

# PRACTICE EXAM 16 — QUESTIONS 1-50

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**Format: Risk Identification Questions** — each item presents a construction or business scenario describing a contractor's planned action, contract structure, financial position, or operational choice. Select the option that identifies the primary forward-looking risk the contractor faces from the situation as it stands.

1. A contractor signs a \$3M commercial contract with a residential builder license rather than the required commercial general contractor license. What is the primary risk?

- A. SC may void the contract and assess civil and criminal penalties for unlicensed contracting, with no recovery for completed work
- B. The owner may demand a 10 percent discount on the contract price for licensing issues
- C. The contractor's CGL premium will increase at the next renewal period
- D. The contractor may need to register with the IRS as a new business entity

2. A contractor's bid for a \$4M public school project does not include a bid bond, which the bid documents required. What is the primary risk?

- A. The bid will be rejected as non-responsive and the award will go to another bidder
- B. The contractor will receive a non-binding warning from the public owner
- C. The owner will accept the bid but withhold 10 percent of contract value as a substitute
- D. The architect will require a verbal commitment in lieu of the bond

3. A subcontractor finishes work on March 1 with \$80,000 unpaid. The SC 90-day lien filing deadline lands on May 30. The sub plans to file the lien on June 5. What is the primary risk?

- A. The owner may file a counter-suit for tortious interference with contract
- B. The lien will be invalid for being filed outside the 90-day statutory window, permanently extinguishing lien rights against the property
- C. The GC may file a complaint with the SC Contractor's Licensing Board
- D. The lien will be reduced to 75 percent of the claimed amount

4. A project schedule shows 35 percent complete by SOV but only 22 percent complete by actual physical progress at month 4 of a 12-month schedule. What is the primary risk?

- A. The architect will accelerate retainage release on the project
- B. The owner will increase the contract value to cover the gap
- C. The contractor is front-loading the SOV; the architect may detect this and require a rebalanced SOV, delaying or reducing future pay applications until alignment is restored
- D. The contractor's surety will increase bonding capacity for the firm

5. A contractor names the owner as additional insured on the CGL policy, but the endorsement is limited to "operations in progress" only and excludes "completed operations." What is the primary risk?

- A. The CGL premium will increase at next renewal due to the endorsement
- B. Claims arising from completed work (post-substantial completion) against the owner will not trigger the additional-insured coverage, leaving the owner without contractor-paid defense or indemnity
- C. The builder's risk policy will refuse to cover the owner as additional insured
- D. The owner may demand the contractor's W-9 form for the endorsement

6. A contractor pays \$32,000 to a sole proprietor specialty consultant during the year and does not obtain a Form W-9 from the consultant. What is the primary risk?

- A. The consultant may file Form 1099-NEC against the contractor in error
- B. The SCDOR may classify the consultant as an employee for state purposes
- C. The contractor's CGL coverage may be voided for documentation issues
- D. The contractor cannot file Form 1099-NEC without the W-9 and may be required to backup-withhold 24 percent on payments, facing IRS penalties for failure to file

7. An SC contractor with 8 employees, none of whom have completed Form I-9 Section 2, hires a new field worker without enrolling in E-Verify. What is the primary risk?

- A. The contractor will face a \$50 fine from SC DHEC for documentation
- B. The new worker will be ineligible for overtime under FLSA rules
- C. The contractor's CGL coverage will be retroactively voided for the violations
- D. ICE may impose per-form penalties for missing I-9 Section 2 across all employees, and SC may impose additional penalties for failure to enroll in mandatory E-Verify

8. A contractor wins a \$1.8M bid where the takeoff omitted \$150,000 of steel scope by oversight. What is the primary risk?

- A. The contractor must perform the omitted steel scope at the firm's expense without compensation, eroding profit and potentially producing a project loss
- B. The owner will renegotiate the contract upward to cover the missing scope
- C. The architect will issue a change order automatically for the omitted scope
- D. The subcontractors will absorb the missing scope through their markups

9. A contractor proceeds with a \$90,000 change in scope directed verbally by the architect, with no signed change order, planning to submit the claim after completion. What is the primary risk?

- A. The owner may contest that the work was directed at all or that the price is reasonable, leaving the contractor with no signed authorization to support recovery and potentially absorbing the cost
- B. The architect will refuse to issue any future RFI responses to the contractor
- C. The owner will automatically agree to the contractor's claim amount
- D. The architect will resign from the project mid-construction

10. A contractor begins demolition of a 1968 commercial building without submitting NESHAP notification, having relied on a verbal owner assurance that the building was asbestos-free. What is the primary risk?

- A. The owner will receive a refund of the demolition fee from the contractor
- B. EPA citation for failure to inspect and submit 10-working-day NESHAP notification, regardless of the verbal assurance and regardless of whether asbestos is ultimately found
- C. The architect will require redesign of the demolition plan
- D. SC DHEC will issue a written warning but no penalty assessment

11. A contractor agrees to start construction on a fast-tracked project while the architect's design documents are only 65 percent complete. What is the primary risk?

