

**Level 4 Diploma in Procurement and Supply**

# **D4 - Negotiating and contracting in procurement and supply**

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## **EXAM EXEMPLAR QUESTIONS**

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**QUESTIONS AND INDICATIVE ANSWER CONTENT**

## QUESTIONS AND MARKING SCHEME

### Q1 Learning outcome: 1.0

- (a) Explain why a 'delivery note' is a very significant 'form' in the 'battle of the forms'. (15 marks)
- (b) Describe **TWO** ways in which a buying organisation might attempt to avoid entering into the 'battle of the forms'. (10 marks)
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### Marking scheme

- (a) This is a standard aspect of contract law. Candidates might explain in general terms that 'the Battle of the Forms' occurs when there are differences between a buyer's and a seller's terms and conditions because the offer /counter offer and acceptance process uses documents which will carry either party's terms) and then explain why the delivery note has a particular significance in the Battle of the Forms which might include but is not restricted to:
- The general principle ('last document rule') means that most often the supplier is in the stronger position. The delivery note (when goods are physically delivered) is usually the last 'form' in the 'battle' (the last counter offer) so that this can be the document that determines whose terms and conditions apply to the deal. The delivery note will hold the supplier's terms.
  - Goods inwards staff and other 'receivers' of goods and deliveries are often unaware of the significance of the delivery note as a legal document and part of the contract. The risk here is that the delivery note is not checked and then signed/accepted 'sight unseen' which means that the terms may not be in the interest of the buyer

Depth of answer is required as above or other relevant answers. Higher scoring candidates might provide more detail about the Battle of the Forms and quote relevant case law e.g. Butler v Ex-Cell-O.

Higher scoring answers might also go on to describe the consequences of contracting on supplier terms such as the buyer might have liability for certain costs and risks, inability to claim damages from the supplier for faulty goods, disadvantageous payment or credit terms affecting cash-flow.

Up to 5 marks for explaining the Battle of the Forms in general terms and up to 10 marks for explaining the significance of the delivery note to both parties.

(15 marks)

- (b) This question is testing the candidate's knowledge and understanding of how to win or at least never start 'the Battle of the Forms'. Candidates can describe TWO from a number of different ways to avoid entering into the 'battle'.
- The buyer must send acknowledgement forms with all enquiries to potential suppliers. These hold the buyer's terms and conditions of purchase. Suppliers are required to sign and return indicating acceptance.
  - The buyer should reject quotations including the seller's terms and the seller asked to sign an agreement to meet the buyer's terms.
  - The buyer must send acknowledgement forms with all purchase orders to potential suppliers. These hold the buyer's terms and conditions of purchase. Suppliers are required to sign and return indicating acceptance. If the seller uses its own acknowledgement and terms then the buyer must write back confirming that delivery will be made on the buyer's terms.

- The use of framework contracts (in their several different forms).
- By negotiated agreement, this can result in a combination of terms from both parties.
- Stamp delivery notes 'goods received on buyers' terms and conditions' on receipt of goods.

Candidates should provide depth of detail in the answer. Higher marks are gained with greater depth. Case Law is not essential but could serve to illustrate points and clarify explanations.

Up to 5 marks for each description as above or similar and relevant.

(10 marks)

**CIPS study guide reference: Chapter 2 - 4.4 to 4.12. Page 29 and 30**

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SAMPLE QUESTIONS

**Q2 Learning outcome: 2.0**

- (a) Discuss **FOUR** advantages and **FOUR** disadvantages of a win-lose approach to negotiation.

**(16 marks)**

- (b) Explain **THREE** factors a buying organisation might consider when establishing its bargaining position in relation to a supplier.

**(9 marks)**

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**Marking scheme**

- (a) The discussion of the advantages and disadvantages of a 'Win-Lose' approach to negotiation might start with an introduction to the terminology (i.e. one party wins, the other loses). There is a place for win-lose approaches to negotiations where the 'win' in the issue or outcome is deemed more important than the relationship.

**Advantages include:**

- Win-lose can bring more competitive advantage as the negotiator is targeted with obtaining their objectives to the detriment of the other party's
- Very focused
- Win-lose more appropriate for certain types of purchases i.e. transactional
- Win-lose often perceived as a powerful perspective/position.

