CIPS Level 5 – Advanced Diploma in Procurement and Supply

Managing Contractual Risk [L5M3]

Sample Exam Questions (Objective Response)

The correct answer will be highlighted

Sample Questions L5M3 March 2020
Q1. Where a subsidiary company is bidding for a contract but it has a poor credit rating, the procurement organisation could obtain which of the following from the parent company to reduce the risk?

a. Guarantee  
b. Indemnity  
c. Insurance  
d. Resolution  

LO: 1  
AC: 1.2

Q2. A large manufacturing company has begun a project to increase the size of their premises. The procurement team has estimated that if the main supplier fails to complete the project on schedule it will incur costs and losses of $20,000 per day for every day there is a delay. Which of the following clauses should the large manufacturer use in the contract with the supplier?

a. Indemnity  
b. Liquidated damages  
c. Public liability  
d. Warranty  

LO: 1  
AC: 1.2

Q3. A buyer has not been managing contract delivery since the agreement was created a year ago. The supplier has not been delivering what was required, although the procurement organisation has been paying its monthly invoices for the last year. In all likelihood the courts would regard this situation as ...

a. a counter offer  
b. a material breach  
c. an acceptance by performance  
d. an unacceptable variation  

LO: 1  
AC: 1.1
Q4. Which of the following will terminate an offer?
   1. Acceptance
   2. Consideration
   3. Revocation
   4. Intention

   a. 1 and 2 only
   b. 1 and 3 only
   c. 2 and 4 only
   d. 3 and 4 only

LO: 1
AC: 1.1

Q5. The general principle relating to penalty clauses is that they must be which of the following to be legally enforceable by the courts?
   1. Reasonable in the context of the losses incurred
   2. An adequate punishment for the supplier’s failure
   3. Enough to justify any legal action against the supplier
   4. Sufficient compensation relative to the damages suffered

   a. 1 and 2 only
   b. 2 and 3 only
   c. 3 and 4 only
   d. 1 and 4 only

LO: 2
AC: 2.3

Learning outcome (LO)    Assessment criteria (AC)    The correct answer is highlighted
Q6 A buyer is seeking to include a clear regime within the contract to act as a lever to encourage the supplier to focus on achieving the stated performance measures. Should they consider using service credits?

a. Yes, these encourage suppliers to achieve stated measures

b. Yes, they are a form of unliquidated damages that will punish poor performing suppliers

c. No, they relate to bonus payments to suppliers and can be expensive to implement

d. No, service credit regimes are generally viewed as penalties by the courts and cannot be enforced

LO: 3  
AC: 3.1

Q7. Specific performance is always a legal right for the buyer in the event of a supplier breach of contract. Is this correct?

a. Yes, for any breach the supplier can be forced to deliver the contract

b. No, it only applies to contracts for the provision of services

c. No, it is only available when there is no other remedy

d. Yes, but only when it is expressly agreed between buyer and supplier

LO: 3  
AC: 3.2

Q8. Which of the following are recognised conflict resolution approaches? Select THREE that apply.

a. Investigation

b. Liquidation

c. Negotiation

d. Litigation

e. Arbitration

f. Synchronisation

LO: 2  
AC: 2.2

Learning outcome (LO)  Assessment criteria (AC)  The correct answer is highlighted
Q9. Regional Social Housing (RSH) is a public body which operates within a strictly regulated environment. It is under close public scrutiny in terms of how it manages its finances. It has a contract in place with a facilities management provider (FM). It is a five year contract and year two has just commenced. Within its regulations RSH is allowed to make some changes to contracts once awarded. There has been a recent change in safeguarding legislation which has necessitated a change in the contract. An initial meeting has taken place between RSH and the supplier. Which of the following are required to enable the change to go ahead (assume RSH can make this change within the procurement regulations)?

