

A wallpaper hanger sent a general contractor this fax:

"Will do all paperhanging on the doctor's new building, per owner's specs, for \$14,000 if you accept within reasonable time after main contract awarded."

Three competitors sent the general contractor similar bids to hang wallpaper in the doctor's building in the respective amounts of \$18,000, \$19,000, and \$20,000. The general contractor used the wallpaper hanger's \$14,000 figure in preparing and submitting her own sealed bid on the doctor's building. Before the bids were opened, the wallpaper hanger truthfully advised the general contractor that the former's sub-bid had been based on a \$4,000 computational error and was therefore revoked. Shortly thereafter, the general contractor was awarded the doctor's building construction contract and subsequently contracted with a competitor to wallpaper the building for a price of \$18,000.

The general contractor then sued the wallpaper hanger to recover \$4,000.

Which of the following, if proved, would most strengthen the general contractor's prospect of recovery?

- A. After the wallpaper hanger's notice of revocation, the general contractor made a reasonable effort to subcontract with another paperhanger at the lowest possible price.
- B. The general contractor dealt with all of her subcontractors in good faith and without seeking to renegotiate (lower) the prices they had bid.
- C. The general contractor had been required by the owner to submit a bid bond in the amount of \$50,000 and could not have withdrawn or amended her bid on the main contract without forfeiting that bond.
- D. The wallpaper hanger was negligent in erroneously calculating the amount of his sub-bid.

Explanation:

Irrevocable offers

	Type	Description	Consideration	Duration
UCC	Firm offer	Merchant gives written & signed assurance that offer will remain open	Not required	Specified or reasonable time
Common law	Option contract	Offeror promises to keep offer open in exchange for consideration	Required	
	Partial performance (unilateral contracts)	Offeror invites acceptance only by performance & offeree begins to perform		Reasonable time for full performance
	Promissory estoppel*	Offeror could reasonably foresee reliance on offer & offeree reasonably relies to his/her detriment	Not required	Reasonable time

UCC = Uniform Commercial Code.

*Also referred to as "detrimental reliance."

Under the doctrine of **promissory estoppel** (ie, detrimental reliance), an **offer** is binding as an option contract and is therefore **irrevocable** for a reasonable period of time if:

the offeror **reasonably expected to induce reliance** on the offer **before acceptance**

the offeree **reasonably relied** on the offer *and*

reliance caused the offeree to suffer **substantial detriment**.

When such an offer is **revoked before a reasonable period of time** has passed, the **offeree's remedies** range from **enforcement of the offer** to **reimbursement of expenses** incurred in reliance on the offer.

Here, the wallpaper hanger knew that the general contractor would factor the wallpaper hanger's sub-bid into her bid for the main contract (reasonable expectation of reliance). The general contractor then used the wallpaper hanger's sub-bid in preparing

and submitting her bid (reasonable reliance). Therefore, proof that the general contractor could not have amended or withdrawn her bid without forfeiting a bid bond (substantial detriment) would most strengthen her prospect for recovery.

(Choice A) The general contractor's reasonable efforts to subcontract with another paperhanger at the lowest price (ie, her efforts to mitigate damages) go to the *amount* of her recovery, not to whether she *can* recover.

(Choice B) The general contractor's good-faith dealing with all subcontractors is irrelevant to whether she can recover damages stemming from the revocation of the wallpaper hanger's offer.

(Choice D) The wallpaper hanger's negligence in erroneously calculating the amount of his sub-bid has no bearing on the general contractor's chances of recovery.

Educational objective:

An offer is binding as an option contract and therefore irrevocable if (1) the offeror reasonably expected to induce reliance on the offer before acceptance, (2) the offeree reasonably relied on the offer, and (3) reliance caused the offeree to suffer substantial detriment.

References

Restatement (Second) of Contracts § 87 (Am. Law Inst. 1981) (option contract by detrimental reliance).

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