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In the Supreme Court of Iowa

Supreme Court No. 25-0556
Jefferson County No. EQEQ004660

FS, Inc., Plaintiff - Appellant

vs.

Jefferson County Conservation Board,
Defendant-Appellee

Appeal from the Iowa District Court for Jefferson County
Honorable Shawn R. Showers, Presiding

BRIEF OF APPELLEE
JEFFERSON COUNY CONSERVATION BOARD

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether a bidder on a public construction contract who fails to properly file a required bid bond security with its bid, as set out in the invitation for bids, after a conditional acceptance, subject to review, may recover for loss of profits when the public board ultimately refuses to enter into a contract with it, in favor of another bidder complying with all bid bond security requirements?..... 14

II. Was the District Court allowance of evidence interpreting admitted Requests for Admission, and finding that damages were not shown error requiring reversal? . . . 19

ROUTING STATEMENT

The case on appeal presents substantial issues of first impression relative to the application of discovery rules and statutory commands of a statute involving a public entity's spending and definition of legal terms for the guidance of the bench and bar. (Iowa R. App. P. 6.1101(c)).

NATURE OF THE CASE

This is an appeal from a bench trial before the Iowa District Court for Jefferson County following the Court overruling Plaintiff's attempts to

foreclose presentation of Defendant's evidence and Court findings of fact that there was no breach of contract, nor any adequate showing of Plaintiff's unmitigated damages. D0068, Breach of Contract Ruling at 1-8 (3/9/2025).

STATEMENT OF FACTS

Appellant FS, Inc. (hereafter "FS", also alternately called "Four Seasons" in other parts of the record) appeals from ruling of the Iowa District Court for Jefferson County, Shawn R. Showers, Judge, dismissing a suit filed by FS for breach of contract after they were an unsuccessful bidder for a public conservation contract in Jefferson County, Iowa. D0068, Ruling at 1-2. The suit was against the five member Jefferson County Conservation Board (hereafter "County Board"). D0072, Tr. at 95:12-22 (5/8/2025). Following denial of summary judgment to FS, their claim was ultimately denied after a bench trial finding that there was no breach of contract in refusing to award a contract to FS. D0068 at 8:1-7 (3/9/2025).

The County Board submitted a solicitation for bids for construction of a public county park (hereafter "Project") in Jefferson County, Iowa. D0072, Tr. At 44:20-23; 66:19-25 & 67:1-6 (5/8/2025). Prior to offering the solicitation for bids the County Board fixed the required bid security bond for bidders at 10% of the project cost. D0072, Tr. at 57:15-20 (5/8/2025).

The Board established that amount as mandated by Iowa Code §26.8. D0072, Tr. at 98:16-21 (5/8/2025). The Trial Court found Iowa law mandates that government entities require all bidders' submit bid security to comply with mandatory legislative rules fixing the amount government entities shall require at any amount between 5% and 10%. D0068, Ruling at 3:4 (3/9/2025). The County Board fixed the required security bond at 10%. D0072 at 98:16-21 (5/8/2025). FS failed to comply. D0072, Tr. at 57:15-20 (5/8/2025). They submitted a bid for the project, but included a security for only 5%. D0072, Tr. at 78:3-8 (5/8/2025). At the bid opening their monetary bid for construction work appeared lowest and it was proclaimed their bid was accepted, but subject to engineering approval. D0072 Tr. at 75:16-20 (5/8/2025). Facts at trial established the Acceptance of the bid was "pending engineering review". D0072 Tr. at 84:25 to 85:1-3 (5/8/2025). After initial receipt of bids and award, subject to engineering approval, the failure of FS to submit the proper Bid Bond Security was observed. D0072 Tr. at 78:3-8 (5/8/2025). Following the project engineer's finding that the FS bid security was deficient, the County Board rejected the FS bid and formally authorized issuance of a contract to the bidder whose bid was higher but who submitted the proper bid bond security advertised. D0072 Tr. at 82:8-12 & 82:19-25 (5/8/2025). Thus,

the County Board awarded the written contract to the lowest bidder who had complied with the properly required 10% bid security deposit. D0072 Tr. at 106:12-15 & 108:15-19 (5/8/2025).

