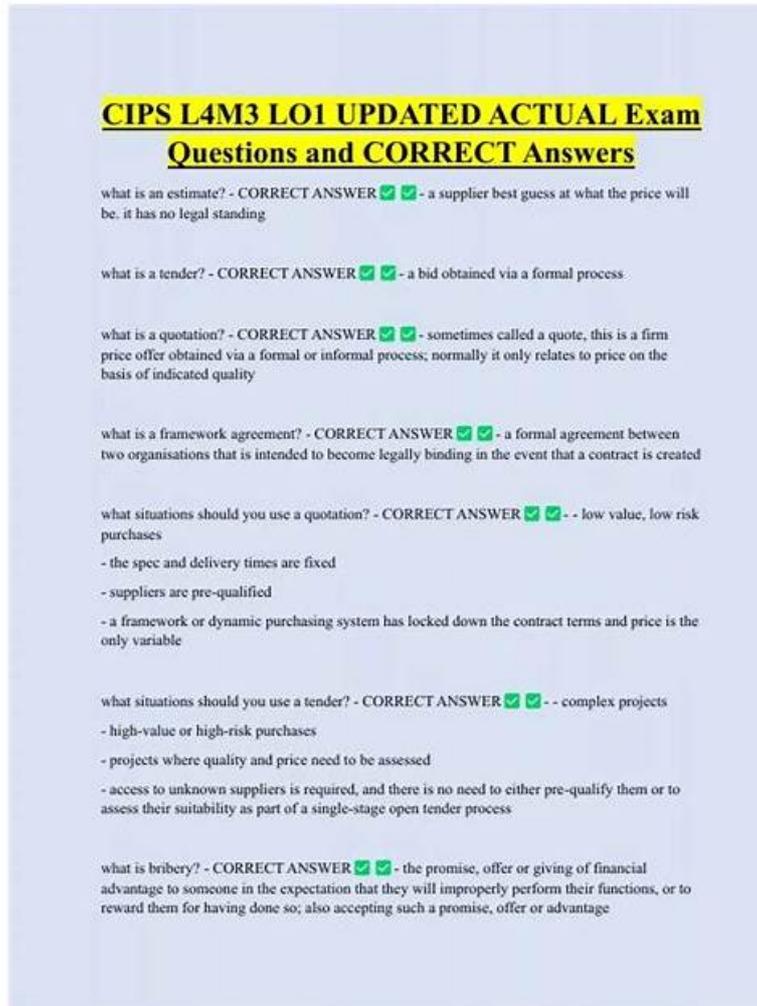


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CIPS Commercial Contracting Sample Questions (Q113-Q118):

NEW QUESTION # 113

Maximum Score: 1

Where a supplier is incentivised to deliver improvements that create added value for the buyer, this is described as what type of outcome?

- A. Win-win
- B. Win-lose
- C. Lose-win
- D. Lose-lose

Answer: A

Explanation:

Incentive mechanisms that reward suppliers for delivering improvements (such as cost reductions, quality enhancements, or innovation) create mutual benefit:

* The buyer gets better value or reduced costs.

* The supplier receives rewards such as bonuses, gain-share, or stronger relationships.

This is the definition of a win-win outcome (D).

Reference: CIPS L4M3 Commercial Contracting - Incentive contracts and win-win supplier relationships.

NEW QUESTION # 114

Which of the following is most likely to reduce ITT preparation time while maintaining the clarity of tendering documents?

- A. Monitoring usage
- B. Eliminating pre-qualification stage from all tendering processes
- C. Standardising documentation whenever possible
- D. Using request for quotation

Answer: C

Explanation:

One of the major disadvantages of tendering process is that it is lengthy, bureaucratic and slow. To reduce the preparation time, buying organisation can:

- Plan forward
- Standardise tendering documents (such as notices, terms and conditions,...) whenever possible
- Train procurement staff
- Write down policies for tender-waiver

Buying organisation should not eliminate the pre-qualification stage from all tendering processes. This stage is used as a filter to select the most competent suppliers for next stage in restricted tendering. To save time in this process, you can design a model questionnaire.