- A. Downstream design changes may require rework of already-completed construction, generating cost overruns and disputes about who pays for the rework
- B. The architect will earn additional design fees from the fast-track approach
- C. The owner's CGL premium will increase from the fast-track structure
- D. The project will finish ahead of schedule with no negative consequences

12. A contractor's bid on a federally funded project does not include Davis-Bacon prevailing wages in the labor cost, having been calculated at the firm's standard non-union rates. What is the primary risk?

- A. The contractor faces back-wage liability to all workers at the prevailing rate, plus potential federal contract debarment for Davis-Bacon non-compliance
- B. The contractor will receive a written warning from the SC Department of Labor only
- C. The architect will issue a change order to cover the wage differential
- D. The owner will increase the contract price to cover the wage gap

13. A material supplier providing concrete to a subcontractor on a SC private commercial project did not give preliminary notice to the GC or owner at the start of delivery. What is the primary risk?

- A. The supplier's invoices for the project will be voided automatically
- B. The supplier may lose certain lien rights or face procedural challenges to its lien claim depending on applicable SC notice provisions; the safer course is to provide preliminary notice at the start of work
- C. The GC will collect double payment from the supplier for the materials
- D. The supplier will be required to provide a refund to the sub

14. A contractor allows its CGL policy to lapse for 14 days between policies. During that 14-day window, no incidents occur on active projects. What is the primary risk?

- A. The contractor will face a \$500 fine from the SC Department of Insurance
- B. The new CGL carrier will refuse to issue any replacement coverage
- C. Any claim from work during the 14-day gap may be uncovered even if filed after new coverage takes effect, depending on the occurrence-vs-claims-made trigger
- D. The architect will refuse to certify future pay applications on the project

15. A contractor's SCDOR audit reveals that the firm paid sales tax to its in-state material supplier on \$400,000 of materials but also collected sales tax from customers on the same materials, treating the work as a retail sale. What is the primary risk?

- A. The contractor will receive a sales tax refund from SCDOR for the double payment
- B. The owner will receive a tax credit from the SCDOR audit findings
- C. SCDOR may reverse the customer-collection treatment and require the contractor to refund the customer-collected tax while remaining liable for supplier-paid tax, creating a net tax loss
- D. SCDOR will close the audit with no findings or further action

16. A subcontract includes a flow-down clause incorporating "all terms of the prime contract." The prime contract includes a 60-day pay cycle and a strict 21-day claim notice requirement. The subcontract is silent on both. What is the primary risk?

- A. The flow-down clause is categorically unenforceable in SC contracts
- B. The 60-day pay cycle and 21-day claim notice will apply to the sub through the flow-down, even though the sub may have expected shorter pay cycles and longer claim windows now legally barred
- C. The sub may unilaterally renegotiate the pay cycle at any time
- D. The architect will side with the sub on any flow-down dispute

17. A contractor submits a \$5.5M bid that is awarded, then realizes the bid bond was filed but the performance bond capacity is constrained because of an existing \$4M bonded job. What is the primary risk?

- A. The contractor's CGL premium will increase at next renewal cycle
- B. The architect will request additional bonding documentation upfront

C. The surety may refuse to issue the performance bond if combined exposure exceeds the aggregate limit; failing to deliver the bond at contract execution is default, allowing the owner to award elsewhere and forfeit the bid bond

D. The owner will increase the contract value to cover the bond costs

18. A contractor signs an AIA A201-based contract with an indemnification clause requiring the contractor to indemnify the owner for "any and all losses arising from the project, regardless of cause." What is the primary risk?

A. The clause is fully enforceable and the contractor has no defense available

B. The owner will reduce the contract price by 10 percent for the clause

C. The clause may be partly unenforceable in SC under Code 32-2-10 for indemnifying the owner's own negligence, but the contractor cannot rely on this until the dispute is litigated, leaving a costly defensive posture

D. The architect must approve all indemnification claims under the contract

19. A project schedule shows a 30-day slip on the critical path at month 8 of a 14-month schedule, with no documented owner-caused delays. What is the primary risk?

A. The contractor faces liquidated damages exposure at the daily rate for each day past contractual completion, with no time extension grounds, plus reputational and bonding-capacity impact

B. The owner will absorb the schedule slip without penalty assessment

C. The architect will issue a change order extending the schedule by 30 days

D. The owner will accept the slip and waive any LD claim altogether

20. A contractor classifies a journeyman carpenter as an independent contractor and pays via Form 1099-NEC. The carpenter works 50 hours per week on the contractor's projects under direct supervision. What is the primary risk?

- A. The carpenter will refuse to sign the IRS Form 1099-NEC at year-end
- B. The contractor's CGL coverage will be voided for the misclassification
- C. The architect will refuse to certify pay applications on the project
- D. IRS reclassification of the worker as employee with back FICA, FUTA, withholding, and substantial penalties; plus SC WC and overtime exposure if the worker meets misclassification criteria

21. A contractor's bid pricing strategy applies a flat 10 percent markup to all subcontractor quotes regardless of trade or risk profile. What is the primary risk?

