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Question 1

Question Type: **MultipleChoice**

Which of the following will be always automatically deemed as a consideration?

Options:

A- Promise to perform over and above an existing obligation

B- Promise given to a third party

C- Implied consideration

D- Past consideration

Answer:

A

Explanation:

Consideration only appears in common law countries. Below are some examples of what is and what is not consideration:

- Past consideration is something that has already been done or given. This cannot act as consideration

- Implied consideration: if the detail of a promise to pay is expressed after the provision of goods or services, but there is an implication that such promise would be forthcoming, this may (depending on the facts) be valid consideration.

- A promise given to a third party: this is not normally consideration, and is based on a concept known as privity of contract. Anyone who is not a party to the contract, even if they are beneficiary of it, cannot sue if the terms of the contract are breached.

- A promise to perform over and above an existing obligation: This is always consideration

- Consideration & Promissory Estoppel

- CIPS study guide page 36-40

LO 1, AC 1.2

Question 2

Question Type: MultipleChoice

CMS Corp goes into a gainshare agreement with the contractor, EIP Ltd. Both parties agree that the final fee will be calculated on target cost - target fee basis. Which of the following will affect the final fee payable in this gainshare agreement? Select TWO that apply:

Options:

A- Accrual expense

B- Final price

C- Purchaser goodwill

D- Supplier share

E- Actual cost

Answer:

D, E

Explanation:

An incentive contract is a sub-segment of a fixed-price or cost-reimbursement contract when there are specific cost or time commitments that are desired for a project. The standard incentive contract will allow for a fixed price to be paid for work to be completed by a specific deadline and at a specific cost.

There are two major types of incentive contracts: Cost-plus-incentive fee and Fixed-price incentive (firm target) contracts. Both types have the same formula for calculating final fee and final price.

The target fee is the amount that will be paid if the actual costs (which can be proven) match the target costs

The actual fee will be adjusted in proportion to the difference between the target cost and the actual cost. The usual calculation is:

Target fee + ((target cost - actual cost) x Supplier share) = final fee

The final price then becomes:

Actual cost + final fee = final price

LO 3, AC 3.3

Question 3

Question Type: MultipleChoice

An organization has a normal tender process that often last 1 month from defining the needs to contract award. Manufacturing department suddenly required a new special part that they could not foresee within a month. Which of the following should be the priority actions of procurement manager in this urgent situation? Select TWO that apply:

Options:

A- Design new specification

B- Develop relationships with potential suppliers

C- Review contract performance

D- Get high-level authority approval

E- Submit full business justification

Answer:

E

Explanation:

This urgent needs occasionally occur due to a sudden change in circumstances. The process for selecting a replacement supplier must still be controlled. If there is a reason for normal processes to be waived, this must be fully documented and approved at a high level.

LO 1, AC 1.1

Question 4

Question Type: **MultipleChoice**

Under a price adjustment agreement, which of the following would be supplier's justification for increasing unit price?

Options:

A- Rise in fuel price

B- Rise in economies of scale

C- Rise in shares price

D- Rise in customer's satisfaction

Answer:

A

Explanation:

Normally in a price adjustment agreement, the supplier is allowed to change price based on an indexation, which is published by a third party (for example, government or exchange market). The selected indices often associate with input materials of supplier. For instance, the plastics manufacturer may adjust their price based on crude oil price as oil is major input of producing plastics. Other suppliers may select different set of indices, such as Producer Perception Index.

In this question, only 'Rise in fuel price' could be a justification for supplier to increase price because:

- It may affect the input material price

- The index is checked and published by an independent third party.

LO 3, AC 3.3

Question 5

Question Type: **MultipleChoice**

Which of the following is a key feature of liquidated damage clauses?

Options:

A- The amount of damage is predetermined

B- Liquidated damage is a penalty

C- The amount of liquidated damages must be exceptionally larger than the actual damages incurred

D- The liquidated damages are non-negotiable

Answer:

A

Explanation:

Liquidated damages are presented in certain legal contracts as an estimate of otherwise intangible or hard-to-define losses to one of the parties. It is a provision that allows for the payment of a specified sum should one of the parties be in breach of contract.

Understanding Liquidated Damages

Liquidated damages are meant as a fair representation of losses in situations where actual damages are difficult to ascertain. In general, liquidated damages are meant to be fair, rather than punitive.