**Disadvantages include:**

- Win-lose could damage the buyer-supplier relationship, (not taking account of the other persons perspective). May leave the 'losing' party feeling resentful
- Seen as a dominant/aggressive position
- Too much focus on achieving own objectives, could mean missing an opportunity
- Less flexible.

**Less trusting**

Focus on limited goals might result in missed opportunities if sources of synergy are not explored.

- The one party likely to suffer from 'dissonance'

Alternative approaches to the question may compare this approach with 'win-win' and 'win-perceived win'. Candidates could also use the Kilman matrix to describe competitive and collaboration strategies (win/win and win/lose negotiation approaches evolved from this).

Up to 2 marks for discussion of each of FOUR advantages; up to 2 marks for discussion of each of FOUR disadvantages, up to a total of 16 marks.

**(16 marks)**

- (b) The candidate must explain the bargaining strength/position. Candidates should recognise that there are a number of factors to consider when entering into a negotiation.

Topics that could be covered by the candidate are:

- Power and authority of those to attend the negotiation
- Size of the supply organisation relative to the buying organisation

- The ability and cost to switch suppliers (number of potential suppliers, substitutes, level of differentiation of product)
- Attractiveness of the buying account to the supplier (reputation, prompt payer, ethical dealings, supplier development)
- Urgency of demand
- Knowledge/information about the supplier and its negotiating position
- The importance of each party's resources to the other party
- Amount of existing business with the supplier (if any)
- Market position of the supplier e.g. market leader or contender
- Personal relationships/reciprocity
- Business relationships (if any)
- Future goals and objectives e.g. consolidation/acquisition.

Up to 3 marks for each factor explained in context of the buying organisation's position relative to the supplier.

Reference could be made to the importance of evaluating the supplier prior to a negotiation. Higher scoring candidates may explain that the stronger the bargaining position, the greater the opportunity to apply leverage. Higher scoring candidates might explain for each fact, the situation where the buyer or supplier might hold the stronger bargaining position.

**(9 marks)**

**CIPS study guide reference: (a) Chapter 5, section 1.4, 1.5, 2.2, 2.11-2.16, 3.1 and 3.5 - pages 69 to 74  
(b) Chapter 6, section 2.1 to 2.6 - pages 83 to 87**

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**Q3 Learning outcome: 3.0**

- (a) Explain, with examples, the difference between direct and indirect costs. **(10 marks)**
- (b) Discuss **THREE** financial tools that a buyer could use to support a negotiation. **(15 marks)**
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**Marking scheme**

- (a) The first part of this question is designed to test the candidate's knowledge and understanding of the tools available to evaluate suppliers' costs and prices in preparation for commercial negotiations.

The candidate could include the following:

- Definitions of direct and indirect costs. The latter costs contribute to all jobs performed not just that job linked to the direct costs in question.
- The difference between the two costs; direct costs are directly attributable to the make up of the specific saleable product/service whilst indirect costs are not. Indirect costs are overheads or expenditure on labour, materials and other items that cannot be identified with a specific saleable unit of output.
- Examples of each can be taken from any sector and should clearly illustrate the theoretical answer given. E.g. in relation to a restaurant temporary chefs, counter staff and chilled foods could be classed as direct costs, whereas a small head office team providing the administration support could be classified as indirect costs. It is important to ensure that the candidate does not confuse direct and indirect with fixed and variable.
- Candidates may also discuss examples from their own experience.

Up to 5 marks for explaining the difference and up to 5 marks for relevant examples.

Higher scoring candidates will provide examples from the same saleable product/service and might discuss how understanding these costs helps the buyer.

**(10 marks)**

- (b) The second part of this question is designed to test the candidate's knowledge of financial tools that could support a negotiation.

**THREE** could be selected from the following:

- Budget analysis
- Margin analysis
- Contribution analysis-
- Breakeven analysis
- Open Book Costing
- Cost transparency -
- Cost analysis – understanding the suppliers' costs and costing methods such as marginal costing, absorption costing, activity based costing and lifecycle costing.
- Price analysis – comparing the price against other quotations, previous prices, alternative products, market prices etc.

- Ratio Analysis
- Credit referencing.

Other financial tools that the candidate may be familiar with and are appropriate for example ratio analysis would also be acceptable.

Each tool accurately described will be awarded 5 marks.