- A. The architect will reject the bid as non-responsive on form
- B. The owner will demand the bid be re-priced from scratch
- C. The contractor's CGL coverage will be retroactively voided
- D. The flat markup does not reflect risk differential between trades; high-risk subs may be under-marked while low-risk subs are over-marked, resulting in either non-competitive pricing or under-recovery on risk

22. A contractor enters into a \$2M cost-plus contract with no guaranteed maximum price (GMP). The owner is a first-time commercial developer. What is the primary risk?

- A. The contractor will absorb all cost overruns above the estimate
- B. Owner dissatisfaction or financial dispute is likely if actual costs exceed the owner's budget; the owner bears unlimited cost risk under cost-plus without GMP, leading to payment disputes, delays, or litigation
- C. The architect will refuse to certify any pay applications
- D. The owner will receive a bonus payment for project completion

23. A contractor's surety has issued a \$4M bonded program. The contractor has \$2M committed to existing bonded jobs and is bidding two new projects at \$3M and \$2.5M respectively. What is the primary risk?

- A. Even one award (the \$3M or \$2.5M project) plus existing commitments exceeds the \$4M aggregate; the contractor must decline the award or seek bond capacity expansion under unfavorable underwriting
- B. The owner will issue a non-responsiveness notice on the bids
- C. The architect will refuse to certify pay applications for cause
- D. The bond cost will decrease automatically under the program

24. A subcontractor in SC files a mechanic's lien for \$120,000 against a private commercial property. The owner immediately retains counsel and prepares to file a lien release bond at 125 percent of the lien amount. What is the primary risk to the subcontractor?

- A. The lien will be invalidated immediately upon bond filing
- B. Once the release bond is filed, the property is cleared of the lien; the sub must pursue enforcement against the bond within the 6-month window, with the bond becoming the source of recovery
- C. The subcontractor will receive automatic payment from the release bond
- D. The owner must pay the lien amount before the bond can be filed

25. A project's Schedule of Values shows steel erection at \$400,000 of a \$2.5M contract, but the actual cost of the steel scope is \$280,000. What is the primary risk?

- A. The architect will mandate immediate refund of the SOV difference
- B. The SOV is overweight on steel, allowing the contractor to bill more than actual scope value early; the architect may require a rebalanced SOV before further pay applications or the owner may withhold payment
- C. The owner will increase the contract value to match the SOV

D. The bonding capacity will increase due to the SOV structure

26. A contractor's bid for an industrial project includes a 0.5 percent bond cost line item. The actual surety bond program for the project will cost 2.2 percent of contract value. What is the primary risk?

A. The contractor underestimated bond cost by 1.7 percent of contract value; on a \$3M project, that's \$51,000 less recovered than actual, eroding the project margin and net profit

B. The architect will require the bond cost line item to be removed

C. The owner will increase the contract value to cover the differential

D. The surety will reduce the bond cost to match the bid line item

27. A contractor's \$250,000 change order proposal sits unsigned by the owner for 90 days while the contractor proceeds with the directed work. What is the primary risk?

A. The contractor will earn additional profit on the unbilled work

B. The architect will automatically certify the change order

C. The owner will be required to pay the contractor's proposal in full

D. The owner may later dispute that the work was directed or that the price is reasonable, requiring the contractor to litigate the constructive change theory and prove scope, price, and authorization through documentation

28. A contractor's controller intends to file Form 941 for the quarter ending June 30 on August 5, after the July 31 deadline. What is the primary risk?

A. SC will issue a notice of state audit on the firm

B. IRS will assess failure-to-file penalties (typically 5 percent per month up to 25 percent), failure-to-pay penalties, and interest; Form 941 has no extension mechanism for late filers

- C. The architect will refuse to certify pay applications until filing
- D. The owner will withhold final payment for the missed filing

29. A contractor performing earthwork on a 2.5-acre site has not yet submitted the Notice of Intent for NPDES Construction General Permit coverage. Work is scheduled to begin in 5 business days. What is the primary risk?

- A. The architect will refuse to certify pay applications on the project
- B. SC DHEC will issue a written warning only without further action
- C. Beginning earth disturbance before NPDES CGP coverage is in place violates the Clean Water Act and SC regulations, exposing the contractor to EPA citations, civil penalties, and a stop-work order
- D. The owner will absorb any penalties from the violation

30. A subcontractor filed a mechanic's lien 92 days after last work, two days past the 90-day SC statutory deadline. What is the primary risk?

- A. The lien will be reduced by 10 percent for the late filing
- B. The lien will require court approval to be valid going forward
- C. The lien must be re-filed within 30 days to cure the defect
- D. The lien is invalid under SC Code Title 29 Chapter 5; missing the 90-day deadline permanently extinguishes the lien right, with no further recourse against the property

31. A contractor's CGL policy has a \$1M per-occurrence limit and \$2M aggregate limit. The contractor has incurred \$1.8M in CGL claims so far during the policy period. A new claim of \$400,000 has just been filed. What is the primary risk?