Subsequently FS filed suit in the Iowa District Court for Jefferson County against the County Board claiming contractual rights. FS sought relief, including for breach of contract and lost profits. D0068 Ruling at 2 (3/9/2025).

During the pretrial proceedings FS served Requests for Admissions upon the County Board, but at a hearing regarding Summary Judgment Motions by both sides Iowa District Judge Joshua P. Schier found fact issues remained for trial. D0072 Tr. at 56:8-11 (5/8/2025). The Court at Summary Judgment ruled that 30 statements served as Requests for Admissions became admissions and constituted part of the law of the case, limiting testimony and evidence offered by the County Board. D0072 Tr. at 56 (5/8/2025).

FS was unsuccessful in seeking partial summary judgment on its breach of contract claim as Iowa District Court Judge Joshua P. Schier found that disputed facts foreclosed a right to summary judgment as material facts required trial to resolve the questions (D0033, Ruling on Competing Mots. for Summ. J. (8/13/2024)) that were ultimately tried

without a jury, before Judge Shawn Showers. D0072 Tr. at 21:19-21 (5/8/2025). FS sought to prevent any testimony by the County Board at trial. D0072 Tr. at 3:11-14 & 68:12-14 (5/8/2025). At trial on February 18, 2025, Judge Showers ruled that the case, originally filed in equity would be tried at law, and ruled the Admissions were the Law of the Case but allowed the County Board to call witnesses and admitted exhibits, with 1 exception, after offering FS a continuance in return, which was waived. D0072, Tr. at 7:14 - 10:1 (5/8/2025).

FS relied upon 30 unanswered Requests for Admissions, set out as follows, which became the law of the case:

> **1.** Multiple contractors who had submitted bids relating to the Prairie Ridge Campground Project (the "Project") were present at the Board meeting held on February 28, 2024.
>
> **2.** Four Seasons' bid was opened at the February 28, 2024 Board meeting.
>
> **3**. After Four Seasons' bid was opened at the February 28, 2024 Board meeting, the amount of Four Seasons' bid bond was readily ascertainable.
>
> **4.** The Board has at all relevant times considered Four Seasons to be sufficiently qualified and able to perform the contract for the Project if it was awarded to Four Seasons.

5. At the February 28, 2024 Board meeting, the Board accepted the Four Seasons' bid.

6. At the February 28, 2024 Board meeting, the Board never determined that Four Seasons' bid was non-responsive.

7. After the February 28, 2024 Board meeting, the Board refused to execute a contract for the Project with Four Seasons on the ground that Four Seasons' bid was non-responsive.

8. The Board's determination that Four Seasons' bid was non-responsive was based solely on Four Seasons' bid bond being five percent.

9. The Board accepted the bid of Leffler Dirtworks, LLC to perform the work on the Project.

10. The bids of Four Seasons and Leffler Dirtworks, LLC each provide for the same exact work to be completed in constructing the Project.

11. After the Board's acceptance of Four Seasons's bid, Four Seasons did not have the right to withdraw its bid without forfeiting its bid bond.

12. Had the Board and Four Seasons entered into a formal contract for the completion of the Project with Four Seasons providing the proposed performance bond for the Project, any discrepancy regarding the amount of the bid bond would have been of no concern to the Board.

13. The Board is the only entity responsible for paying for the Project.

14. After the February 28, 2024 Board meeting, the Board failed to offer Four Seasons a contract for the Project.

15. After the February 28, 2024 Board meeting, the engineer completed a review of Four Seasons' bid.

16. After the February 28, 2024 Board meeting, Four Seasons acted in good faith in relation to the Board and the Project.

17. After the February 28, 2024 Board meeting, Four Seasons did not prevent the satisfaction of any conditions relating to the Project which may have existed.

