samples and conducting the analyses provided for in Article 5, with the exception of those referred to in Article 6(3), shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) for up to one analysis per 500 tonnes, with the exception of the cost of inter-bin transfers. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

Article 9

Notwithstanding Article 12 of Regulation (EEC) No 3002/92, the documents relating to the sale of cereals carried out under this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where applicable, the T5 copy shall carry:

(a) for common wheat, one of the entries set out in Annex III(A) to this Regulation;

(b) for barley, one of the entries set out in Annex III(B) to this Regulation;

(c) for rye, one of the entries set out in Annex III(C) to this Regulation.

Article 10

1 The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

[F2 2 Notwithstanding Article 17(1) of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price

applying on the day of the award and the price awarded, but not less than EUR 50 per tonne for rye and EUR 25 per tonne in the case of other cereals. Half of this security shall be lodged when the export licence is issued and the balance shall be lodged before the cereals are removed from the place of storage.**]**

Textual Amendments

F2 Substituted by Commission Regulation (EC) No 37/2007 of 17 January 2007 amending Regulation (EC) No 990/2006 opening standing invitations to tender for the export of cereals held by the intervention agencies of the Member States.

Article 11

The intervention agencies concerned shall communicate to the Commission tenders submitted within two hours of the expiry of the deadline for the submission of tenders laid down in Article 4(1). If no tenders are submitted, the Member State concerned shall communicate this to the Commission within the same time-limits. If the Member State does not send a communication to the Commission within the given deadline, the Commission shall consider that no tender has been submitted in the Member State concerned.

The communications referred to in the first subparagraph shall be sent electronically, in accordance with the model in Annex IV. A separate form for each type of cereal shall be sent to the Commission for each invitation to tender. The tenderers shall not be identified.

Article 12

1 In accordance with the procedure referred to in Article 25(2) of Regulation (EC) No 1784/2003 the Commission shall fix, for each cereal concerned and by Member State, the minimum selling price, or decide to take no action in respect of the tenders received, in accordance with Article 10 of Regulation (EEC) No 2131/93.

2 If the fixing of a minimum price, in accordance with paragraph 1, would lead to an overrun on the maximum quantity available to a Member State, an award coefficient may be fixed at the same time for the quantities offered at the minimum price in order to comply with the maximum quantity available to that Member State.

Article 13

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

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