- A. The new claim will be paid in full from the per-occurrence limit

B. The aggregate limit will be exhausted at \$200,000 of the new claim ( $\$2M - \$1.8M = \$200K$  remaining); the contractor must self-fund the remaining \$200,000 plus any further claims through the policy period

C. The architect will require the contractor to obtain new insurance

D. The CGL carrier will automatically increase the aggregate limit

32. A contractor's \$2M unit-price bid is based on estimated quantities provided by the owner's engineer. The actual quantities during construction are 40 percent lower than the estimate. What is the primary risk?

A. The contractor will earn unexpected profit on the reduced quantities

B. The owner will pay the bid total regardless of actual quantities

C. Unit-price contracts pay actual quantities at the bid unit rate; the 40 percent quantity reduction means recovered overhead and profit (allocated across the full estimated quantity) is short by 40 percent of budgeted total, potentially producing a loss

D. The architect will issue a change order to maintain contract value

33. A contractor employs 4 full-time field workers and pays them on an hourly basis but does not maintain workers compensation insurance, having determined that 4 employees is below the SC WC threshold. What is the primary risk?

A. SC requires WC coverage at four or more employees; the contractor is at the threshold and faces direct liability for medical costs, lost wages, and statutory penalties from the SC Workers Compensation Commission on any injury

B. The contractor's CGL coverage will be voided for non-compliance

C. The architect will refuse to certify pay applications on this work

D. The IRS will reclassify the workers as independent contractors

34. A contractor's AIA A201-based contract requires written notice of claim within 21 days of the event. A delay event occurs and the contractor submits notice on day 28. What is the primary risk?

- A. The architect will issue a Certificate of Substantial Completion
- B. The owner will accept the late notice without consequence to the claim
- C. The owner may assert that the contractor waived the claim by failing to provide notice within the 21-day window; the architect, IDM, or arbitrator may sustain the waiver, barring recovery
- D. The architect will automatically grant a time extension

35. A contractor's \$1.5M bid was prepared from a takeoff of incomplete bid documents. The owner issued an addendum 24 hours before bid submission that the contractor's estimator did not see. What is the primary risk?

- A. The architect will rebid the project at the contractor's request
- B. The bid is evaluated against the final documents including the addendum; if the bid did not incorporate it, the bid may be non-responsive or, if accepted, the contractor must perform the addendum scope at no additional cost
- C. The owner will accept the bid as submitted and waive the addendum
- D. The architect will pay the addendum scope separately from the contract

36. A contractor's project schedule was developed using critical path method but has not been updated since the project began 6 months ago. The owner requests a schedule update reflecting current status. What is the primary risk?

- A. The architect will require the contractor to rebuild the schedule from scratch
- B. The contractor will earn additional fees for the schedule update

C. Without contemporaneous updates, the contractor lacks the documentation to support delay claims, time extension requests, or constructive change theories; missing monthly updates may breach the contract and expose the contractor to LD claims

D. The owner will issue a notice of default to the contractor

37. A contractor signs a \$750,000 contract with a no-damage-for-delay clause. Mid-project, the owner causes a 45-day delay by failing to make required design decisions on time. What is the primary risk?

A. The contractor will receive a \$50,000 cash bonus from the owner

B. The contractor's monetary recovery for delay damages may be barred by the no-damage-for-delay clause despite owner fault; time relief may still be available but the contractor absorbs the delay cost without compensation

C. The architect will issue a change order for \$250,000 in delay costs

D. The owner will increase the contract value automatically to cover

38. A contractor's bid pricing applies overhead at 8 percent of direct cost, but the firm's actual overhead allocation analysis shows overhead should be 14 percent of direct cost to fully recover firm-wide expenses. What is the primary risk?

A. The bid will be rejected as non-responsive on form

B. The owner will increase the contract value at award

C. The contractor is under-allocating overhead by 6 percent of direct cost; on a \$1M direct cost, that's \$60,000 of unrecovered overhead per project, systematically eroding overhead recovery across the firm

D. The CGL coverage will be voided for the misallocation

39. A subcontractor in SC perfected a mechanic's lien by filing within the 90-day window but has not commenced enforcement suit. It is now 5 months and 25 days post-filing. What is the primary risk?

- A. The lien will be reduced by 50 percent for the delay in enforcement
- B. The owner will be required to pay the lien amount immediately
- C. The architect will certify the lien as valid for the next 30 days
- D. The 6-month enforcement deadline expires in 5 days; failing to commence suit within that window dissolves the lien by operation of law, regardless of merit

40. A contractor allows a single performance bond claim to be filed against the surety, who promptly pays the \$180,000 claim. The contractor has signed personal indemnity agreements with the surety. What is the primary risk?

