Responding to a county's written advertisement for bids, a tire company was the successful bidder for the sale of tires to a county for its vehicles. The company and the county entered into a signed, written agreement that specified, "It is agreed that the company will deliver all tires required by this agreement to the county, in accordance with the attached bid form and specifications, for a one-year period beginning September 1, 2019." Attached to the agreement was a copy of the bid form and specifications. In the written advertisement to which the company had responded, but not in the bid form, the county had stated, "Multiple awards may be issued if they are in the best interests of the county." No definite quantity of tires to be bought by the county from the company was specified in any of these documents.

In January 2020, the company learned that the county was buying some of its tires from one of the company's competitors. Contending that the tire company–county agreement was a requirements contract, the company sued the county for the damages caused by the county's purchase of some of its tires from the competitor.

If the county's defense is to offer proof of the advertisement concerning the possibility of multiple awards, should the court admit the evidence?

A. No, because it would make the contract illusory.

B. No, because of the parol evidence rule.

C. Yes, because the advertisement was in writing.

D. Yes, because the provision in the written agreement, "all tires required by this agreement," is ambiguous.

Explanation:

Exceptions to parol evidence rule

Evidence of prior or contemporaneous oral or written agreement is admissible to establish:

- whether writing is integrated and, if so, completely or partially
- meaning of ambiguous term
- defense to formation or enforcement (eg, fraud, duress, mistake)
- ground for granting or denying remedy (eg, rescission, reformation)
- subsequent contract modifications
- condition precedent to effectiveness

Under the **parol evidence rule**, evidence of **prior or contemporaneous agreements** or negotiations is not admissible to contradict the terms of an integrated contract. A contract is integrated when (1) it is in writing and (2) it embodies the final expression of the parties' intent regarding the contract's subject matter (as seen here). But even when a contract is integrated, such evidence is **admissible to interpret** an **ambiguous contract term**.

Here, the provision in the written agreement, "all tires required by this agreement," is ambiguous: it could mean as many tires as the county chooses to order during the one-year contract term OR as many tires as the county actually requires during that period (making this a requirements contract). Therefore, evidence of the written advertisement, which stated that the county could issue multiple tire awards, is admissible to determine whether the contract was, in fact, a requirements contract **(Choice B)**.

(Choice A) Where a promising party has discretion whether to perform at all, its promise is illusory. Because the county's evidence indicates that "all tires required by this agreement" means "as many tires as the county *chooses* to order," it could make the contract illusory if admitted. But this is not a reason to exclude the evidence.

(Choice C) The fact that the advertisement was in writing is irrelevant. Any evidence (oral or written) can be used to interpret the meaning of an ambiguous contract term.

Educational objective:

The parol evidence rule does not bar evidence of a prior or contemporaneous agreement, and such evidence is admissible when it is used to establish the meaning of an ambiguous contract term.

References

- Restatement (Second) of Contracts § 214 (Am. Law Inst. 1981) (when parol evidence is admissible to explain meaning of ambiguous term).