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## Commercial Contracting

CIPS L4M3

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## QUESTION NO: 1

Which of the following are likely to be advantages of using invitation to tender? Select TWO that apply:

- A. Short turnaround times
- B. Quick implementation
- C. Driving forward planning culture
- D. Lower administration costs
- E. Reducing risks of bribery and corruption

## ANSWER: C E

### Explanation:

Advantages of using invitation to tender may be as below:

**No Nepotism:** Tenders or bids are evaluated on the basis of certain predetermined criteria, such as price, quality and value for money. In other words, the firm offering the highest quality product or service at the lowest price point would win the contract. As most tender documents are opened and evaluated in a public process, I think that there remains little room for nepotism or favoritism of any kind.

**Value for Money:** From the perspective of the client, tenders offer the greatest value for the amount of money spent. This is due to the fact that the client can choose from a wide pool of potential suppliers to select the ones that can produce the highest quality product or service at the lowest price point. This allows the company, establishment or organization to save money without having to compromise on quality. Therefore, despite being quite time consuming, tendering is, in my opinion, a profitable long-term process from an organization's point of view.

**Encourages Competition:** The process of tendering helps promote a competitive market. This is because a number of potential contractors, firms or suppliers get a chance to bid for every project. And because selection depends on quality and price, every bidder tries to reduce operational inefficiencies and redundancies as much as possible in order to lower expenses and improve quality. This entire process encourages healthy competition in the market and prevents complacency and laziness, which in turn provides a boost to innovation and new ideas.

**Easier Entry:** The system of tendering makes it easier and simpler for new firms to enter the market or even a particular industry. This is due to the fact that contracts under this system are awarded on the basis of predetermined, objective criteria. As a result, even a firm that is a new entrant to the market, having no connections or contacts in the industry, can win a prestigious and lucrative contract by providing the highest value for the client's money. This process therefore helps new firms to quickly get a foothold in the market or industry, thus significantly lowering the traditional barriers to entry.

Reference:

- Characteristics and Benefits of the Tendering Process
- CIPS study guide page 6-8

LO 1, AC 1.1

## QUESTION NO: 2

Which of the following best defines an 'express' term in general contract arrangements?

- A. It is a standard set of terms and conditions published by CIPS
- B. It is not necessarily discussed by the parties, but nonetheless forms part of the contract
- C. It is the term that is added to the contract by the law or based upon the facts of the case.
- D. It is clearly agreed between the parties, and is virtually always written down in the contract

## ANSWER: D

### Explanation:

Express terms are the terms of the agreement which are expressly agreed between the parties. Ideally, they will be written down in a contract between the parties but where the contract is agreed verbally, they will be the terms discussed and agreed between the parties.

Implied terms are terms implied into the contract by the courts. They are not expressly set out in the contract but are taken to be as effective as if they were and as if they had been included from day one of the contract. The express terms and any implied terms together create the legally binding obligations on the parties.

Reference:

- Contracts: Express and Implied Terms

- CIPS study guide 126-132

LO 3, AC 3.1

## QUESTION NO: 3

Which of the following is regulated by standard ISO 14001?

- A. Energy management
- B. Quality management systems
- C. Environmental management
- D. Information security management

## ANSWER: C

### Explanation:

ISO has about 22,000 international standards covering a vast range of aspects of product or service quality. Below are some of the most common ISO standards:

- ISO 9001: Quality management system

- ISO 27001: Information security management

- ISO 5001: Energy management
- ISO 14001: Environmental management

Reference:

- ISO 14001:2015 Environmental management systems — Requirements with guidance for use
- CIPS study guide page 86

LO 2, AC 2.1

## QUESTION NO: 4

Which of the following are typically included in an SLA? Select TWO that apply:

- A. Requirements for packaging
- B. Service definition
- C. KPI details  
Correct)
- D. Code of conduct
- E. Product's lifespan

## ANSWER: B C

### Explanation:

The core elements of an SLA are set out below:

- Service definition
- Quality definition
- KPI details
- KPI management response
- Operational performance and management response
- Constraints or mitigating factors

Reference: CIPS study guide page 110-116

LO 2, AC 2.2

## QUESTION NO: 5

Under general legal principles of contract formation, which of the following will always automatically result in the termination of an offer?