- A. The surety will refund the bond cost paid for the project
- B. The contractor's CGL premium will decrease at renewal
- C. The architect will not certify future pay applications on the project
- D. The surety may pursue the contractor and individual indemnitors for full recovery of the \$180,000 paid plus fees; bonding capacity may also be reduced or revoked, hurting future bidding

41. A contractor's bookkeeper deposits federal payroll tax withholdings monthly instead of semi-weekly, despite the firm exceeding the \$50,000 annual tax liability threshold that requires semi-weekly deposits. What is the primary risk?

- A. IRS failure-to-deposit penalties accrue per missed deposit deadline (typically 2 percent to 15 percent of underpayment depending on lateness); the deposit schedule is strict and cumulative penalties can substantially exceed expectations
- B. The architect will require the contractor to obtain new bookkeeping
- C. SC DOR will issue a written warning for the deposit pattern
- D. The contractor's CGL coverage will be voided for the issue

42. A contractor's pay application for \$185,000 is rejected by the architect because the contractor failed to include lien waivers from two material suppliers. The contractor's response is to re-submit the same pay application with a note that the lien waivers will follow. What is the primary risk?

- A. The pay application will be rejected again, delaying payment another 30-day cycle; meanwhile the contractor remains exposed to lien claims and continues funding the work from working capital, creating cash flow strain
- B. The architect will accept the note in lieu of the lien waivers
- C. The owner will release additional retainage to compensate the gap
- D. The architect will automatically certify the pay application

43. A contractor receives a Notice to Proceed for a project but does not have a finalized SWPPP in place. Earth disturbance is required within 3 business days to meet the NTP schedule. What is the primary risk?

- A. The architect will issue a SWPPP on the contractor's behalf
- B. The owner will absorb any SWPPP-related penalties from the agency
- C. Beginning earth disturbance without a SWPPP and Notice of Intent in place violates NPDES CGP, exposing the contractor to EPA citations, stop-work orders, civil penalties, and project delays; NTP pressure does not justify the violation
- D. SC DHEC will retroactively approve the SWPPP after the disturbance

44. A contractor's \$3M bid for a project is the lowest of 5 bidders, with the second-lowest at \$3.6M and the highest at \$4.2M. The contractor is asked to confirm the bid. What is the primary risk?

- A. The contractor will be awarded the project at the next-lowest price
- B. The owner will increase the contract value at the award stage
- C. The architect will accept the bid as submitted with no review

D. The 20 percent gap between the contractor's bid and the next-lowest bid may indicate a takeoff error, omitted scope, or estimating mistake; without careful verification before confirmation, the contractor risks proceeding at a loss-producing price with limited withdrawal options

45. A contractor's bookkeeper has been processing payroll without verifying I-9 forms for new hires, having delegated the verification to a project manager who never completed it. The firm employs 22 workers and is approaching a federal contract award. What is the primary risk?

A. The architect will refuse to certify pay applications on the project

B. The owner will accept the labor as-is for the project

C. ICE audit of the firm's I-9 forms could uncover systemic non-compliance, generating per-form penalties for each violation across all 22 employees, plus debarment risk on federal contracts and serious findings

D. The IRS will issue Form 1099-NEC for all current workers

46. A contractor signs an AIA A201-based contract with mediation as a condition precedent to arbitration. The contractor and owner enter mediation with the mediator proposing terms the contractor finds unfavorable. What is the primary risk?

A. The mediator's proposal is binding regardless of contractor agreement

B. The architect will issue a Certificate of Substantial Completion

C. The owner will withdraw from mediation, restoring the pre-dispute state

D. If the contractor signs a settlement agreement during mediation incorporating the proposed terms, that settlement becomes a binding contract enforceable in court; the contractor must evaluate any proposal carefully before signing

47. A contractor's project superintendent has been keeping daily reports but only for days when "notable events" occur, skipping days that are routine. What is the primary risk?

- A. The architect will refuse to certify pay applications on the project
- B. The owner will absorb the documentation gap going forward
- C. SC DHEC will require additional reports from the contractor
- D. Without continuous daily reports, the contractor lacks contemporaneous evidence to support delay claims, change order disputes, or constructive change theories; gaps give opposing parties a foothold to challenge causation, magnitude, and timing

48. A contractor's builder's risk policy covers the project during construction. Three weeks after substantial completion, fire damages the building before the owner's permanent property insurance takes effect. The contractor is in the process of completing punch list items at the time. What is the primary risk?

- A. The builder's risk policy will automatically continue to cover the damage
- B. Builder's risk policies typically terminate at substantial completion or owner occupancy; if the policy has ended and the owner's permanent coverage has not yet taken effect, the loss may be uninsured with the contractor potentially liable during the gap
- C. The owner will increase the contract value to cover the fire loss
- D. The architect will absorb the damage cost from professional fees

49. A contractor's project bid includes a 5 percent contingency. During execution, the contractor encounters \$130,000 in unforeseen subsurface conditions that the project specifications excluded from the contractor's responsibility. What is the primary risk?