1. Contract variation clause
2. Indemnity from FM's parent
3. Agreement of all parties
4. Assessment of unliquidated damages

a. 1 and 2 only
b. 1 and 3 only
c. 3 and 4 only
d. 2 and 4 only

LO: 1
AC: 1.1
Q10. A large insurance company, InsCover (IC), has a number of issues with some of its suppliers in respect of specific contractual terms.

Supplier A – this is a high risk/value supplier and IC is keen to achieve a win/win outcome. The dispute relates to a long overdue invoice which the supplier claims should have been settled three months ago.

Supplier B – this is a transactional supplier that provides routine supplies. IC has a number of options and could switch supply easily. There is an issue relating to damage caused to IC property when the supplier recently made a delivery.

Supplier C – this is an important supplier and IC is keen to find a solution even if they have to meet mid-way to do so. The relationship is worth preserving. The issue relates to IC’s claim for predetermined compensation for the supplier failing to deliver part of its obligations.

Supplier D – an initial meeting has taken place but IC did not have sufficient information to seek resolution. So both parties agreed to call a recess and will reconvene soon to finish the discussion. The issue is about the supplier’s use of a third party to fulfil part of the contract

For each of the suppliers, you are required to match the conflict resolution approach and the contractual issue. Choose from these options and drag and drop your answers into the table below. [8]

You can only use each option once.

<table>
<thead>
<tr>
<th>Conflict resolution approach</th>
<th>Contract term</th>
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<tbody>
<tr>
<td>Avoid</td>
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<tr>
<td>Collaboration</td>
<td>Liquidated damages</td>
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<tr>
<td>Compete</td>
<td>Payment</td>
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<td>Compromise</td>
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<table>
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<tr>
<th>Supplier</th>
<th>Conflict resolution approach</th>
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<td>D</td>
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<table>
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<th>Conflict resolution approach</th>
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<td>B</td>
<td>Compete</td>
<td>Liability</td>
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<tr>
<td>C</td>
<td>Compromise</td>
<td>Liquidated damages</td>
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<tr>
<td>D</td>
<td>Avoid</td>
<td>Subcontracting</td>
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</tbody>
</table>

LO: 1
AC: 1.2
Q11. In relation to contract formation, completion of both offer and acceptance constitutes which of the following?

a. Precedent.

b. **Agreement.**

c. Capacity.

d. Intention.

LO: 1
AC: 1.1 and 1.3

Q12. A large financial services organisation (FSO) is entering into a long-term contract with a supplier for the provision of information technology (hardware, software and support). The FSO anticipates that there will be a need for the contract to change from time to time during its term. To facilitate this, which type of clause should be included within the contract when it is set up?

a. **Variation.**

b. Liability.

c. Amendment.

d. Arbitration.

LO: 1
AC: 1.6

Q13. Which of the following are contractual financial remedies relating to either non or under-performance of a supplier?

1. Liquidated damages.
2. Payment terms.
3. Service credits.
4. Termination clauses.

a. 1 and 2

b. 2 and 4.

c. **3 and 1.**

d. 3 and 4.

LO: 3
AC: 1.3 and 1.5
Q14. Which of the following are recognised contractual tools for attempting to resolve a breach of contract?

1. Liquidation.
2. Consideration.
3. Mediation.
4. Arbitration.

a. 1 and 2.
b. 2 and 4.
c. 3 and 1.
d. 3 and 4.

LO: 2
AC: 2.2 and 2.5

Q15. When a contractual dispute arises, the first step to resolve the issue should be a negotiation between the parties. Is this correct?

a. Yes, because it will cost less than following an alternative legal process.
b. No, a contract is legally binding and does not require further negotiation.
c. Yes, this approach will give assurance that the issue will be resolved fully.
d. No, where there is a dispute the parties are unlikely to agree to meet up.

LO: 2
AC: 2.1
Q16. Liquidates damages are used within a contract to exclude liability for specific events which are outside the control of the contracting parties. Is this correct?

a. No, they reinforce to the contracting parties what the key obligations are under the contract.

b. Yes, they ensure that the burden of non-delivery is shared between all contracting parties.

c. No, they represent a genuine pre-estimate of the costs relating to a contractual breach.

d. Yes, they limit responsibility for contract failure due to extreme and uncontrollable events.

