

Task 2**1. ¿Qué es un contrato y qué es un convenio?**

Un contrato es un acto jurídico bilateral que se da entre dos partes que interactúan recíprocamente y en el cual se crean o transmiten derechos y obligaciones. Un convenio es aquel documento en el cual se producen efectos jurídicos (crear, transferir, modificar o extinguir derechos y obligaciones).

2. ¿Cuáles son los contratos bilaterales?

Son aquellos en los cuales las partes se obligan recíprocamente.

3. ¿Cuáles son los contratos unilaterales?

Son aquellos en los cuales una sola parte se obliga hacia la otra sin que ésta quede obligada.

4. ¿Cuáles son los contratos onerosos?

Son aquellos en los cuales se estipulan provechos y gravámenes recíprocos.

5. ¿Cuáles son los contratos gratuitos?

Son aquellos en los que el provecho es solamente de una de las partes.

6. ¿Cuáles son los contratos conmutativos?

Son aquellos en los cuales las prestaciones son ciertas desde que se celebra el contrato.

7. ¿Cuáles son los contratos aleatorios?

Son aquellos en los cuales la prestación debida depende de un acontecimiento incierto.

8. ¿Cuáles son los contratos instantáneos?

Son aquellos en los cuales los efectos jurídicos se producen de inmediato.

9. ¿Cuáles son los contratos de tracto sucesivo?

Son aquellos en los cuales los efectos jurídicos se prolongan en el tiempo.

10. ¿Cuáles son los elementos esenciales de un contrato?

Los dos principales elementos de un contrato son el consentimiento y el objeto que pueda ser materia del contrato.

11. ¿Cuáles son los elementos de validez de un contrato?

Los principales elementos de validez dentro de un contrato son la capacidad legal de las partes, la ausencia de vicios del consentimiento, un objeto, motivo o fin lícitos, y en su caso, guardar la forma que la Ley establece.

12. ¿Cuáles son los efectos de un contrato?

Los efectos de un contrato son que obliga a lo pactado, obliga también a las consecuencias que se derivan de su naturaleza, la buena fe, el uso, o la ley. Además, los contratos están hechos para cumplirse y producir los efectos jurídicos deseados, por lo que la validez y el cumplimiento de los contratos no pueden dejarse al arbitrio de uno de los contratantes ya que el resultado es un acuerdo de ambas partes.

13. ¿Qué es el consentimiento?

El consentimiento es el acuerdo de voluntades entre dos o más partes para celebrar un contrato.

14. ¿Cómo se forma el consentimiento entre partes?

Cuando es expreso, el consentimiento se forma cuando la voluntad se expresa verbalmente, por escrito, por medios electrónicos, ópticos o por cualquier otra tecnología, o por signos equívocos. También puede ser tácito, lo que significa que resulta de hechos o actos que lo presupongan o que autoricen a presumirlo.

15. ¿Cómo se forma el consentimiento entre ausentes?

Puede contraerse a través de representantes conforme a la Ley, sin embargo, la falta de representación puede producir una ineficiencia relativa o la aplicación de las normas de la gestión de negocios.

16. ¿Qué y cuáles son los vicios del consentimiento?

Son aquellos que producen la ineficacia (usualmente relativa) del contrato. Los principales vicios del consentimiento son el error, el dolo, o la mala fe, la violencia y la lesión.

17. ¿Qué es el error?

El error ocurre cuando se da una apreciación equivocada de la realidad. Este puede invalidar el contrato cuando recae sobre el motivo determinante de la voluntad de cualquiera de los que contratan.

18. ¿Cuántas clases de error existen?

Existen principalmente dos tipos, el error derecho es el que recae sobre la naturaleza o los efectos jurídicos y el error de hecho es el que recae sobre las circunstancias fácticas del contrato.

19. ¿Qué son el dolo y la mala fe?

El dolo es el artificio que se emplea para inducir a error a alguno de los contratantes, puede provenir además de uno de los contratantes o de un tercero. La mala fe es la disimulación del error de uno de los contratantes.

20. ¿Cuándo se dice que hay violencia en un contrato?

Se dice que hay violencia en un contrato cuando se hace uso de la fuerza física o de amenazas, cuando se amenacen la vida, honra, libertad, salud o parte considerable del patrimonio. También se dice que hay violencia cuando se amenaza al contratante, cónyuge, ascendientes, descendientes, o parientes colaterales dentro del segundo grado.

21. ¿Qué es el *dolus bonus*?

Son aquellas consideraciones generales o exageraciones sobre provechos o perjuicios que pueden resultar de celebrar, o no, el contrato. Estos no se toman en cuenta para calificar dolo o violencia.