18. A five percent bid bond is not in violation of any Iowa statute.

19. The amount of the bid bond with respect to the Project would not change in any way the work that was to be completed as part of the Project.

20. The amount of the bid for the Project by Leffler Dirtworks, LLC was $890,469 — which is $82,025 more than Four Seasons bid for $808,444.

21. If the Board allows Leffler Dirtworks,

LLC to complete the Project, it will be obligated to pay $82,025 more than what Four Seasons bid to complete the Project.

22. The public would not have been prejudiced had the Board allowed Four Seasons to post a performance bond and complete the Project according to its bid.

23. Four Seasons bid conforms in all material respects to the actual construction work proposed in the Board's Notice to Bidders for the Project.

24. The Board had full authority to award the contract for the Project and did not require the approval of any other person, individual, agency or entity.

25. The submission of a lower bid bond does not give a bidder a substantial advantage or benefit not enjoyed by other bidders.

26. The people of Jefferson County would benefit if the Board could have the Project completed for less money.

27. Ben Brueck, President of Four Seasons, was present at the February 28, 2024 meeting when the Board accepted Four Seasons' bid.

28. Four Seasons' bid addressed all material terms relating to the construction of the Project.

29. No further material terms relating to the

> construction of the Project beyond the terms contained in Four Seasons' bid remained to be negotiated after February 28, 2024.
>
> **30.** On February 28, 2024, the Board assented to the material terms relating to the construction of the Project as contained in Four Seasons' bid.

(D0056, Pl.'s Req. for Admis. - hereafter "Admissions"(2/18/2025)).

Testimony by the County Board's Director Shawn Morrissey and the Project's independent engineer Marcus Clark established the admitted acceptance was specifically made subject pending Review by the Engineer. D0072, Tr. at 104:21-25 & 105:1-8; at 107:15-27; at 109:18-25 & 110:1-5; at 78:3-15; at 81:1-9 (5/8/2025). After the acceptance, pending review of the project engineer, the incorrect bid security of FS was observed and resulted in rejection of the FS bid. D0072, Tr. at 78:3-8 (5/8/2025). Accordingly, no contract was issued to FS (D0072 at 61:6-8), but to another bidder that submitted the correct 10% bid security requested. D0072 Tr. at 82:11-25; at 102:11-24; at 106:12-15; at 108:15-19 (5/8/2025).

JURISDICTIONAL STATEMENT

No objection is made to the Jurisdictional Statement of FS by the County Board.

ARGUMENT

I.

A bidder on a public construction contract who fails to properly file a required bid bond security with its bid, as set out in the invitation for bids, after a conditional acceptance, subject to review, may not recover for loss of profits when the public board ultimately refuses to enter into a contract with it, in favor of another bidder complying with all bid bond security requirements

STATEMENT OF ERROR PRESERVATION

The County Board agrees that FS properly made objection to participation in trial and presentation of witnesses, testimony or exhibits presented by the County Board and was granted appropriate standing objections.

STATEMENT OF SCOPE AND STANDARD OF APPELLATE REVIEW

The County Board disputes the defendant's argument and conclusions on scope of review and standard of review as to findings of fact by the Court below. In a law action, as this case was tried, the trial court's findings

properly are binding on the appellate court if supported by substantial evidence, as occurred in this case.

> Where a case is tried at law, the scope of review is for errors at law. Iowa R. App. P. 6.907 (2009); *Johnson v. Kaster,* 637 N.W.2d 174, 177 (Iowa 2001). Under this standard of review, the trial court's findings carry the force of a special verdict and are binding if supported by substantial evidence. *Johnson,* 637 N.W.2d at 177. We are not, however, bound by the trial court's legal conclusions. *Am. Family Mut. Ins. Co. v. Petersen,* 679 N.W.2d 571, 575 (Iowa 2004).

Van Sloun v. Agans Bros., 778 N.W.2d 174, 179 (Iowa 2010).