- A. The contractor must absorb the entire \$130,000 in unforeseen conditions
- B. The architect will issue a refund for the contingency line item
- C. The owner will reduce the contract value by the contingency amount
- D. The contractor must assert the differing-site-conditions claim with proper notice and documentation to recover the \$130,000; failing to give prompt written notice before disturbing the condition may waive the claim, leaving the contractor responsible

50. A contractor purchases \$80,000 of materials from an Ohio supplier who does not collect SC sales tax. The contractor uses the materials on an SC commercial project but does not self-remit SC use tax to MyDORWAY. What is the primary risk?

- A. SCDOR may discover the unremitted use tax on audit and assess the tax owed plus penalties and interest; SC contractors are end consumers of materials and bear use tax liability when sales tax was not collected at the source
- B. The Ohio supplier will refund the materials cost to the contractor
- C. The architect will refuse to certify pay applications on the project
- D. The owner will absorb the use tax liability instead of the contractor

## PRACTICE EXAM 16: ANSWER KEY AND EXPLANATIONS

**1. A** — Unlicensed contracting is a categorical violation in SC. SC Code Title 40 Chapter 11 voids contracts performed by unlicensed contractors and imposes civil and criminal penalties; the contractor cannot recover for completed work either. The licensing classification (residential vs commercial) must match the work performed to be enforceable.

**2. A** — Public bid documents specifying required bid bonds set the bond as a responsiveness threshold. Failure to include a required bid bond renders the bid non-responsive on its face, and the owner has no discretion to award to a non-responsive bidder over responsive competitors. The award proceeds to the next-lowest responsive bid.

**3. B** — SC Code Title 29 Chapter 5 imposes the 90-day filing deadline as a strict statutory limit; filing on June 5 (96 days after March 1) exceeds the window. The lien is invalid by operation of law and the subcontractor permanently loses lien rights against the property regardless of the underlying debt's validity.

**4. C** — A 13-point gap between SOV billing percent and actual physical progress is the signature of a front-loaded Schedule of Values. Architects routinely detect this pattern during pay app review and require rebalancing before further certifications, slowing the contractor's cash flow until the SOV reflects true work progression.

**5. B** — Standard CGL additional-insured endorsements come in two flavors: "ongoing operations" and "completed operations." A policy limited to ongoing operations leaves the owner without contractor-paid coverage for claims arising after substantial completion — a major exposure gap, since most construction defect claims surface during the warranty period.

**6. D** — Form W-9 is required to file Form 1099-NEC and establish the payee's tax classification. Without the W-9, the contractor cannot file 1099-NEC, must perform 24 percent backup withholding on payments going forward, and faces IRS penalties for failure to obtain TIN. The W-9 should be obtained before the first payment.

**7. D** — ICE I-9 audits assess penalties per form per violation, so 8 employees with missing Section 2 means 8 violations at hundreds to thousands of dollars each, potentially \$20,000+ in penalties. SC's E-Verify mandate applies to all employers regardless of size, adding state penalties for non-enrollment.

**8. A** — Lump sum contracts allocate scope risk to the contractor; once awarded, the contractor must perform all work described in the bid documents regardless of takeoff accuracy. The \$150,000 omission is the contractor's loss; owners are not obligated to absorb estimating errors after award, and recovery requires proving differing site conditions or constructive change, which the omission does not support.

**9. A** — Constructive change recovery requires the contractor to prove the work was directed and that the price is reasonable. Without a signed change order, the contractor must establish both elements through contemporaneous documentation (RFIs, daily reports, correspondence); the owner can challenge each, and the contractor's recovery is not guaranteed even with strong documentation.

**10. B** — NESHAP requires written notification at least 10 working days before regulated demolition or renovation, regardless of the contractor's knowledge of asbestos presence. The verbal owner assurance is not a defense; the regulation imposes an affirmative duty to inspect and notify, and EPA citations follow procedural violations regardless of actual asbestos discovery.

**11. A** — Fast-tracking compresses the schedule by overlapping design and construction, but creates rework risk when downstream design changes invalidate earlier construction. The contractor and owner often disagree about who bears the rework cost, and the disputes can dwarf the schedule savings from the fast-track approach.

**12. A** — Davis-Bacon prevailing wages are mandatory on federally funded construction; the contractor's bid must reflect prevailing rates regardless of standard firm rates. Bidding at non-union rates exposes the contractor to back-wage liability for all workers (paid the differential), DOL investigation, and potential federal contract debarment.

**13. B** — Preliminary notice requirements vary by jurisdiction and lienor type. Suppliers who fail to provide required preliminary notice may face procedural challenges to their lien claim or partial lien rights loss; providing notice at the start of work is the standard prophylactic practice to preserve full lien rights.

**14. C** — CGL policies are typically occurrence-based, covering events that occur during the policy period; if no coverage was in force during a 14-day gap and an incident occurred during that window, the claim is uncovered even if filed later under the new policy. Continuous coverage is essential to avoid coverage gaps.