22. ¿Es la lesión un vicio subjetivo u objetivo?

Puede ser ambos ya que tiene un elemento objetivo que se da cuando existe una desproporción notoria entre las prestaciones recíprocas de las partes que produce lucro excesivo y además tiene un elemento subjetivo que puede aprovechar la suma ignorancia, notoria inexperiencia o extrema miseria.

23. ¿Qué es la causa (motivo o fin) de los contratos?

La causa de un contrato es la razón jurídica de la celebración del contrato, aquello que subjetivamente provoca a las partes a contratar no debe ser contrario a las leyes de orden público ni las buenas costumbres.

24. ¿Qué función desempeña la forma de los contratos?

Su función es establecer el medio mediante el cual se presentará el contrato, existen diferentes tipos de formas, por ejemplo: los contratos por teléfono, por telégrafo, por medios tecnológicos, por la norma genérica (consensualismo), etc.

25. ¿Qué es la firma para los contratos?

La firma es un elemento que se requiere al momento de llevar a cabo un contrato escrito. Si una de las partes no puede hacerla, se podrá imprimir su huella digital o colocar otra firma a su ruego.

26. ¿Qué es el objeto de los contratos?

El objeto de un contrato es aquello que el obligado debe dar o el hecho que el obligado debe hacer o no hacer.

27. ¿Qué requisitos debe tener el objeto material de un contrato cuando es una cosa?

Si el objeto material es una cosa, este debe existir en la naturaleza, puede ser una cosa futura, ser determinada o determinable en cuanto a su especie y estar en el comercio.

28. ¿Qué requisitos debe tener el objeto material de un contrato cuando es un hecho?

Si el objeto material es un hecho, este debe ser posible y lícito.

29. ¿Cuáles son las cláusulas esenciales de los contratos?

Las cláusulas esenciales son aquellas que se refieren a los requisitos fundamentales del contrato. Si estas cláusulas se eliminan, cambia la naturaleza del contrato.

30. ¿Cuáles son las cláusulas naturales de los contratos?

Las cláusulas naturales son las que normalmente acompañan el contrato, pues se derivan de su naturaleza. Estas cláusulas se tienen por puestas, aunque no se expresen.

31. ¿Cuáles son las cláusulas accidentales de los contratos?

Son aquellas que las partes añaden como resultado del acuerdo de sus voluntades.

32. ¿Cuáles son las normas de interpretación que establece el *Código*?

- Se estará al sentido literal de sus cláusulas si los términos claros no dejan duda sobre la intención de los contratantes.
- Si las palabras parecieren contrarias a la intención evidente de los contratantes, prevalecerá ésta sobre aquellas.
- En los términos del contrato, no se entenderán comprendidos cosas distintas y casos diferentes de aquellos sobre los que los interesaron se propusieron contratar.
- Las cláusulas deben entenderse en el sentido más adecuado para que produzca efecto.
- Las cláusulas de los contratos deben interpretarse las unas por las otras, atribuyendo a las dudosas el sentido que resulte del conjunto de todas.
- Las palabras que pueden tener distintas acepciones serán entendidas en aquella que sea más conforme a la naturaleza y objeto del contrato.
- Deben tomarse en cuenta los usos o costumbres del país para interpretar las ambigüedades de los contratos.
- Si aplicando las reglas anteriores no se pueden resolver las dudas:
 - a) Si recaen sobre circunstancias accidentales:
 - Contrato gratuito: resolver en favor de la menor transmisión de derechos e intereses.
 - Contrato oneroso: resolver en favor de la mayor reciprocidad de intereses.
 - b) Si recaen sobre el objeto principal del contrato, será nulo.

33. ¿Qué son los contratos nominados?

Son aquellos contratos que ya están regulados por la Ley, en ellos se establecen las normas que las partes pueden variar y las que son permanentes.

