COMMISSION REGULATION (EC) No 1290/2003

of 18 July 2003

on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2003/04 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], as amended by Commission Regulation (EC) No 680/2002 [2], and in particular Article 22(2), Article 27(5) and (15) and Article 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 2003/04 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 [3], as last amended by Regulation (EC) No 1159/2003 [4]. 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 [5], as last amended by Regulation (EC) No 325/2003 [6], 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 [7], as last amended by Regulation (EC) No 2194/96 [8], must continue to apply.

(4) The Management Committee for Sugar has not delivered an opinion within the time limit set by its chairman,

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 [9] 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 29 July 2004.

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 25 July 2003;

(b) shall end on Thursday 31 July 2003 at 10.00, Brussels local time.

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 144, 28.6.1995, p. 14.
[4] OJ L 162, 1.7.2003, p. 25.
[5] OJ L 152, 24.6.2000, p. 1.
[6] OJ L 47, 21.2.2003, p. 21.
[7] OJ L 16, 20.1.1989, p. 19.
[8] OJ L 293, 16.11.1996, p. 3.

[9] Including Kosovo as defined in United Nations Security Council Resolution 1244 of 10 June 1999.

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:

— on 14 and 28 August 2003,

— on 4, 11, 18 and 25 September 2003,

— on 2, 9, 16, 23 and 30 October 2003,

— on 6, 13 and 27 November 2003,

— on 11 and 23 December 2003,

— on 8 and 22 January 2004,

— on 5 and 19 February 2004,

— on 4 and 18 March 2004,

— on 1, 15 and 29 April 2004,

— on 13 and 27 May 2004,

— on 3, 10, 17 and 24 June 2004,

— on 1, 15 and 29 July 2004.

Article 5

1. Offers in connection with this tender:

(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; or

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

2. An offer shall be valid only if the following conditions are met:

(a) the offer indicates:

(i) the reference of the invitation to tender;

(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) the offer includes a declaration by the tenderer that if his tender is successful he 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) the offer includes a declaration by the tenderer that if his tender is successful he 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;