

A tile floor installer sent a general contractor this fax:

"Will install all marble tile flooring in new office building, per owner's specs, for \$50,000 if you accept within reasonable time after main contract awarded."

Three competitors sent the general contractor similar bids to install marble tile floor in the office building in the respective amounts of \$55,000, \$58,000, and \$60,000. The general contractor used the tile floor installer's \$50,000 figure in preparing and submitting her own sealed bid on the office building. Before the bids were opened, the tile floor installer truthfully advised the general contractor that the former's sub-bid had been based on a \$5,000 computational error and was therefore revoked. Shortly thereafter, the general contractor was awarded the office building construction contract and subsequently contracted with a competitor to install the marble floors for a price of \$55,000.

The general contractor then sued the tile floor installer to recover \$5,000.

Which of the following, if proved, would best support the tile floor installer's defense?

- A. Before submitting her own bid, the general contractor had reason to suspect that the tile floor installer had made a computational mistake in figuring its sub-bid.
- B. Even after paying \$55,000 for the marble floor installation, the general contractor would make a net profit of \$150,000 on the office building contract.
- C. The general contractor gave the tile floor installer no consideration for an irrevocable sub-bid.
- D. The tile floor installer's sub-bid expressly requested the general contractor's acceptance after awarding of the main contract.

## 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 treated 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*

that reliance caused the offeree to suffer substantial detriment.

This is true even if **no consideration** (eg, money) was given to support the offer's irrevocability (**Choice C**).

Here, the tile floor installer knew that the general contractor would factor the installer's sub-bid into her own bid on the main contract. However, if the general contractor had reason to suspect that the installer had made a mistake in computing its sub-bid, her

reliance on that sub-bid would have been *unreasonable*. Therefore, this fact, if proved, would best support the tile floor installer's defense.

**(Choice B)** The fact that the general contractor would make a \$150,000 profit on the main contract even after the tile floor installer revoked its sub-bid (ie, offer) would not support the installer's defense. That is because the general contractor would have made a \$155,000 profit had the installer not revoked.

**(Choice D)** Although the tile floor installer's sub-bid expressly requested the general contractor's acceptance after awarding of the main contract, the general contractor could still recover if she reasonably relied on that bid before acceptance (not seen here).

**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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