**15. C** — SC treats contractors as end consumers of materials installed into real property, paying sales tax to the supplier (not collecting from customers). Collecting sales tax from customers in addition to paying

it to suppliers is a misapplication; SCDOR reverses customer collection (refunding the customer) while the contractor remains liable for supplier-paid tax, generating a net tax loss.

**16. B** — Flow-down clauses bind subcontractors to the substantive terms of the prime contract by reference. The 60-day pay cycle and 21-day claim notice from the prime apply to the sub through the flow-down, binding the sub to terms it may not have specifically negotiated; subs must read the prime contract before signing the subcontract.

**17. C** — Surety bonding capacity is the aggregate limit set by underwriting; a \$5.5M project plus an existing \$4M job (\$9.5M total) likely exceeds the aggregate. Failure to deliver the performance bond at contract execution is contractor default under the bid documents, allowing the owner to award elsewhere and call the bid bond.

**18. C** — SC Code 32-2-10 limits broad-form indemnification in construction contracts, treating provisions that require indemnification for the owner's own negligence as against public policy. The contractor cannot invoke the statute proactively, however; the protection is litigated reactively after a claim arises, leaving the contractor exposed in the interim.

**19. A** — Without time extension grounds, schedule slips on the critical path expose the contractor to LD damages at the daily contract rate. Beyond direct LDs, bond claims, owner relationship damage, and surety capacity reduction follow from chronic schedule failures, compounding the financial impact beyond the LD amount itself.

**20. D** — The IRS common-law test focuses on behavioral control, financial control, and the relationship; a journeyman working 50 hours per week under direct supervision typically fails the independent contractor test. Reclassification triggers back FICA, FUTA, federal income tax withholding, and substantial penalties — plus SC WC and overtime exposure under state law.

**21. D** — Different trades carry different risk profiles (specialty work has higher productivity risk, weather risk, change order risk than commodity work). A flat 10 percent markup undermarks high-risk subs and overmarks low-risk ones, distorting the GC's margin recovery and competitive positioning across trade categories.

**22. B** — Cost-plus contracts without GMP transfer cost risk to the owner. First-time commercial owners often underestimate the cost exposure and react poorly when actual costs significantly exceed initial budgets, generating payment disputes, change order disagreements, and litigation. A GMP cap or substantial owner contingency mitigates this risk.

**23. A** — Bonding capacity is aggregate across all active bonded jobs; existing \$2M committed plus new \$3M = \$5M exceeds the \$4M limit. The contractor must decline the award or seek capacity expansion, which involves new underwriting and may be approved on less favorable terms during the project window.

**24. B** — Lien release bonds (typically 125 to 150 percent of the lien amount) substitute the bond for the property as security for the underlying claim. The lien is cleared from the property title, but the underlying claim remains alive — the sub must pursue enforcement against the bond within the 6-month statutory window, with the bond as the source of recovery.

- 25. B** — SOV imbalance toward early-trade items (steel allocated at \$400K vs actual \$280K cost) lets the contractor bill more than scope value early. Architects routinely detect this on pay app review and require rebalancing before further certifications; rebalancing constrains the contractor's cash flow on the project.
- 26. A** — Bond cost is a direct project cost recovered through the bid line item. Underestimating by 1.7 percent on a \$3M project is \$51,000 of unrecovered actual cost, eroding the project's net margin. Accurate surety quotes should be obtained before finalizing the bid to avoid this gap.
- 27. D** — Constructive change requires proof that work was directed and that the price is reasonable. After the work is complete and the proposal remains unsigned, the owner can dispute either or both elements; the contractor's recovery depends on contemporaneous documentation rather than the signed change order, increasing dispute risk.
- 28. B** — Form 941 has a strict quarterly deadline (last day of the month following quarter end) with no extension mechanism. Late filing triggers failure-to-file penalties at 5 percent per month up to 25 percent, plus failure-to-pay penalties and interest, accumulating quickly on the unpaid balance.
- 29. C** — NPDES Construction General Permit coverage is required before earth disturbance on sites of 1 acre or more; a 2.5-acre site clearly exceeds the threshold. Beginning work without permit coverage violates the Clean Water Act and SC regulations, triggering EPA citations, civil penalties, and stop-work orders that delay the project further.
- 30. D** — The 90-day SC lien filing deadline is strict; filing on day 92 (two days late) extinguishes the lien permanently under SC Code Title 29 Chapter 5. There is no cure mechanism, no court approval, and no refile option — the lien right is lost.
- 31. B** — CGL aggregate limits cap total claims during the policy period; at \$1.8M already paid against a \$2M aggregate, only \$200K of capacity remains for the new \$400K claim. The contractor self-funds the \$200K shortfall plus any further claims through the policy term, until the aggregate refreshes at renewal.
- 32. C** — Unit-price contracts pay only the actual quantity at the bid unit rate. Overhead and profit allocated across the estimated quantity are not separately recoverable when quantities drop 40 percent; the contractor's budgeted overhead recovery is short by 40 percent, often producing a project loss when fixed costs are not adjusted.
- 33. A** — SC requires workers compensation coverage at four or more employees; the contractor is at the threshold and IS over (not below) the requirement. Operating without coverage exposes the firm to direct liability for medical costs, lost wages, and statutory penalties from the SC Workers Compensation Commission on any worker injury.
- 34. C** — AIA A201 claim notice requirements are strict; the 21-day window typically functions as a waiver provision. Late notice on day 28 risks the owner asserting waiver, with the architect, IDM, or arbitrator sustaining the defense and barring the contractor's recovery on the merits regardless of the underlying claim's validity.