In the present case two different respected jurists found facts justified a trial despite earlier Admissions and relying upon Iowa R. App. P. 6.904(3)(p) the proposition that Even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a jury question (here a 'trier of fact' question) is engendered. Pursuant to Iowa R. App. P. 6.904(3)(a) such findings of fact in a law action are binding upon the appellate court if supported by substantial evidence.

ARGUMENT

I.

> **We have held that one who contracts with a municipality or a political subdivision is bound at its peril to take cognizance of statutory limitations upon the authority of the government agency. Recovery is denied under**

> **the firm public policy that taxpayers should be protected from evasion of statutory prerequisites by the public body and from the opportunity for fraud or collusion between public officials and contracting parties.**

Thompson v. L.J. Voldahl, Inc., 188 N.W.2d 377, 380 (Iowa 1971).

FS is before the Court claiming damages for a claimed breach of contract by the County Board. No contract was formed or found to exist by the Court.

In *Hansen Company, Inc. v. RedNet Environmental Services*, 909 N.W.2d 228 (Iowa Ct. App. 2017) the court specified that to recover for a breach-of-contract claim, the complaining party must prove by a preponderance of evidence:

1). The existence of a contract;

2). The terms and conditions of the contract;

3). That it has performed all the terms and conditions of the contract;

4). The defendant's breach of the contract in some particular way; and

5). That plaintiff has suffered damages as a result of the breach.

FS factually failed to establish that a contract ever existed. In argument in their opening brief FS seems to argue that a conditional acceptance is not an acceptance at all. We believe that is exactly their problem. In this case it was a conditional or qualified acceptance, which was pending engineer review as found by the fact finder trying this case.

The right of a party to submit a request for admissions is designed to relate to statements of opinions of fact or the application of law to facts including genuineness of any document described in the request. R. Civ. P. 1.510(1). It is noteworthy that although the Admissions of FS relate to many topics, not one relates to the legal requirement for Bid Bond Security which is a protection to the County Board.

FS argues on appeal that they believed the County Board's evidence showing that the FS bid, which found the statement made at bid opening to be a conditional acceptance pending engineer approval, was instead an unconditional acceptance forming a contract then and there. Their disputed argument fails to address the mandatory requirement that their offer did not contain the statutorily authorized and County Board required 10% bid bond.

Although they argue their claim is incontrovertible due to FS serving late answered requests for Admissions (D0068, Ruling at 4 (3/9/2-25)) and

claims a right to prohibit the County Board from presenting any facts at trial regarding the conditional nature of the bid's acceptance, the District Court found against FS on the issue. Their requests for admissions did not deal with the issue of the mandatory bid bond that Iowa law mandates "**shall"** be set by the county board, which FS failed to comply with. Iowa R. Civ. P. 1.510(1).

FS failed to establish in its request for admissions or in facts at trial that a final unconditional acceptance was ever reached — and the judicial fact finding by the Court that the County Board's conditional acceptance of the bid was subject to its engineer review dooms their argument. Such conditional acceptance of the bid "pending engineer review" established that the alleged FS contract failed to meet the standard set out that approval be absolute and unconditional. *City of Fairfield v. Harper Drilling Co.*, 692 N.W.2d 681 at 685 (Iowa 2005). The finding of the District Court in trial should have consequences. The court found the acceptance was conditional, allowing further review.

The County Board agrees that where there an unconditional acceptance of a bid is issued by a governmental body, it can create an enforceable contract. *See Horsfield Const., Inc. v. Dubuque Cnty., Iowa*, 653 N.W.2d 563, 571 (Iowa 2002). In *Horsfield* Judge Lavorato, writing for

the Court found a breach of contract case can lie where the Plaintiff is denied a contract for no reason after a formal written acceptance is accepted and then denied without reason. But FS is distinguishable as it involves a claimant who was found to disregard the required mandatory bond. There was a reason for refusal of the County Board to contract.

