

Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system

CHAPTER VI  
**PUBLIC STORAGE**

SECTION 5  
**Intervention sales**

*Article 39*

**Sales**

1 Intervention agencies may sell sugar only after a decision to this effect has been taken in accordance with the procedure referred to in Article 39(2) of Regulation (EC) No 318/2006.

2 The sale of sugar under the conditions referred to in Article 18(3) of Regulation (EC) No 318/2006 shall be by tendering procedure or by another sales procedure.

3 The terms of the tendering procedure, including the intended use of the sugar to be disposed of, shall be determined when the decision is taken to issue an invitation to tender.

For the purposes of this Section, ‘intended use’ means:

- a animal feed;
- b export;
- c other purposes, to be determined as required.

The purpose of the tendering procedure shall be to determine the selling price, the amount of the denaturing premium or the amount of the export refund, as the case may be.

4 The terms of the tendering procedure must guarantee equal access and treatment for all interested parties irrespective of where in the Community they are established.

*Article 40*

**Notice of invitation to tender**

1 The invitation to tender shall be issued by the intervention agency concerned for the quantities of sugar held by it.

2 Each intervention agency concerned shall draw up an invitation to tender, which it shall publish at least eight days before the beginning of the period for the submission of tenders.

The intervention agency shall send the invitation to tender, and any amendments thereof, to the Commission prior to publication.

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- 3 The invitation shall indicate in particular:
- a the name and address of the intervention agency issuing the invitation to tender;
  - b the terms of the tendering procedure;
  - c the time limit for submission of tenders;
  - d the lots of sugar put up for tender, and for each lot:
    - the reference number,
    - the quantity,
    - the quality of the sugar concerned,
    - the type of packaging,
    - the location of the place in which the sugar is stored,
    - the delivery stage,
    - any facilities at the warehouse for loading onto a means of transport by inland waterway, sea or rail.

For the purposes of this Section, 'lot' means a quantity of sugar of uniform quality, packaged in the same way and stored in the same place. The minimum bid for each partial invitation to tender shall be 250 tonnes.

- 4 The intervention agency shall make such arrangements as it considers necessary to enable interested parties who so request to examine the sugar offered for sale.

#### *Article 41*

### **Tender**

1 Award to successful tenderers shall be equivalent to the conclusion of a sales contract for the quantity of sugar awarded. Award shall be made, as the case may be, on the basis of the following factors contained in the tender:

- a the price to be paid by the successful tenderer;
  - b the amount of the denaturing premium;
  - c the amount of the export refund.
- 2 The price to be paid by the successful tenderer shall be:
- a the price indicated in the tender, in the case of paragraph 1(a);
  - b the price indicated in the terms of the invitation to tender, in the case of paragraph 1(b) and (c).

#### *Article 42*

### **Terms of the tendering procedure**

1 For the purposes of the tendering procedure, the following terms of the tendering procedure shall be determined when the decision is taken to issue an invitation to tender:

- a the total quantity or quantities put up for tender;
- b the intended use;
- c the time limit for submission of tenders;
- d the price to be paid by the successful tenderer if the sugar is intended for animal feed or for export.

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2 Additional terms may be determined in the decision is taken to issue an invitation to tender, in particular:

- a the minimum price for sugar put up for sale for a purpose other than animal feed or export;
- b the maximum amount of the denaturing premium or the export refund;
- c the minimum quantity per tenderer or per lot;
- d the maximum quantity per tenderer or per lot;
- e the specific period of validity of the denaturing premium certificate or export licence.

#### *Article 43*

### **Standing invitation to tender**

1 If the situation on the sugar market in the Community so requires, a standing invitation to tender may be issued for the sale of sugar.

During the period of validity of the standing invitation to tender, partial invitations to tender shall be issued.

2 The standing invitation to tender shall be published only for the purpose of issuing it. The invitation as published may be amended or replaced during the period of validity of the standing invitation to tender. It shall be amended or replaced if the terms of the tendering procedure are changed during its period of validity.