Higher scoring answers will not only identify but also discuss the contribution each tool can make to a negotiation including its limitations.

**(15 marks)**

**CIPS study guide reference: Chapter 7 - Pages 103 to 119**

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SAMPLE QUESTIONS

#### Q4 Learning outcome: 4.0

During a negotiation meeting the supplier offers a price and payment terms that are on offer 'today only' and the buyer can take or leave this deal. The buyer explains that more discussion is required because the price is above the buyer's budget and the payment terms are shorter than the buying organisation's standard terms. The supplier listens selectively and then repeats his ultimatum. The buyer does not want an impasse to end the meeting.

(a) Using the scenario outlined above suggest **THREE** different types of question that the buyer can use and explain why these questions might be effective. (15 marks)

(b) Discuss how effective listening skills could improve the supplier's contribution to the negotiation. (10 marks)

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#### Marking scheme

(a) Answer content might include:

The scenario poses an ultimatum and an impasse situation. There is also an element of an unreasonable deadline too (on offer today only). The buyer has a range of questions that he can ask to avoid walking away and keep the negotiations open. He will want to understand if there is an opportunity to extend the deadline and what lies behind the fixed stance on price and payment terms. The buyer can use questions to keep the negotiation going, try to regain control, to refocus the negotiation towards a more integrative approach/outcome and create options to find something to bargain with to improve the price and payment terms.

Candidates can draw from sources such as Gerard Nierenberg (Fundamentals of negotiations) or Steele, Murphy and Russell (It's a Deal).

Answers could provide THREE question types from the following or other valid questions if justified:

- **Open ended** – requires more than yes/no answer and elicits more information to keep the discussions progressing and potentially new options. For example:
  - o Why are you taking such a firm position on your payment terms?
  - o What else could either of us do to close the gap between our positions?
  - o Why can't we negotiate on this deadline?
- **Probing** – asks for more detail, clarification or explanation to gain further understanding of why there is no room for negotiation and no alternatives to offer. For example
  - o Are you feeling pressure to bring the negotiations to a close?
  - o What is your reasoning behind not wanting to negotiate further?
  - o Why is it important to conclude negotiation?
- **Hypothetical** – opens up options. The buyer could put forward some options regarding price and payment terms or could offer other variables to trade to see if they are more valuable to the supplier than the price level and payment terms the supplier has offered. For example
  - o If it was 2 weeks from now and we were looking back at this negotiation, what might we wish we had brought to the table?
  - o If we can come up with an alternative, would you still want me to 'take or leave' your offer?



- o If I were able to look at increasing volumes would you be able to discuss discounting prices?
- **Multiple** – covers more than one issue, puts the other party under pressure and potentially introduces other options to consider. For example
  - o How can we extend the deadline and how would this affect the price and terms you can offer?
  - o What is different tomorrow that would remove this offer or prevent you improving your offer and including a discussion on volume?

Some of the probing, hypothetical and multiple questions could be stated as open-ended questions. A wide range of types of questions will be accepted, providing that they are justified in context of the scenario.

Up to 5 marks for content relating to each question type; which breaks down as follows: 2 marks for an appropriate example of a question type and up to 2 marks for explanation of how the question can be effective in relation to the deadline/impasse/ultimatum and 1 mark for specific context to the scenario.

**(15 marks)**

- (b) Effective listening encourages the supplier to talk.

**It is useful in negotiations for the following reasons:**

- It will signal to the buyer that the supplier is engaged and interested to find a solution.
- This might yield more important information, which can be turned into negotiation leverage. It involves listening and then understanding and interpreting the meaning and intent of what had been said. The buyer, through questions, will show willingness to discuss and possibly concede in some variables. New options might be generated that are of greater value to the supplier than price and payment terms.
- Effective listening techniques could be discussed i.e. Nodding, hand gestures to encourage the buyer to continue speaking etc.
- Facilitates understanding because the supplier can ask questions then and give some clarity on potential misinterpretations.
- It facilitates subsequent recall of a message
- It would help to re-build rapport with the buyer and potential future collaborative relationships.

Candidates can use a range of additional factors; however the answer should be contextualised in relation to supporting a negotiation.

Up to 2 marks for each point discussed as above or similar and relevant to the scenario.

**(10 marks)**

**CIPS study guide reference: Chapter 13 - Pages 201 to 205**

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