Where a bidder fails to comply with technicalities of a bid bond security submitted with their bid, it is the unquestioned right - if not the duty - of a government agency to reject a claimant's low bid due to a technical defect in the bidder's bond security:

> Our affirmance of the trial court in its determination that the check in question was not properly certified, and that the defendant Board was justified in rejecting Menke's bid and immediately accepting another bid, necessarily leads to the conclusion that plaintiff has no cause of action against the Board. In the absence of fraud or conspiracy, an action by an unsuccessful bidder for public work will fail, *Mortland v. Poweshiek County*, 156 Iowa 720, 137 N.W. 1009, and the trial court will not substitute its own judgment for a discretionary action of a public body. On the errors assigned, we find plaintiff has no cause of action against the defendant Board for refusing to accept his bid.

Menke v. Bd. of Ed., Indep. Sch. Dist. of W. Burlington, 211 N.W.2d 601, 607–08 (Iowa 1973)

If the County Board is claimed to have been inarticulate in its indication that the acceptance (established by the Admissions) was actually

conditional following a review of the bid, so too is the argument of FS in not realizing its listed Admissions do not foreclose testimony of the fact that the Bid was not accepted unconditionally and failed to form a binding contact. None of the requests admitted that a formal contract actually existed, only that their bid offer was accepted. Even with the FS argument accepted, testimony is still allowable to reflect and interpret the nature of the acceptance. There is such a thing as a conditional acceptance as was found to have occurred in the present case.

A bidder for a public project may not sue for damages in the circumstances brought before the court for all the reasons above.

II.

The District Court's allowance of evidence interpreting admitted Requests for Admission, and finding that damages were not shown is not error requiring reversal

Both the prior decisions by District Court Judge Joshua P. Schier (finding FS's alleged facts were not uncontroverted and would be subject to trial due to their nature as being insufficient for Summary Judgment) and District Court Judge Shawn Showers findings for the County Board on the facts, by a preponderance of evidence at trial considered the nature of the

conditional oral acceptance of the FS bid which was controverted by the written minutes of the County Board. It is an accepted Iowa legal proposition that even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a 'jury question' is engendered - which applies equally in trials to the Bench as it would in trials to a jury.

The District Court properly permitted evidence on the facts which helped clarify and define the form of acceptance claimed in the Admissions. Those facts, based on the evidence of an independent Professional Engineer and the Director of the County Board were persuasive. They were bolstered by the written evidence from the County Board's minutes of the proceedings on February 15, 2024. The August 18, 2024 ruling of Judge Schier finding that factual issues remained for trial, and the finding of facts against FS on the issues in trial are entitled to be upheld upon appeal.

The District Court's finding of fact determined the actual acceptance was subject to a conditional acceptance for the engineer. Iowa law does not yet command that a County Board cannot exercise its power to make a conditional acceptance. Although the County Board is alleged to have acted in haste at the bid opening, it redeemed itself by insuring all bidders complied with its earlier 10% bid security determination. Iowa's statutes

make clear that the state's laws on bidding and establishing bonding practices are mandatory by the deliberate use of the word "shall" in Iowa Code §26.8. Shall imposes a command, whereas if the legislature would have chosen to make observance of the law optional, it would have used the word may.

The decision by the County Board and its project engineer insured that the ultimate successful bidder complied with all requirements of the bid process. Not to have done so could have exposed the County Board to liability from other bidders who meticulously followed all requirements of the process. Despite the FS claim the County Board could have otherwise awarded the contract to them despite their lapse, it would not follow the actual law and ultimate determinations of the County Board to follow the law. The mandatory nature of Iowa Code § 26.8 is clear.

It is an accepted legal proposition of Iowa Law, without need for citation that in construing statutes, the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said.

Although FS makes numerous arguments about its interpretations of what the law should be, its argument fails to acknowledge what the law conclusively says as set out in Chapter 26 of the Code of Iowa and what the

County Board required for a binding contract, including the specified bid bond. Section 26.8 justifies and mandates the County Board actions.

