EXAM PRACTICE QUESTIONS

Adopted from Past Exam papers

D39PZ: Procurement and Contracts
PLEASE NOTE THAT THE FOLLOWING ANSWERS ARE NOT A FULL SET OF ANSWERS FOR THE GIVEN QUESTIONS. THE ANSWERS ARE JUST GIVEN UNDER BULLET POINTS.

THESE BULLET POINTS ARE USEFUL INDICATIONS OF HOW YOU COULD STRUCTURE THE ANSWERS.
The Clerk of Works has issued a direction to the Contractor on a recent site visit. The direction requires the Contractor to remove and rebuild a large number of concrete columns which, in the Clerk of Works’ opinion, have been damaged by vehicles moving around the site.

The Contractor does not agree that the columns have been damaged. Explain what the Contractor should do in this situation. Support your explanation with reference to the JCT05 SBC/Q form of contract and the Contractor’s commercial interests.

(33 marks)
This question centres on cl. 3.4 which gives the CoW his powers.

State the relevant clause number

Explain the role of the CoW as an inspector of the works, his relatively limited power, and the difference between a CoW direction and a CA instruction (or Variation).
With regard to the contract form:

- CoW direction has no effect until it is confirmed by CA instruction in writing within 2 working days of the direction being given (clause 3.4)
- If the CA confirms the direction in writing within this time, then it becomes a CA instruction (clause 3.4)
- Comment on the translation of a direction into an instruction as further evidence of the limitation of the CoW’s powers and expertise (i.e. focus on workmanship only mean directions can only really relate to work not in accordance or workmanship not in accordance). The inability of the CoW to vary the works should be mentioned.
With regard to the contractor’s commercial interests:

- Suggest that the contractor will not want to potentially undertake unnecessary remedial work by complying with the CoW direction if it was not to be later confirmed by a CA instruction. The Contractor would therefore be advised to not do anything until the direction is confirmed by the CA, even if the Contractor is under time pressure.

- May focus on the difference of opinion between the CoW and the Contractor. They would suggest that wanting for an independent, supposedly neutral opinion from the CA would be advisable before any potentially abortive action was to be taken by the Contractor.

- If the Contractor is under time pressure, it may comply with the COW direction before it is confirmed as a CA instruction. If the Contractor does this, then it is at the Contractor’s risk as the direction may not be confirmed (if the CA disagrees with the CoW’s opinion) and is, thus, a commercial decision.
Question 2- (Semester 3 - 2009/10 Exam paper)

a) Explain why the Contract Sum must be continually updated during construction.

(10 marks)
This question relates to contract law underpinning the JCT form.

You should determine that the Contract Sum must be sustained to ensure that the ongoing agreement between the Contractor and Employer about it is clearly documented.

You should note that the current definition is contained in each interim certificate and the gross valuation process determines it.

Cite relevant clauses (4.1 – 4.5) - Not required to explain each clause in detail.

Identify various needs arise on construction sites to update the contract sum as described in cl. 4.3 (eg:- variations, claims etc.)
- Explain that the Work completed without a valid / agreed contract sum would have to be paid on a quantum meruit basis. All students should be able to explain that this will likely be higher than the bill rates as tender price would have been the lowest from the market rather than the market norm.

- You may suggest that the difference between bill rates and quantum meruit rates could be marked in the current economic climate, where tender prices are depressed and the Contractor may even have “bought” the contract by tendering below cost.
b) Assume that the Contract defines several Listed Items. Explain the responsibilities of the Quantity Surveyor and the Contractor to ensure that these Listed Items are included in the amount stated as due in each relevant Interim Certificate.

Support your answer by referencing all relevant JCT05 SBC/Q contract clauses. (23 marks)
- Commence discussion with an explanation of a Listed Item – ideally, this should be in your words, and not replicated from cl. 1.1.

- Give practical examples of the items that are often prefabricated off site as examples of Listed Items.

- QS’s responsibilities are concerned with the treatment of Listed Items when ascertaining the Gross Valuation. The QS’s responsibilities are defined by cl. 4.16.1.1; 4.16.1.2; 4.16.1.3, but no other part of 4.16 is relevant – mention of them should not receive marks.

- May debate the QS’s willingness to visit off-site locations to inspect Listed Items and establish that a QS not inspecting such items would be negligent.
Contractor’s responsibilities are concerned with ensuring the listed items can be clearly identified as being destined for the project – defined by cl. 4.17

- only seek payment for the listed items in the contract – 4.17.1
- provide evidence that the contractor owns the listed items – 4.17.2.1
- provide evidence that the listed items are insured – 4.17.2.2
- the listed items must be clearly distinguished as allocated to the project (i.e. not on a shelf in a warehouse with other unallocated items) and intended for the Employer – 4.17.3

Mention that the contractor may have to provide bonds for the items if agreed in the contract particulars (cl. 4.17.4 and 4.17.5)
Question 3 - (Semester 2 - 2009/10 Exam paper)

Explain the difference between a Contract Administrator’s instruction and a Variation. Support your answer with two practical examples of situations that require a Variation, and two practical examples of situations that require an instruction.

Support your answer by referencing all relevant JCT05 SBC/Q contract clauses.

(33 marks)
- All students must clearly establish that a Variation is a change to the Works (cl. 5.1.1) or the conditions in which the Works are to be completed (cl. 5.1.2). All students should establish that a Variation is instigated by the Employer and is (typically) not of the Contractor’s choice. The purpose of a Variation (i.e. why it is so-called) is to vary the content of the Contract Documents.

- This should be compared with instructions, being defined as directions to the contractor with which it must complete regarding compliance with the contract documents, allowing access, etc. – All students must establish that cls. 3.14 – 3.22 establish what issues the CA is entitled to instruct on. Instructions should be described along the lines of the CA’s directions to the Contractor regarding the manner in which the Works are being construction.
- Note that the contractor’s obligation to comply with all instructions (other than those varying the conditions in which the works are to be completed) – cl. 3.10 – is required because the purpose of an instruction (other than those varying the works) is to make sure that the Contractor fulfils the original agreement.

- A variation will change the Contract Sum, although any extensive discussion of adjustment of the contract sum is a tangent to this question and should not be well rewarded.

- All students should establish that CA instructions can only be issued in accordance with the contract – i.e. the CA’s powers to instruct in cls. 3.14 to 3.22. Students should not be well rewarded if they then copy out the content of these clauses – the focus is on the underlying understanding, although the student’s examples will obviously have to comply with these powers.
The examples provided by students should clearly illustrate the above principles. The student is not expected to merely replicate 3.x clauses empowering the CA to instruction, but should be able to suggest practical project situations in which instructions and Variations would be required. Merely replicating the contract definition (i.e. inspection of the works) is not adequate – the student should be able to come up with a practical example (e.g. checking fire protection to encased steelwork).