

Dickinson
CONTRACTS I
Fall 1989

Question 1

Acme Aircraft is a manufacturer of police helicopters, normally producing ten to twenty a year. It selects the "fasteners" (i.e., bolts) to be used in each helicopter on the basis of its expected use and, thus, the fasteners differ from one to another. Since about 50 types of fasteners are commonly used and they are expensive (\$7.25 each), Acme does not maintain an inventory of fasteners, but purchases them as needed.

In January, 1988, Acme's purchasing agent, Betty Bowser, contacted Findley Fastener Company, requesting quotes on eleven types of fasteners "to be delivered on a when-and-as-needed basis." Findley responded:

"We will sell you any quantity of any size fastener on a when-and-as-needed basis for \$3.00 plus the actual cost of material and shipping; Provided, that you deal exclusively with us."

The price was so low that Findley would just break even on the contract, but, he believed, if he became the sole supplier of fasteners to Acme, he would be in a position to raise prices later and so make a fair profit.

Bowser wired back, "Accept your offer," and entered Findley as Acme's supplier of the eleven types of fasteners. The next time Acme built a helicopter using fasteners of the types Findley had quoted, Bowser ordered six dozen, which were delivered promptly. Thereafter Acme purchased all fasteners of the eleven types from Findley, although (unknown to Findley) Bowser still ordered fasteners of other

types from other manufacturers.

In July, 1988, Acme received its first military contract, a one year contract for seventeen helicopters. As luck would have it, most of the fasteners required were those supplied by Findley. So, Bowser ordered 2,500 each of the eleven types. Findley was aghast when he received this order, however, because it meant he would have to borrow additional working capital, and, thus, actually lose money on the Acme contract. But when he called Bowser, she said, "you're lucky you're not Hollowell Screw and Nut, because I've just ordered 20,000 fasteners from them." Upon learning Findley wasn't Acme's only fastener supplier, he flew into a rage, told Bowser off and stopped shipments to Acme.

Acme had to have fasteners fast, so Bowser searched her files and found a recent, printed circular from Russ Bolt and Screw, dated June 1, 1988, containing a price list that stated it was "firm and irrevocable" through December 31, 1988. On July 15th she sent Russ the following telegram:

"Hereby order 2,500 each of [eleven listed types] for prompt or current shipment. Please ship without delay as we have a contract in progress."

One hundred of each of the eleven types of fasteners arrived within a week, with the following note from Russ:

"Here is the first part of your order. Since you have contract in progress, and we want to accommodate you as a new customer, we are shipping these parts now. Unfortunately economic conditions required us to raise prices, so also enclosed is our new price list that will apply to your order. Please notify us if you do not wish delivery on these terms."

Since the shortage of fasteners was holding up

production, Bowser sent the fasteners to the manufacturing department. When the bill for the first month's deliveries came, however, she instructed the Accounts Payable office to pay only \$20,000 (calculated on the June price list) instead of \$22,000 as requested (calculated on the new price list).

When Russ received the check, he wired Acme, "Your account in arrears. Have ceased shipments." Bowser responded, "Expect deliveries in accordance with contract at price stated to be firm until December 31, 1988, or else." When no further deliveries were made, Acme obtained fasteners elsewhere at a substantial increase in price (approximately \$13,000).

(i) Acme brought an action against Findley for breach seeking \$23,000, the additional expense it incurred in buying fasteners of the eleven types, all of which were used on the military contract. (ii) Acme also brought an action against Russ alleging breach of contract and seeking damages of \$13,000, the excess cost of securing replacement fasteners. (iii) Russ counterclaimed against Acme for \$2,000, the amount withheld.

With regard for each of these actions, who will win and why?

Question 2

Zolton Transfer is a trucking company.

Subpart A On November 2nd, Zolton wrote Dayton Pump Works offering to carry less-than-carload shipments to Cincinnati for \$1.25 per hundred pounds. The letter arrived on November 4th. On November 5th, Dayton Pump accepted this offer in a letter that was not delivered to Zolton until November 8th. In the meantime, on November 6th Dayton Pump wired Zolton, "In response to your offer, propose same terms

at \$.95 per hundred. Wire answer earliest convenience." Zolton received this wire the same day and grudgingly wired back, "We accept." Its response was received by Dayton Pump on November 7th.

Is there a contract and, if so, at what rate?

Subpart B During July, Zolton negotiated with several construction firms for adding a new dispatch office to the side of its Dayton warehouse and terminal. These negotiations cost \$1,500, and resulted in four offers between \$12,500 and \$17,000. Finally, on August 1st, Zolton contracted with Jones Construction to perform the work by October 1st at a cost of \$12,500. As required, Zolton paid Jones a downpayment of \$3,000 at the signing.

Unfortunately, all of Jones' tools and equipment were destroyed by fire the very next day, and its owners elected not to continue in business. Other contractors now seemed less interested in obtaining Zolton's work, and, after spending an additional \$1,000, Zolton received only one offer from Smith Contracting for \$16,500, also with completion by October 1st. Zolton concluded that Smith's price was too high in view of the fact that the new addition would only add \$11,000 to the fair market value of its building. Therefore, Zolton declined Smith's offer and instead bought two portable offices at a total cost of \$5,000. These offices added nothing to the value of Zolton's facility, however.

Jones admits its breach and has offered to repay Zolton its \$3,000 downpayment in full settlement of all claims. Should Zolton accept? If not, how much would it accept and why?

Subpart C On April 21st, Zolton received a "Purchase Request" from Wayland Foods for a daily run to its

Cincinnati store during May. Zolton acknowledged this document on its "Transportation Quotation" form, stating its price to be \$3,100 for the 31 day period. By return mail, Wayland sent a "Movement Confirmation" form stating the services as "Shipment of goods by daily trips from Dayton warehouse to our Cincinnati store," the period as "May," and the price as "\$3,100."

Because this contract substantially increased Zolton's business, on April 25th, it leased another truck from Hertz Leasing for five weeks at a cost of \$1,000, and hired a new driver, Barnes, for \$7.50 per hour.

On April 30th, Zolton received the following letter from Wayland, "Situation changed and must cancel contract. Sorry." When Zolton's dispatcher protested over the telephone, Wayland's warehouse manager pointed out that both its "Purchase Request" and its "Movement Confirmation" included the following language on the back:

"Owner of the goods reserves the right to cancel this contract in the event that Owner's business interests require it. By accepting this contract, shipping company acknowledges Owner's right and agrees to abide by Owner's determination of the requirements of its business interests."

Zolton's "Transportation Quotation" does not contain similar language.

Zolton laid off Barnes, paying him only \$600 in severance pay. They had to pay the full \$1,000 rental on the truck, however, even though it sat idle in the yard for the entire month of May.

What are Zolton's rights and damages, if any?

Subpart D Zolton's terminal is 500 yards north of Dr. Weaver's Veterinary Clinic. Several times, "patients" had been scared by the roar of Zolton's trucks as they passed his clinic, so, when he met Zolton's president on the golf course, Dr. Weaver said, "If your trucks will come and go to the north, so that they do not pass my clinic, for one year, I will pay you \$1,000 for your trouble." Since it didn't matter which direction the trucks left the terminal, the president agreed and ordered that all drivers use the road to the north only when leaving or returning.

Of course, Dr. Weaver refused to pay at the end of the year, and Zolton brought an action to enforce the contract. At trial the above was proven and Zolton's dispatcher testified that, because of the opening of a new highway just north of the yard, he would have issued the same instructions to the drivers anyway, but for a different reason.

Who will win and why?