**35. B** — Bids are evaluated against final bid documents including all addenda. A bid that fails to incorporate the addendum may be deemed non-responsive on review; if accepted, the contractor is bound to perform the addendum scope at no additional cost, because the bid is presumed to reflect the documents as amended.

**36. C** — Contemporaneous schedule updates are essential evidence for delay claims, time extension requests, and constructive change theories. Six months without updates leaves no contemporaneous record of the project's progression, severely weakening any claim and potentially breaching contract requirements for periodic updates.

**37. B** — No-damage-for-delay clauses limit the contractor's monetary recovery for delays, including owner-caused delays in many jurisdictions. The contractor absorbs the financial impact of the 45-day delay (extended general conditions, idle equipment, lost productivity), though time relief through a contract time extension may still be available.

**38. C** — Under-allocating overhead by 6 percent of direct cost means the firm's bids are systematically too low to recover actual overhead expenses. On a \$1M direct cost project, \$60K of overhead is unrecovered; across multiple projects, this systematically erodes the firm's net profit and undermines the firm's overall financial position.

**39. D** — The SC mechanic's lien 6-month enforcement deadline runs from the filing date; missing it by even one day dissolves the lien by operation of law. Filing the enforcement suit within the remaining 5 days is critical, and the deadline cannot be extended through negotiations or settlement discussions.

**40. D** — Personal indemnity agreements are standard surety bond conditions; they give the surety the right to recover from individual indemnitors after paying claims. The surety pursues the principal entity AND individual owners for the \$180K plus attorney fees; bonding capacity may also be reduced or revoked, severely limiting future bidding.

**41. A** — IRS deposit schedules (monthly vs semi-weekly) are mandatory based on prior-year tax liability; depositing on the wrong schedule triggers failure-to-deposit penalties per missed deadline. Cumulative penalties at 2 to 15 percent of underpayment can substantially exceed expectations when applied across multiple deposit periods.

**42. A** — Re-submitting the same pay application without remedying the lien waiver defect simply restarts the rejection cycle. The contractor remains exposed to lien claims from the suppliers (because no lien waivers have been provided) and continues funding the work from working capital while waiting for the next pay cycle.

**43. C** — NPDES CGP coverage must be in place before earth disturbance; the SWPPP and Notice of Intent are prerequisites. Beginning work without them exposes the contractor to EPA citations, stop-work orders, and civil penalties — the NTP schedule pressure does not excuse the violation, and the project delays from a stop-work order typically exceed the SWPPP preparation time.

**44. D** — A 20 percent gap between the lowest bid and the next-lowest is a major signal of estimating error, missing scope, or pricing mistake. Verification before bid confirmation is critical, because once the

contract is signed, withdrawal options are very limited and the contractor may be locked into a loss-producing price.

**45. C** — Systemic I-9 non-compliance across 22 employees is a serious ICE audit finding, with per-form penalties accumulating quickly into substantial amounts. Federal contract debarment is an additional exposure that compounds the financial impact, potentially excluding the firm from federally funded work for an extended period.

**46. D** — Signed settlement agreements at mediation create binding contracts enforceable in court, independent of any contractual provisions about whether mediation outcomes are binding. The contractor must evaluate any proposed terms carefully before signing — once signed, the settlement governs regardless of the original contract's dispute resolution architecture.

**47. D** — Daily reports must be continuous to be evidentiary; selective reporting "only on notable days" creates documentation gaps that opposing parties exploit during dispute resolution. The absence of routine-day documentation undermines the contractor's ability to prove conditions, causation, and timing of claimed events when they arise later.

**48. B** — Builder's risk policies typically end at substantial completion or owner occupancy, while the owner's permanent property insurance is separately arranged. A coverage gap between these two policies creates a window of uninsured exposure; if loss occurs during the gap, the contractor may be liable for damages occurring while still on site completing punch list items.

**49. D** — Differing site conditions claims require prompt written notice before the condition is disturbed, to preserve the owner's investigation right. Without timely notice, the contractor's claim may be waived under contract terms, leaving the \$130,000 as a contractor expense even when contract specifications expressly excluded the unforeseen conditions from contractor responsibility.

**50. A** — SC treats contractors as end consumers of materials; the contractor must self-remit SC use tax on out-of-state purchases when SC sales tax was not collected. SCDOR audits commonly detect this through purchase records and invoice reviews, assessing the tax owed plus failure-to-remittance penalties and interest from the original due date.