

A general contractor about to bid on a construction job for an office building invited a carpenter and several others to bid on the carpentry work. The carpenter agreed to bid if the general contractor would agree to give the carpenter the job provided that his bid was lowest and the general contractor was awarded the main contract. The general contractor so agreed. The carpenter, incurring time and expense in preparing his bid, submitted the lowest carpentry bid. The general contractor used the carpenter's bid in calculating its own bid, which was successful.

Which of the following best supports the carpenter's position that the general contractor is obligated to award the carpentry subcontract to the carpenter?

- A. The carpenter detrimentally relied on the general contractor's conditional promise in preparing his bid.
- B. The carpenter gave consideration for the general contractor's conditional promise to award the carpentry subcontract to the carpenter.
- C. The general contractor has an implied duty to deal fairly and in good faith with all bidders whose bids the general contractor used in calculating its main bid to the building owner.
- D. The general contractor has an obligation to the owner of the building to subcontract with the carpenter because the carpenter's bid was used in calculating the general contractor's bid, and the carpenter is an intended beneficiary of that obligation.

Explanation:

Elements of valuable consideration

Bargained-for exchange Each party's willingness to enter agreement must be induced by other party's act/promise

Legal detriment Each party must relinquish legal right by either:
performing (or promising to perform) act that is not legally required *or*
refraining (or promising to refrain) from performing legally permissible act

A contract is generally formed when an exchange of promises is supported by **valuable consideration**—ie, a **bargained-for exchange** of promises or performance. However, **performance** under that agreement can be made **contingent upon a condition**. There are two types of conditions:

Condition precedent – where a party's **duty to perform *arises*** upon the occurrence or nonoccurrence of an uncertain future event (ie, the event *creates* the duty)

Condition subsequent – where a party's **duty to perform is *released*** upon the occurrence or nonoccurrence of an uncertain future event (ie, the event *extinguishes* the duty)

Here, the carpenter offered to bid on the carpentry work in exchange for the contractor's promise to award the carpenter the subcontract. This exchange of promises provided valuable consideration to form a binding agreement. The contractor's performance of that agreement was contingent upon the carpenter submitting the lowest bid and the contractor receiving the main contract. Since these conditions precedent occurred, the contractor was obligated to award the subcontract to the carpenter.

(Choice A) The doctrine of **promissory estoppel** allows a party to enforce a promise on which it reasonably and detrimentally relied when *no* valid contract was formed. A contract was formed here, so the carpenter's reliance is irrelevant.

(Choice C) The duty of good faith and fair dealing is implied in every contract—but not bids and other mere offers. Therefore, this duty would extend to the carpenter, but not other bidders with whom no contract was formed.

(Choice D) An *intended* beneficiary is a person who is intentionally given an advantage under a contract to which the person is not a party and may therefore enforce those contractual obligations. Here, the carpenter's bid was used in the contractor and building owner's agreement. But since there is no evidence that this agreement was intended to benefit the carpenter, he is merely an *incidental* beneficiary who has no right to enforce the agreement.

Educational objective:

A contract is generally formed when an exchange of promises is supported by valuable consideration and may include conditions that delay (condition precedent) or extinguish (condition subsequent) a party's promised performance.

References

Restatement (Second) of Contracts § 71 (Am. Law Inst. 1981) (bargained-for exchange as consideration).

17A Am. Jur. 2d Contracts § 447 (conditions precedent).

17A Am. Jur. 2d Contracts § 453 (conditions subsequent).

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