CONTRACT MODEL PER DETERMINED WORK (OR SERVICES) AT UNIT PRICES

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CONTRACT PER DETERMINED WORK AT UNIT EXECUTED BY THE FOLLOWING PARTIES, ON THE ONE HAND, THE SUBSIDIARY PRODUCTIVE COMPANY OF THE FEDERAL ELECTRICITY COMMISSION CALLED CFE DISTRIBUCIÓN, HEREINAFTER "THE COMMISSION", REPRESENTED BY MR. _____ IN ITS CAPACITY AS _____, WHAT WILL _____, HEREINAFTER "THE CONTRACTOR", REPRESENTED BY MR. _____ IN THEIR CAPACITY AS _____, WHOM THEY MUST BE JOINTLY REFERRED TO AS THE PARTIES, IN ACCORDANCE WITH THE FOLLOWING STATEMENTS AND CLAUSES:

D E C L A R A T I O N S

FIRST. - The Commission, through its representative, declares that:

- A) It is a subsidiary productive company, with its own legal personality and assets pursuant to the provisions of articles 1st of the Agreement by which CFE Distribution was created, published in the Official Gazette of the Federation on March 29, 2016 (Creation Agreement) and the 1st Article of the Organic Statute of CFE Distribution (Statute).
- B) Its purpose is to carry out the activities needed to provide the public service of electric power distribution, as well as to carry out, among other activities, the financing, installation, maintenance, management, operation and expansion of the infrastructure needed to provide the public distribution service, in accordance with the provisions of the Federal Electricity Commission, the Electricity Industry Law, the Terms for the strict legal separation of the Federal Electricity Commission and other applicable legal provisions, generating economic value and profitability for the Mexican State as its owner, pursuant to Articles 2nd of the Creation Agreement and 1st of the Statute.
- C) Pursuant to articles 5, section XVIII of the Creation Agreement and 4, section XIX of the Statute, in order to fulfill its purpose, it may execute all kinds of acts, agreements, contracts, subscribe to credit instruments and grant all kinds of real and personal guarantees for obligations contracted by itself, the Federal Electricity Commission or its subsidiary and affiliated production companies, subject to the applicable legal provisions, with any public entity of the Federal, State or Municipal Government and with individuals or legal entities.
- D) In order to _____ requires the work of _____, pursuant to the Call and Requirements Document published on __, __, __ in the CFE Competition Microsite for the contracting procedure through Open Competition No. _____.

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Your Federal Taxpayer Registration is CDI160330RC9.

E) The C. _____, in his/her capacity of _____, as he/she has sufficient legal authority to appear at the execution of this Contract, which she/he proves with the testimony of Public Deed No. _____ dated _____ before the faith of _____, Public Notary No. _____, from _____, who is valid under the terms in which it was granted.

F) To cover the expenditures deriving from this Contract, we have financial resources pursuant to: _____.

G) For the current exercise, he/she has the corresponding budget availability and the necessary funds to make the expenditures that are motivated in the execution of the work.

H) To ensure the best available conditions in terms of price, quality, financing, opportunity and other relevant circumstances, the Commission published on the CFE Competitions Microsite dated _____, the Call and the Requirement Specifications for the Open Competition for the execution of the works subject to this Contract.

I) By the judgment issued on date of _____, the present Contract was awarded to the Contractor, because it complied with the legal, technical and economic requirements requested in the Specifications.

J) Through _____ the opinions, licenses, permits, rights to material banks, as well as the property or property rights including those of way and expropriation of real estate on which the work will be carried out, or the rights granted by whoever may legally dispose of them, and other authorizations necessary for the beginning of the works covered by this contract have been obtained from the competent authorities, likewise any other authorizations that may be necessary for the fulfillment of the same will also be processed.

SECOND. - The Contractor, through _____ declares that:

- A. It proves to be a legal entity duly incorporated and with legal existence pursuant to Mexican laws, pursuant to the testimony of Public Deed No. _____ granted before Notary Public No. _____, of _____, dated _____, _____, _____, duly registered in the Public Registry of Commerce of, under Mercantile Folio No. _____ dated _____, _____, _____.
- B. He/ She _____ has sufficient legal authority to sign this contract, which is accredited by the testimony of Public Deed No. _____ Volume _____, dated _____, _____, _____, granted before the Notary Public No. _____ of _____, by _____ registered in the Public Registry of Commerce _____ under the Mercantile Folio No. _____ dated _____, _____, _____, which so far have not been modified, revoked or cancelled.
- C. In its capacity of _____, declares under oath that the Contractor, his/her partners, or the people who are part of it, are not

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found in any of the assumptions established in Provision 15 of the General Provisions on Acquisitions, Leases, Contracting of Services and Execution of Works of the Federal Electricity Commission and its Subsidiary Productive Companies (General Provisions).

D. Is Mexican and agrees that, should he/she change his/her nationality, he/her will continue to be considered Mexican, as far as this contract is concerned, and will not invoke the protection of any foreign government under penalty of losing, to the benefit of the Mexican Nation, all rights derived from this contract.

E. Has the legal capacity to contract and has the human, technical, economic and material resources, requirements necessary to carry out the work covered by this contract.

