Commission Regulation (EC) No 1327/2004 of 19 July 2004 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2004/2005 marketing year

COMMISSION REGULATION (EC) No 1327/2004

of 19 July 2004

on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2004/2005 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector[(1)], and in particular Articles 22(2), 27(5) and (15) and 33(3) thereof,

Whereas:

(1) In view of the situation on the Community and world sugar markets, a standing invitation to tender should be issued as soon as possible for the export of white sugar in respect of the 2004/2005 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export levies and/or export refunds.

(2) The general rules governing invitations to tender for the purpose of determining export refunds for sugar established by Article 28 of Regulation (EC) No 1260/2001 should be applied.

(3) In view of the specific nature of the operation, 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 Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector[(2)]. However, Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products[(3)], and Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products[(4)], must continue to apply.

(4) 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 in order to determine export levies and/or export refunds on white sugar covered by CN code 1701 99 10 for all destinations

excluding Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro[(5)], and the former Yugoslav Republic of Macedonia. During the period of validity of this standing invitation, partial invitations to tender shall be issued.

2 The standing invitation to tender shall be open until 28 July 2005.

Article 2

The standing invitation to tender and the partial invitations shall be conducted in accordance with Article 28 of Regulation (EC) No 1260/2001 and with this Regulation.

Article 3

1 The Member States shall establish a notice of invitation to tender. The notice of invitation to tender shall be published in the *Official Journal of the European Union*. 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 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 to tender are modified during that period.

Article 4

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

a shall begin on 23 July 2004;

b shall end on Thursday 29 July 2004 at 10.00, Brussels local time.

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 10.00, Brussels local time:

— 12 and 26 August 2004,

— 9, 16, 23 and 30 September 2004,

— 7, 14, 21 and 28 October 2004,

— **[**[F1]11 and 25 November 2004,**]**

— 9 and 23 December 2004,

— 6 and 20 January 2005,

— 3 and 17 February 2005,

— 3, 17 and 31 March 2005,

— 14 and 28 April 2005,

— 12 et 26 May 2005,

— 2, 9, 16, 23 and 30 June 2005,

— 14 and 28 July 2005.

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 1685/2004 of 29 September 2004 amending Commission Regulation (EC) No 1327/2004 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2004/2005 marketing year.

Article 5

1 Tenders in connection with this tendering procedure:

a must be in writing and must be delivered by hand to the competent authority in a Member State, against a receipt; or

b must be addressed to that authority either by registered letter or telegram;

c must be addressed to that authority by telex, fax or electronic mail, where the authority accepts such forms of communication.

2 Tenders shall be valid only if the following conditions are met:

a tenders shall contain:

(i) the procedure to which the tender relates;

(ii) the name and address of the tenderer;

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

(iv) the amount of the export levy or, where applicable, of the export refund, per 100 kilograms of white sugar, expressed in euro to three decimal places;

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

b the quantity to be exported is not less than 250 tonnes of white sugar;

c proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security indicated in the tender;

d tenders include a declaration by the tenderer that if their tender is successful they will, within the period laid down in the second subparagraph of Article 12(2), apply for an export licence or licences in respect of the quantities of white sugar to be exported;

e tenders include a declaration by the tenderer that if their tender is successful they will:

(i) where the obligation to export resulting from the export licence referred to in Article 12(2) is not fulfilled, supplement the security by payment of the amount referred to in Article 13(4);

(ii) within 30 days following the expiry of the export licence in question, notify the authority which issued the licence of the quantity or quantities in respect of which the licence was not used.

3 A tender may stipulate that it is to be regarded as having been submitted only if one or both of the following conditions is/are met:

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

b the tender, if successful, relates to all or a specified part of the tendered quantity.

4 A tender which is not submitted in accordance with paragraphs 1 and 2, or which contains conditions other than those indicated in the present invitation to tender, shall not be considered.

5 Once submitted, a tender may not be withdrawn.

Article 6

1 A security of EUR 11 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer.

Without prejudice to Article 13(4), where a tender is successful this security shall become the security for the export licence at the time of the application referred to in Article 12(2).

2 The security referred to in paragraph 1 may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given 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 referred to in paragraph 1 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 the relevant export licence within the period referred to in the second subparagraph of Article 12(2), to the extent of EUR 10 per 100 kilograms of white sugar;

c to successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 31(b) and 32(1)(b)(i) of Regulation (EC) No 1291/2000 the export obligation resulting from the licence referred to under Article 12(2) in accordance with the terms of Article 35 of that Regulation.

In the case referred to under (b) of the first subparagraph, the releasable part of the security shall be reduced, as applicable, by:

a the difference between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation, when the latter amount is higher than the former;

b the difference between the minimum amount of the export levy fixed for the partial invitation concerned and the minimum amount of the export levy fixed for the following partial invitation, when the latter amount is lower than the former.

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 cases of *force majeure*, the competent authority of the Member State concerned shall take such action for the release of the security 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. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2 Tenders submitted shall be communicated to the Commission by the Member States without the tenderers being mentioned by name and must be received by the Commission within one hour and thirty minutes of the expiry of the deadline for the weekly submission of tenders stipulated in the notice of invitation to tender.

Where no tenders are submitted, the Member States shall notify the Commission of this within the same time limit.

Article 8

1 After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

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