LO: 3
AC: 1.3

Q17. Which of the following are legitimate reasons why a contract could be forced legally to come to an end before its agreed term? Select TWO that apply.

a. Changes in the supplier’s micro environment.

b. The need to apply agreed service credits.

c. Significant breach of conditions by one party.

d. An unexpected change in interest rates.

e. Activating an agreed termination clause.

f. Requesting a small change to the specification.

LO: 3
AC: 2.4
Q18. In the context of contract formation, ‘acceptance’ must be which of the following for it to constitute a legally binding agreement between the parties? Select THREE that apply.

a. Communicated.
b. Witnessed.
c. By guarantee.
d. Unconditional.
e. Under oath.
f. Unequivocal.

LO: 1
AC: 1.3

Q19. Super Clean Group (SCG) is a large facilities management organisation. One of its procurement officers (PO) has a meeting with a cleaning company about a potential future contract. The cleaning company has already submitted a quote to the PO, based on a specification that was provided. The PO explained that they had the authority to commit SCG to the contract and confirmed that the price was acceptable for the services being offered. They agreed that the contract would commence in one month’s time. In addition to the offer and acceptance which of the following make this a legally binding contract?

1. Precedence.
2. Consideration.
3. Capacity.
4. Warranty.

a. 1 and 2.
b. 2 and 3.
c. 3 and 4.
d. 4 and 1.

LO: 1
AC: 1.1
Q20. Specific issues have arisen on four International Telecommunications Group (ITG) contracts and different resolution approaches are being pursued. Relevant information is as follows:

Contract 1 – GPG is in dispute with its supplier (ABC) about ABC’s use of another company to fulfil elements of the contract. GPG claims that ABC did not have the right to outsource this work and is unhappy with ABC’s choice of supplier. An amicable solution has not been found. The contract allows for a specified independent third party, who is not a lawyer, to make the decision on how best to resolve the dispute.

Contract 2 - GPG is in dispute with its supplier XYZ, due to XYZ’s perceived poor labour relations track record overseas. This has had an impact on GPG’s brand and revenues. To date, an informal approach has been adopted. XYZ has tried to provide GPG with reassurances but GPG wants compensation. Now GPG and XYZ have agreed to involve an independent third party in their future discussions to help them find a solution. The third party will not recommend a solution but will instead help to facilitate the discussion.

Contract 3 – GPG has been trying to resolve a significant issue with its supplier DEF for almost a year. In GPG’s opinion, DEF has failed to deliver some minor elements of the contract and so GPG has withheld 50% of the monies due. The contract states that GPG is entitled to withhold a reasonable sum. DEF claims that 50% is an unreasonable and arbitrary amount. The parties have tried to find a resolution but reluctantly GPG has had to pass the issue onto its legal adviser to pursue the only remaining course through the courts.

Contract 4 - GPG has enjoyed a good relationship with the supplier (ZAM), but recently GPG incurred some additional costs that arose indirectly due to ZAM’s actions on a contract it was delivering for GPG. ZAM has already acknowledged responsibility and GPG is hopeful of finding a quick and amicable solution. A meeting between GPG and ZAM has been arranged for them to find a mutually acceptable solution.

You are required, for each contract, to determine the relevant resolution method and the issue that led to the point of conflict between GPG and its supplier.

You can only use each option once.

<table>
<thead>
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<th>Resolution Method</th>
<th>Issue</th>
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<tr>
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<tr>
<td>2</td>
<td>Mediation</td>
<td>Reputational damage</td>
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<tr>
<td>3</td>
<td>Litigation</td>
<td>Penalty clause</td>
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<tr>
<td>4</td>
<td>Negotiation</td>
<td>Consequential loss</td>
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LO: 2  
AC: 2.2