#### *Article 44*

### **Submission of the tender**

1 The tenders submitted shall be sent to the intervention agency in electronic form.

2 Tenders shall state:

- a the reference of the invitation to tender;
- b the name and address of the tenderer;
- c the number of the lot;
- d the quantity tendered for;
- e per tonne, as appropriate, expressed in euro to two decimal places:
  - the price proposed, excluding internal charges,
  - the proposed amount of the denaturing premium, or
  - the proposed amount of the export refund.

The intervention agency may require additional information.

3 A tender concerning several lots shall be deemed to contain as many tenders as the lots it concerns.

4 Tenders shall not be valid unless:

- a proof is supplied before expiry of the time limit for submission of tenders that the tendering security of EUR 200 per tonne of sugar has been lodged;
- b they include a declaration by the tenderer undertaking, for any quantity of sugar awarded for either a denaturing premium or an export refund:

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- to apply for a denaturing premium certificate and to lodge the security required in that connection, where the tendering procedure relates to sugar intended for animal feed,
  - to apply for an export licence and to lodge the security required in that connection, where the tendering procedure relates to sugar intended for export.
- 5 A tender may stipulate that it is to be treated as submitted only if the award:
- a relates to all or a specified part of the quantity indicated in the tender;
  - b is made not later than a time and date specified by the tenderer.
- 6 Tenders not submitted in accordance with paragraphs 1, 2, 3, 4 and 5, or containing terms other than those indicated in the invitation to tender, shall not be taken into consideration.
- 7 Once submitted, a tender may not be withdrawn.

#### *Article 45*

### **Examination of tenders**

- 1 Tenders shall be examined in private session by the intervention agency. Persons present at the examination shall be sworn to secrecy.
- 2 The Commission shall be informed without delay of the tenders submitted.

#### *Article 46*

### **Fixing amounts**

Where the terms of the tendering procedure do not specify either a minimum price or a maximum amount for the denaturing premium or the export refund, these shall be fixed in accordance with Article 39(2) of Regulation (EC) No 318/2006 after the tenders have been examined, in the light of market conditions and potential outlets. However, a decision may be taken to make no award.

#### *Article 47*

### **Award of the tender**

- 1 Except where a decision is taken to make no award under a tendering procedure or a partial tendering procedure, and without prejudice to paragraphs 2 and 3 of this Article, the award shall be made to any tenderer whose tender is not less than the minimum price or more than the maximum amount of the denaturing premium or the export refund.
- 2 For any one lot, the award shall be made to the tenderer who proposes either the highest price or the lowest amount of the denaturing premium or the export refund.

If the lot is not completely accounted for by that tender, the remainder shall be awarded to other tenderers depending on the amount of their tender, starting with either the next highest price or the next lowest denaturing premium or export refund.

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3 If several tenderers propose either the same price or the same amount for the denaturing premium or the export refund for one lot or part of a lot, the intervention agency shall award the quantity concerned by one of the following means:

- a in proportion to the quantities indicated in the tenders in question;
- b by dividing that quantity between the tenderers in agreement with them;
- c by the drawing of lots.

#### *Article 48*

### **Rights and obligations arising from awards**

- 1 If the sugar is intended for animal feed, awards shall:
  - a confer the right to the issue of a certificate for the quantity for which the denaturing premium is awarded, showing in particular the denaturing premium specified in the tender;
  - b entail the obligation to apply for such a certificate for that quantity to the intervention agency to which the tender was submitted.
- 2 If the sugar is intended for export, awards shall:
  - a confer the right to the issue of an export licence for the quantity for which the export refund is awarded, showing in particular the export refund and, in the case of white sugar, the grade specified in the invitation to tender;
  - b entail the obligation to apply for such a licence for that quantity and, in the case of white sugar, that grade, to the intervention agency to which the tender was submitted.
- 3 Rights shall be exercised and obligations fulfilled within 18 days following expiry of the time limit for submission of tenders.
- 4 Rights and obligations arising from awards shall not be transferable.