F. Has the record(s) cited below, which is/are in force:

1. Federal Taxpayer Registry No. _____.

G. Has duly inspected the working site subject to this contract in order to consider all the factors involved in the preparation of its offer, as well as those involved in the execution of the work subject to this contract.

H. Submitted the corresponding guarantee(s) as stipulated in clause ____ of this contract.

I. Has the experience, organization, elements, and technical and financial capacity as required to fulfill the obligations it undertakes under this Contract and recognizes and accepts that mentioned qualities and qualifications are a determining reason for the Commission's willingness to enter into this Contract.

J. Is familiar with the content and scope of the Federal Electricity Commission Law, its Regulations, General Provisions, and other applicable provisions, and has met all the requirements stipulated in the Requirement Specifications referred to in section D of the FIRST declaration, as well as the content of the following annexes:

ANNEXES OTHER THAN THE TECHNICAL AND ECONOMIC OFFER FROM A TO M.

AT 1 Written statement under oath of knowing the working execution site and its environmental conditions.

AT 2 Description of the Contestant's comprehensive planning to carry out the work, including the construction procedure for the execution.

AT 3 List of Construction Machinery and Equipment.

AT 4 Curriculum vitae of each of the technical professionals who will be responsible for the Management, Administration and Execution of the work, and Structural Outline of the Organization.

- AT 5 Documents attesting the contestant's Experience and Performance in similar contracts.
- AT 6 A written statement pointing out that the contestant will **NOT** subcontract the work related to the contest.
- AT 7 Statement of compliance with National Content requirements and percentage of labor force.
- AT 8 A written statement confirming that the prices of Materials, Machinery, and permanent Installation of Foreign Equipment, as stated in the offer, are not quoted under unfair International Trade practices, such as price discrimination or subsidies.
- AT 9 General Work Execution Program, including scheduling, with no economic amount
- AE 1 Analysis of the total unit prices for the work concepts.
- AE 2 List of material supplies, labor force, and equipment involved in the integration of the offer.
- AE 2a.1 List of materials and permanent installation equipment of national origin required for the execution of the work, including their description, technical specifications, unit, quantity to be used, brand of the permanent installation equipment, basic cost, and total amounts.
- AE 2a.2 List of permanently installed foreign materials and equipment required for the execution of the work, including their description, technical specifications, unit, quantity to be used, brand, country of origin, cost in foreign and national currency, and total amounts.
- AE 2b List of labor force to be used, including job categories, quantity to be used, unit, and total amounts. This list must also include the percentage for minor tools and safety equipment.
- AE 2c List of construction machinery and construction equipment to be used, including description, technical specification, quantity to be used, unit, and total amounts.
- AE 3 Real Wage Factor.
- AE 3a Analysis, Calculation, and Integration of the real wage factor.

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The Contestant must attach to this annex the calculation of the breakdown of the integration factor in decimal fractions, categorized by employer-employee obligations, as derived from the Social Security Law (IMSS).

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| AE 3b | Tabulation of base wages of labor force for eight-hour workdays and wage integration. |
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| AE 4 | Analysis, Calculation, and Integration of Hourly Costs. |
| AE 5 | Analysis, Calculation, and Integration of Indirect Costs. |
| AE 6 | Analysis, Calculation, and Integration of Financing Costs. |
| AE 7 | Profit proposed by the contestant. |
| AE 8 | Analysis, Calculation, and Integration of Additional Charges. |
| AE 9 | Relation and Analysis of Basic or Auxiliary Unit Costs used in the integration of unit prices for the work components presented in Annex AE 1. |
| AE 10 | Concept Catalogue. |
| AE 11 | Documents proving Financial Capacity. |
| AE 12 | General Work Execution Program. |
| AE 13 | Direct Cost expenditure program for Labor Force in the Execution of the Works. |
| AE 14 | Direct Cost expenditure program for Machinery and Construction Equipment. |
| AE 15 | Direct Cost expenditure program for Materials and Permanent Installation Equipment. |
| AE 16 | Direct cost expenditure program for Professional, Technical, and Administrative Personnel Responsible for the management and execution of the work. |

Annex 3: Procedures for the Review of Cost Adjustments.

Annex 4: Procedure for the Analysis and Integration of Unit Prices, General Information; and

Annex 5: Methodology for determining the Machinery Utilization Charge.

CFE-Contractor Ethics Declaration.

Annex S: Occupational health and safety guidelines for suppliers and contractors.

General and specific Work specifications.

Project plans.

CFE Safety and Hygiene Regulations (Chapter 100).

Environmental guidelines included in the CFE management system.

Specifications No. _____

Electronic Construction Log.