Liquidated damages may be referred to in a specific contract clause to cover circumstances where a party faces a loss from assets that do not have a direct monetary correlation. For example, if a party in a contract were to leak supply chain pricing information that is vital to a business, this could fall under liquidated damages.

A common example is a design phase for a new product that may involve consultation with outside suppliers and consultants in addition to a company's employees. The underlying plans or designs for a product might not have a set market value. This may be true even if the subsequent product is crucial to the progress and growth of a company. These plans may be deemed to be trade secrets of the business and highly sensitive. If the plans were exposed by a disgruntled employee or supplier, it could greatly hamper the ability to generate revenue from the release of that product. A company would have to make an estimation in advance of what such losses could cost in order to include this in a liquidated damages clause of a contract.

Limitations of Liquidated Damages

It is possible that a liquidated damages clause might not be enforced by the courts. This can occur if the monetary amount of liquidated damages cited in the clause is extraordinarily disproportional to the scope of what was affected by the breached contract.

Such limitations prevent a plaintiff from attempting to claim an unsubstantiated exorbitant amount from a defendant. For instance, a plaintiff might not be able to claim liquidated damages that amount to multiples of its gross revenue if the breach only affected a specific portion of its operations. The concept of liquidated damages is framed around compensation related to some harm and injury to the party rather than a fine imposed on the defendant.

The courts typically require that the parties involved make the most reasonable assessment possible for the liquidated damages clause at the time the contract is signed. This can provide a sense of understanding and reassurance of what is at stake if that aspect of the contract is breached. A liquidated damages clause can also give the parties involved a basis to negotiate from for an out-of-court settlement.

- Liquidated Damages

- CIPS study guide page 158-159

LO 3, AC 3.2

Question 6

Question Type: MultipleChoice

Which of the following are NOT covered by CISG? Select TWO that apply:

Options:

A- Transfer of risks

B- Contract validity

C- Remedies for breach of contracts

D- Liability of the seller for death or personal injury

E- Liability to pay damages

Answer:

B, D

Explanation:

United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention or CISG)

Vienna Convention was prepared by by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by a diplomatic conference on 11 April 1980. The Convention was welcomed by several countries from different geographic areas, with different legal and political systems. As of 20 August 2020, the Convention has93 Contracting States. The Convention has proved the effectiveness of an uniform text on international trade law.

What CISG covers, and what it does not

In the 6 first articles of the Convention, the authors set up the boundaries of its application.

First is about where it applies. According to UNCITRAL, the Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorisation in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the practical significance of such a declaration will diminish. Finally, the Convention may also apply as the law applicable to the contract if so chosen by the parties. In that case, the operation of the Convention will be subject to any limits on contractual stipulations set by the otherwise applicable law.

Second, the Convention has a list of goods that are not subject to its application in Article 2. Article 3 clarifies the differences between manufacturing contracts and sale contract.

Third, Article 4 and 5 clearly states what CISG does not covers, including grounds for contract invalidity and liabilities to death or injury of person caused by the the goods

Finally, the Convention respects the contractual freedom of the trading parties. Trading parties may select this convention as governing law or select other instrument, such as UPICC or domestic laws.

- Governing law in International Contracts - Would you choose CISG or UPICC (Part 1)

- CIPS study guide page 49-52

LO 1, AC 1.2

Question 7

Question Type: MultipleChoice

A procurement manager is setting KPIs measurement for user satisfaction. He also wants to encourage users to share the reason why they feel the way they do. Which of the following types of KPI should the procurement manager apply?

Options:

A- Quantitative measure

B- Numerical measure

C- Binary measure

D- Qualitative assessment

Answer:

D

Explanation:

There are 3 types of KPI measure:

- Binary KPIs

- Quantitative KPIs (or numerical)

- Qualitative KPIs

User satisfaction is subjective, therefore, using qualitative assessment is the best answer.

LO 2, AC 2.2

Question 8

Question Type: **MultipleChoice**

Which of the following should be used in a contract for window cleaning during the next three months?

Options:

A- Variable pricing arrangement

B- Fixed pricing arrangement

C- Standard schedule of rates

D- Cost-plus arrangement

Answer:

B

Explanation:

A contract for window cleaning during the next three months is a short-term service contract in which changes of input costs (labour, tools,...) are very unlikely to happen.