1. Negotiation
  2. Rejection
  3. Failure conditionality
  4. Non-disclosure
- A.** 3 and 4 only
- B.** 1 and 4 only
- C.** 1 and 2 only
- D.** 2 and 3 only

**ANSWER: D**

**Explanation:**

There are a number of ways for an offer to be terminated. They are events that may occur after an offer has been made which bring it to an end so that it can no longer be accepted. An offer is terminated in the following circumstances:

1. Revocation
2. Rejection
3. Lapse of time
4. Conditional Offer (or Failure of Conditionality)
5. Operation of law
6. Death
7. Acceptance
8. Illegality

Reference:

- How Is an Offer Terminated?
- CIPS study guide page 31-32

LO 1, AC 1.2

## QUESTION NO: 6

Which of the following are examples of incentives which can be embedded in contract terms? Select THREE that apply

- A.** Gainshare
- B.** Indemnity
- C.** Contract extensions

- D. Service credits
- E. Liquidated damages
- F. Faster payment

**ANSWER: A C F**

**Explanation:**

Gainsharing is a system of management used by a business to increase profitability by motivating suppliers to improve their performance. As their performance meets the targets, suppliers share financially in the gain (improvement). Gainshare is an incentive for cost control.

Other incentives for good performance are:

- Contract extensions: Buyer can extend the contract duration as an incentive to supplier for meeting their targets.
- Accelerated payments

Reference: CIPS study guide page 187-188

LO 3, AC 3.3

## QUESTION NO: 7

Consequences and actions that arise from certain KPI scores must be...? Select TWO that apply.

- A. Mutually agreed
- B. Deliberately omitted
- C. Documented
- D. Unilaterally imposed by the purchaser
- E. Terminated

**ANSWER: A C**

**Explanation:**

Supplier performance management and monitoring is a fundamental part of contract management. It starts with setting KPIs, targets and consequences or actions that arise from KPI scores. The measures, objectives and targets used in the monitoring of the supplier's performance must reflect those that were agreed when the contract was let. That is why it is important to specify a commitment to continuous improvement at the outset. It would be unfair to the supplier to suddenly introduce a range of measures after the contract had begun - however if such an introduction mid-term through the contract is unavoidable then it should be negotiated and agreed in a professional manner and not merely imposed on the supplier.

In conclusion, the details of how KPIs will be monitored and the actions or consequences resulting from scores achieved must be documented and agreed between the parties. This details may be embedded in the specification or the main body of the contract or it may be set out in a SLA.

Reference:

- Performance Monitoring of Suppliers - CIPS Knowledge summary

- CIPS study guide page 101-109

LO 2, AC 2.2

## QUESTION NO: 8

Which of the following is the best definition of consideration in contract law?

- A. Full statement about something to provide
- B. The act of thinking carefully about one thing
- C. One thing given in exchange
- D. Formal discussion between people who are trying to reach an agreement

## ANSWER: C

### Explanation:

A simple definition of consideration is as follows – an exchange between the parties which results in a benefit to one party, and a detriment to the other. The case of *Currie v Misa (1874) LR 10 Ex 153* provides an apt description of this:

“A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.”

A practical example of this can be found by examining a simple contract. Party A offers £500 to Party B, who in exchange will fit his car with a new engine. Party A receives the benefit of his car being fixed, whilst Party B incurs the detriment of having to take time, effort, and perhaps expenses to fix the car.

Reference:

- Consideration & Promissory Estoppel

- CIPS study guide page 36-40

LO 1, AC 1.2

## QUESTION NO: 9

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

- 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.

Reference: CIPS study guide page 172-176

LO 3, AC 3.3

**QUESTION NO: 10**

Which of the following are most likely to be substantive elements of the specification of a truck? Select TWO that apply:

- A. Guarantee
- B. Foreword
- C. Expected lifespan
- D. Ethics
- E. Abbreviation

**ANSWER: A C**

**Explanation:**

The key substantive elements to be included in a specification are:

- Characteristics of the product or service
- Time scale for delivery
- Response times for defects
- KPIs relating to performance and reliability
- Lifespan and durability expectations
- Documentary requirement for training/user manual and/or management information
- Any specific requirements regarding implementation

Reference: CIPS study guide page 90-92

LO 2, AC 2.1