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
 |