COVID 19 emergency response

TIPS- NEGOTIATION PROCESS- Goods

| **No.** | **Subject** | **Negotiable (Yes/No/may)** | **Remark** |
| --- | --- | --- | --- |
|  | **Delivery:**   * Delivery Period, * partial delivery, * inclusion of inland transport to final destination as option * point of delivery etc. * options for CIP, FCA, EXW | **Yes** | * Some manufacturers/suppliers may not want to take the responsibility of inland transport to final destination/s which should be considered (in this scenario, the Purchaser should either organize its own logistics or urgently contract-out to companies in the country) * If this results in increased price, it is a trade-off that could be seen on a case by case basis |
|  | **Contract price** | **Yes** | * If there are some bench marks, it would help. |
|  | **Payment terms:**   * Use of Letter of Credit * Direct Payment (Preferred) * Amount of Advance payments (up to 40%) * No Bank guarantee for advance (up to 10%) * etc. | **Yes** | * currency: choice of supplier * **Efforts to be made to reduce supplier risk perception (particularly supplying Goods from abroad in the absence of an L/C). This may result in some advance payment to be made without an equivalent guarantee and/ or higher advance payments than normal. There could be a limit where the risk to the Purchaser could be untenable but reasonable tradeoff is expected.** |
|  | **Performance security**   * Normally not required | **Yes** | * **Should normally not be required** given the time and effort needed under the emergency situation. |
|  | **Governing Law** | **Yes** | * Normally, it is the Purchaser’s country law. Some manufacturers/suppliers who may be new to delivering to the Purchaser’s country, for example, may want some other laws to apply e.g. Swiss law, English law etc. which may be considered. |
|  | **Settlement of disputes** | **Yes** | * The one given in the contract form is reasonable and suppliers are likely not to have an issue. It is negotiable, as long as a foreign supplier is not obliged to be subjected to national arbitration procedures. This could easily create justifiable supplier risk perception. |
|  | **Taxes and Duties** | **Yes** | * The contract form envisages CIP for Goods from abroad i.e. custom duties and other taxes in the country of the Purchaser are not the Supplier’s responsibilities. **No imposition shall be made on** the **supplier to cover such costs.** **The Purchaser shall make necessary arrangements with customs authorities to clear the COVID- 19 Goods expeditiously.** |
|  | **Technical specifications (quality)** | **Yes** | * **As long as applicable industry standards (such as WHO’s) are maintained and** * Minimum functional requirements are met. |
|  | **Tests and inspections** | **Yes** | * considering applicable standards |
|  | **Manufacturer’s authorization (for a supplier who does not manufacture the Goods)** | **No** | * Circumstances/market conditions giving rise to such a request may be looked closely. |
|  | **Packing, marking etc.** | **Yes** | * in accordance with applicable standards |
|  | **Insurance** | **Yes** | * The contract form gives two options the first being as per applicable Incoterm. Suppliers would normally be more comfortable with insurance coverage as per applicable Incoterm. |
|  | **Liquidated damages and bonuses** | **Yes** | * Bonuses **could help to accelerate.** |
|  | **warranty** | **Yes** | * The contract form leaves the warranty period to be filled based on applicable industry practice |
|  | **copyright** | **No** | Protects copyrights of suppliers |
|  | **Limitation of liability** | **may** | however, the provision in the contract form is quite balanced and likely no need to be negotiated. |
|  | **Force majeure** | **may** | not likely that change is needed. |
|  | **Termination** | **may** | though the provision is more than likely to serve the purpose. |
|  | **Fraud and Corruption, Bank’s auditing right** | **NO** |  |
|  | **Any other provision that both parties agree to add** | **may** | * If needed on a case by case basis |