#### *Article 49*

### **Statement of award**

- 1 The intervention agency shall immediately send statements of award to the successful tenderers and notify all tenderers of the outcome of their participation in the tendering procedure.
- 2 Statements of award shall indicate at least:
  - a the procedure to which the tender relates;
  - b the number of the lot and the quantity awarded;
  - c the price, the amount of the denaturing premium or the amount of the export refund, as the case may be, accepted for the quantity awarded.

#### *Article 50*

### **Removal of the sugar purchased**

- 1 Except in cases of *force majeure*, the sugar purchased shall be removed from storage not later than four weeks following the date on which the statement of award referred to in Article 49 is received. Instead of removing the sugar from storage, the successful tenderer may

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agree with the intervention agency to conclude a storage contract within that time with the warehouse of the sugar concerned.

However, the intervention agency may if necessary allow a longer period for removing particular lots from storage where there are technical difficulties regarding removal from storage.

2 In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

#### *Article 51*

### **Removal order**

1 The successful tenderer may not remove the purchased sugar from storage or conclude a storage contract under Article 50(1) until a removal order is issued for the quantity awarded.

However, removal orders may be issued for parts of that quantity.

Removal orders shall be issued by the intervention agency concerned at the request of the interested party.

2 The intervention agency shall not issue a removal order unless it is proved that the successful tenderer has either lodged a security to guarantee payment of the price for the sugar awarded within the time laid down, or provided a negotiable instrument.

The security or negotiable instrument shall correspond to the price to be paid by the successful tenderer for the quantity of sugar for which a removal order has been requested.

#### *Article 52*

### **Payment**

1 The payment for the sugar awarded must be made to the intervention agency's account not later than the 30th day following the issue of a removal order.

2 Except in cases of *force majeure*, the security referred to in Article 51(2) shall be released only for the quantity for which the successful tenderer has paid the purchase price to the account of the intervention agency within the time limit referred to in paragraph 1 of this Article. The security shall be released immediately.

3 In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

#### *Article 53*

### **Transfer of ownership**

1 Ownership of sugar awarded under a tendering procedure shall be transferred when the sugar is removed from storage.

2 However, the intervention agency and the successful tenderer may agree to ownership being transferred at another stage. Where the intervention agency and the successful tenderer

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have reached an agreement under Article 50(1), they may determine jointly at what stage the transfer of ownership is to take place.

3 Agreement on the transfer of ownership shall be valid only if it is concluded in writing.

#### *Article 54*

### **Determining the grade or yield**

Articles 35 and 36 shall apply for the purposes of determining the grade or yield of the sugar concerned when it is removed from storage.

However, the contracting parties may agree, after the award has been made, that the grade or yield determined when the sugar was bought in by the intervention agency shall apply to the sugar sold under the tendering procedure.

#### *Article 55*

### **Adjustment of the price of sugar**

1 Where application of Articles 35 and 36 establishes that white sugar is of a grade lower than that indicated in the invitation to tender, the price for that sugar intended for the uses referred to in points (b) and (c) of the second subparagraph of Article 39(3) shall be adjusted in accordance with Article 32(6).

2 If it is found that white sugar intended for export is of a grade other than that indicated in the invitation to tender, the grade shown in the export licence shall be corrected.

3 Where application of Articles 35 and 36 establishes that the yield of raw sugar is other than that indicated in the invitation to tender:

- a the price of the sugar shall be adjusted in accordance with Article 33;
- b the amount of the denaturing premium or export refund shall be adjusted by multiplying it by a coefficient equal to the yield established divided by the yield indicated in the invitation to tender.

#### *Article 56*

### **Release of the security**

1 Except in cases of *force majeure*, the tendering security shall be released only for the quantity for which:

- a either the successful tenderer has:
  - applied, after fulfilling the requirements, for either a denaturing premium certificate or an export licence,
  - lodged the security or provided the negotiable instrument referred to in Article 51(2),
  - has removed the sugar from storage within the time limit laid down,
- b or no award is made.

2 The security shall be released immediately.

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3 In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

#### *Article 57*

#### **Notifications of quantities**

Member States shall notify to the Commission, as soon as they know them, the quantities of white sugar and of raw sugar:

- offered but not yet accepted by the intervention agency;
- accepted by the intervention agency;
- sold by the intervention agency.



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