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Exam : L4M3

Title : Commercial Contracting

Version : DEMO

1.Which of the following is the model form of contract for construction which is recommended by World Bank?

- A. ITC
- B. JCT
- C. CIPS
- D. FIDIC

Answer: D

Explanation:

FIDIC is the International Federation of Consulting Engineers (or Fédération Internationale des Ingénieurs Conseils in French). FIDIC has produced many publications, including the model form contracts, best practice guidances, research on sustainability, integrity and risk management. FIDIC model form contracts have been developed by this organisation since 1999, now they consist of several different books which are marked by colours. Thus, FIDIC model contracts also have the nickname "Rainbow suite of contracts". Basically, the "Rainbow Suite" include the following books:

- * Yellow book: Plant and Design-Build Contract (2 editions: 1999 and 2017)
- * Silver book: EPC/Turnkey Contract (2 editions: 1999 and 2017)
- * Red book: Construction Contracts (2 editions: 1999 and 2017)
- * Emerald book: Conditions of Contract for Underground Works (1st Ed 2019)
- * Blue-Green book: Dredgers Contract (2 editions: 2006 and 2016)
- * Gold book: Design, Build and Operate Contract Guide
- * Pink book: Construction Contract Multilateral Development Bank Harmonised Ed (2 editions: 2005 and 2010)

This type of model contract is commonly used around the world because its author, International Federation of Consulting Engineers, collaborates closely with development banks such as World Bank, Africa Development Bank, Asia Development Bank, etc. Every construction project that is financed by these institutions must adopt the FIDIC contracts.

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.

ITC (International Trade Centre) produces contracts specifically designed for small companies doing international business, covering the sale of goods, distribution, services and joint ventures. Many small companies are now engaged in international trade, but don't have access to the necessary contract forms to protect themselves. ITC and leading legal experts developed eight generic contract templates that incorporate internationally recognized standards and laws for most small business situations.

CIPS has several model forms of contract designed specifically for IT buying and servicing.

Reference: CIPS study guide page 142

LO 3, AC 3.1

2.Cleveland Insurance (Cleveland) offers a range of insurance services. The main software used in the call centre is a customer relationship management (CRM) system. Cleveland perceived an urgent need to replace the existing CRM system to deal with the increasing number of customers and services.

Urgent Digital Ltd (Digital) is one of the bidders of Cleveland's ITT for designing, building and managing the new CRM system. Its bid team is led by Hank Irvine, its technical director. Hank realises that winning

the Cleveland contract (valued at approximately £50M) will enhance his career. During discussions with Cleveland, Hank offers certain assurances regarding timescales for the project. He has not carried out any investigations into the viability of the timescales. Hank has little idea whether the timescales can be met.

Cleveland decides that Digital's bid meets with its requirements, especially given the assurances in timescale offered by Hank, and decides to proceed with it, subject to a formal contract. Eventually, a formal contract is signed by both parties. The initial assurances given by Hank about the timing of the project are never going to be achieved and are at best grossly exaggerated.

Cleveland brought the case to the court and sought rescission of contract with Digital.

Is Cleveland's claim appropriate in this case?

- A. Yes, because Cleveland needs to seek rescission first before claiming for damages
- B. Yes, because both parties agreed with rescission of their contract
- C. No, because the work had been carried out which could not be returned
- D. No, because the contract does not include any provision on rescission

Answer: C

Explanation:

Hank's pre-contractual assurances may amount to misrepresentation. Remedies for misrepresentation could be rescission of contract or damages.

Rescission will be impossible in the following instance:

- Where the innocent party has affirmed the contract; that is, acted in a way confirming that they wish it to continue
- Where the claim has not been brought within a reasonable time (this is a point of general law)
- Where restitution (returning to the pre-contractual position) is impossible (e.g. because the goods have been consumed or have deteriorated)
- Where there has been intervention of innocent third-party (e.g., if the goods have been sold on)

In this case, the subject of contract is designing, building and managing the new CRM system which is impossible to be restituted. Therefore, the contract cannot be rescinded.

Reference: CIPS study guide page 53-55

LO 1, AC 1.2

3.Which of the following are reasons why a purchaser wants to embed a subcontracting clause into the main contract? Select TWO that apply:

- A. To induce the conflicts between the main contractor and subcontractors
- B. To improve supply chain transparency
- C. To reduce the main contract complexity
- D. To keep main contractor liable
- E. To condemn whole liabilities to subcontractors

Answer: D

Explanation:

There are number of reasons why the purchaser will want to control the supplier's subcontracting:

- Supply chain transparency: Normally the purchaser has invested a lot of effort into selecting the right contractor. However, the main contractor's selection of subcontractor might not be in such careful manner, which may result in poor performance. Purchaser must know who subcontractors are. Controlling the subcontracting process can help the purchaser control the outcome.

- Contract terms: the purchaser's requirements must be reflected in the subcontracts. The subcontracting clauses may require the main contractor to do this.

- Liability: the main contractor may subcontract the whole or a part of its liabilities. Subcontracting clause may bind the contractor to be liable with the work, it cannot just blame the subcontractor for any faults.

Reference: CIPS study guide page 154-155

LO 3, AC 3.2

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

Short turnaround times

A. Quick implementation

B. Driving forward planning culture

C. Lower administration costs

D. Reducing risks of bribery and corruption

Answer: B,D

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

5.XYZ Ltd is negotiating a long-term supply contract of important parts with a supplier. Dave, procurement manager teams up with Alla, legal manager to construct a service level agreement. Dave is

concerned that poor performance of supplier may cause damages to the operations of the organisation. Which of the following can be used in conjunction with SLA to compensate the buying organisation in case of supplier's poor performance?

1. Warranties
 2. Force majeure clauses
 3. Penalty clauses
 4. Service credits
- A. 1 and 3 only
 - B. 3 and 4 only
 - C. 1 and 2 only
 - D. 4 and 2 only

Answer: B

Explanation:

Service level agreement often sets out the minimum quality standards of the services provided, remedies if that standards are not met, consequences if the targets are exceeded. Penalty clauses and service credits are remedies that are often used in conjunction with service level agreement to ensure the performance and to compensate the purchaser if targets are not met.

Reference: CIPS study guide page 110

LO 2, AC 2.2