Reference: CIPS study guide page 5

LO 1, AC 1.1

NEW QUESTION # 115

Which of the following is used to detail the complex matter that may be verbiage to the main document?

- A. Contract variation
- B. Standard terms and conditions
- C. Schedule
- D. Subcontracting

Answer: C

Explanation:

Without further explanation, a schedule may be deemed to form an integral part of the obligations of either or both parties. Obviously, the scope or binding nature of such schedule depends on the way it is referred to in the obligatory language of the main agreement. Accordingly, merely attaching the general terms and conditions of sale without explaining to which part of the sale they apply or which provisions apply does not subject a sale pursuant to the body text of the agreement to those general terms and conditions.

Subcontracting is the practice of assigning, or outsourcing, part of the obligations and tasks under a contract to another party known as a subcontractor.

Reference:

- Schedules, annexes and exhibits

- CIPS study guide page 22-26

LO 1, AC 1.1

NEW QUESTION # 116

GPP, the employer, and Prosolia UK, the contractor, entered into five EPC contracts for the development of five different solar power generation plants in the United Kingdom. Four out of the five developments failed to be commissioned by the relevant due dates, with the delays ranging from 44 to 285 days.

Among other claims, GPP, acting through its two investment vehicles, claimed liquidated damages of £500 per day in all four contracts for Prosolia UK's failure to achieve completion of the plants by the due date. The liquidated damages claimed amounted to £1,804,221 across the four delayed contracts.

Prosolia, alongside various other defences, raised the defence that the liquidated damages provision in each contract was a penalty, and therefore unenforceable against it. Is Prosolia contractually obliged to make the payment to the plaintiff?

- A. No, the clause must be treated as a penalty clause which is unenforceable in UK
- B. Yes, the amount is a reward to the employer as they have supervised and monitored the projects
- **C. Yes, the clause is a genuine estimate of possible losses that GPP may have suffered and therefore, it is enforceable.**
- D. No, the amount claimed is too excessive and it may put Prosolia into insolvency. The clause must be void

Answer: C

Explanation:

A liquidated damages clause specifies a predetermined amount of money that must be paid as damages for failure to perform under a contract. The amount of the liquidated damages is supposed to be the parties' best estimate at the time they sign the contract of the damages that would be caused by a breach. If a breach occurs and the liquidated damages clause is enforceable, the parties do not calculate the actual damages (i.e., how much money a party actually lost as a result of the breach). Instead, the breaching party pays the predetermined sum provided by the liquidated damages provision.

To be enforceable, a liquidated damages clause should meet the following criteria.

Damages are difficult to estimate. A court will be more likely to enforce a liquidated damages provision if the damages that will be incurred as a result of a breach of the contract are difficult to estimate when the contract is entered into. In certain situations, injuries are easy to prove. For example, if a breach will result in the loss of sales, it is easy to determine the actual damages by calculating lost profits. Others are more difficult, like the harm caused by breach of a confidentiality agreement or theft of trade secrets. To be enforceable, the damages should be either uncertain or difficult to quantify at the time the contract is entered into.

The amount is reasonable and not a penalty. If the amount of the liquidated damages is grossly disproportionate to the actual harm incurred, a court will likely find it is a penalty or punishment and will not enforce the provision. When making this analysis, courts usually consider what was reasonable at the time the contract was entered into as opposed to when the breach occurred. There have been cases, however, where courts will decide the reasonableness of the damage estimate based on the actual harm at the time of the breach.

The scenario is excerpted and edited based on a real world case law. In that case, the court held that GPP was entitled to liquidated damages under all four of the EPC contracts, ruling that the provisions did not amount to unenforceable penalties in each of the contracts.

Reference:

- CIPS study guide page 158-159

- Liquidated damages in energy projects

- What Is a Liquidated Damages Provision?

LO 3, AC 3.2

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