Fixed pricing arrangement is useful for small to medium scope project, with short timelines, where what is delivered can be adequately specified and the likelihood of changes to the specification, scope and input costs is limited.

LO 3, AC 3.3

Question 9

Question Type: MultipleChoice

In order to monitor supplier's performance, an organization decides to draft performance management frameworks. Which of the following are the components of a performance management framework? Select THREE that apply:

Options:

A- Targets

B- KPIs

C- Consequences

D- Indemnity

E- Force majeure

F- Justification

Answer:

A, B, C

Explanation:

There are three key components of a performance management framework:

- Key performance indicators (KPIs) - What you are measuring

- Targets - the performance level to be achieved

- Consequences - what happens if the measures are not achieved and/or if they are exceeded

LO 1, AC 1.1

Question 10

Question Type: **MultipleChoice**

Which of the following is the procedure that makes no further competition under a framework agreement?

Options:

A- Closed system

B- Direct call-off

C- Standing offer

D- Blanket order

Answer:

B

Explanation:

Direct call off is the act of placing an order under a framework agreement without having further competition.

Standing offer is an available offer.

Blanket order is another name of framework agreement

Closed system is a requirement of framework agreement. It is a system or process that, once started, does not allow new entrants.

LO 1, AC 1.3

Question 11

Question Type: MultipleChoice

The model form contract invented by Institute of Civil Engineers is...?

Options:

A- NEC

B- IMechE/IET

C- FIDIC

D- JCT

Answer:

A

Explanation:

NEC - New Engineering Contracts is a family of contracts invented by Institute of Civil Engineers. The contracts are suitable for procuring a diverse range of works, services and supply, ranging from major framework projects through to minor works and the purchase of supplies and goods.

FIDIC is a French language acronym for Fdration Internationale Des Ingnieurs-Conseils, which means the international federation of consulting engineers. It was started in 1913 by the trio of France, Belgium and Switzerland. The United Kingdom joined the Federation in 1949. FIDIC is headquartered in Switzerland and now boasts of membership from over 60 different countries. FIDIC published its first contract, titled The Form of contract for works of Civil Engineering construction, in 1957. As the title indicated, this first contract was aimed at the Civil Engineering sector and it soon became known for the colour of its cover, and thus, The Red Book. It has become the tradition that FIDIC contracts are known in popular parlance by the colour of their cover. This first contract by FIDIC was undertaken jointly with the International federation of Building and Public works. FIDIC's concerted effort at achieving broad consultation and acceptance of its contract forms has seen subsequent editions of its contracts being ratified by the International Federation of Asian and Western Pacific Contractors Association, Associated General Contractors of America and the Inter-American Federation of the Construction Industry, Multilateral Development Banks among others. Because of the broad support it enjoys, FIDIC contracts are the foremost contracts in international construction.

The Joint Contracts Tribunal, also known as the JCT, produces standard forms of contract for construction, guidance notes and other standard documentation for use in the construction industry in the United Kingdom. From its establishment in 1931, JCT has expanded the number of contributing organisations.

IMechE/IET: Institution of Mechanical Engineers/Institution of Engineering and Technology - two separate institutes that issue jointly agreed model forms covering the design, supply and installation of electrical, electronic and mechanical plant including special conditions for the ancillary development of software.

LO 3, AC 3.1

Question 12

Question Type: **MultipleChoice**

A service contract is going to be expired, which data source is good to create specifications for ITT?

1. Incumbent supplier

2. Maintenance services

3. Alternative supplier

4. User's knowledge

Options:

A- 1, 2 and 3

B- 1, 3 and 4

C- 1, 2 and 4

D- 2, 3 and 4

Answer:

B

Explanation:

There are a number of shortcuts that can be taken when drafting the specification. These include the following:

- The use of brand names

- The use of recognised standards

- The use of samples

- Information and knowledge from users/other buyers: Drafting a specification should naturally include those already used within the organisation itself, but also variants used by other companies in the same sector and other companies in different sectors

- Information from suppliers: suppliers will always be willing to assist in specification development, as this this one way in which they can seek to influence the design to favour their own products.

LO 2, AC 2.1