> 1. **Each bidder <u>shall</u> accompany its bid with a bid security** as security that the successful bidder will enter into a contract for the work bid upon and will furnish after the award of contract a corporate surety bond, acceptable to the governmental entity, for the faithful performance of the contract, in an amount equal to one hundred percent of the amount of the contract. The bid security shall be in an amount fixed by the governmental entity, and shall be in the form of a cashier's check or certified check drawn on a state-chartered or federally chartered bank, or a certified share draft drawn on a state-chartered or federally chartered credit union, or the governmental entity may provide for a bidder's bond with corporate surety satisfactory to the governmental entity . The bidder's bond shall contain no conditions except as provided in this section.
>
> 2. **The governmental entity <u>shall</u> fix the amount of bid security prior to ordering publication of the notice to bidders and such amount <u>must</u> equal at least five percent, but shall not exceed ten percent**, of either the estimated total contract cost of the public improvement or the amount of each bid. (Emphasis added)

IOWA CODE §26.8 (2025).

Although FS attempts to state they would undertake the signing of the contract, there is many a slip between the cup and the lip. It is the reason for bid security bonds accompanying bids. Though they state they intended to enter into a contract, it is not improper for the County Board to proceed cautiously in line with mandatory state law.

When asked to rule summarily that FS was entitled to be awarded judgment under the facts of this case, Judge Schier noted that disputed fact questions existed both as to whether the County Board's acceptance was unconditional and whether the FS bid was responsive. That gives rise to doubts concerning FS claims that the formation of a contract was evident from the proceedings below. The determination of facts was for the court to decide at the bench trial, and they indeed were decided adversely against FS.

Courts should be slow to interfere with decisions of local governments in Iowa determining which party is the lowest responsible bidder, absent proof that the determination is fraudulent, arbitrary, in bad faith, or an abuse of discretion. *See Istari v. City of Muscatine*, 330 N.W.2d 798 (Iowa 1983). After the bench trial Judge Showers correctly found against FS. Although FS would argue for a different interpretation of the word SHALL in order for it to receive a contract that was never offered them, it is black letter law that in construing statutes, the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said. Iowa R. App. P. 6.904(3)(m).

The FS complaint that it did not get formally offered a contract resulted from its own failure. They were part of a group of seven active

bidders, but no other bidder failed to provide it bid security or bond as required, and the County Board's bending the bidding rules for them might well have resulted in other litigation from contesting bidders that were fully responsive in meeting all the requirements including the bid bond.

FS argues facts that were found not dispositive below. The argument that damages attributable to their claimed loss of profits were determined by the trial court to be speculative. Their claims of alleged damages were rejected by District Judge Showers fact finding as "woefully inadequate". D0068, Ruling at 8 (3/9/2025).

The key witness for FS, Benjamin Joseph Brueck, directly testified at trial about their business: "There's a lot of cost and risk". D0072, Tr. at 53:11 (5/8/2025). County Boards should not have to shoulder part of that risk if a bidder fails.

In its brief here, FS also speaks candidly about the risk in Construction Contracts. Such risk has a direct impact upon the vagaries of profit to be expected. After the allowance that such work is risky there is primarily speculation as to the amount of profits which FS might have made. To establish such damages FS must carry the day at trial by a preponderance of the evidence. The record reflects they failed to do so.

FS argues that a conditional acceptance is no acceptance. FS must concede it did not meet the requirement of the bid security and therefore their statements about providing other bonding after the fact does their claim no benefit.

CONCLUSION

The judicial findings and rulings of Judge Joshua Schier in finding the claims of FS were controverted so as to require trial to resolve factual issues, and ultimately upon trial, of Judge Shawn Showers in finding against FS on the facts are both strongly supported by the record and sound legal reasoning. No error can be posited upon them for the rulings below. The Jefferson County Conservation Board prays that this court affirm the decision of the Iowa District Court for Jefferson County at FS costs.

RESPECTFULLY SUBMITTED

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REQUEST FOR ORAL ARGUMENT

Because of the important issues herein Oral Argument is requested.

CERTIFICATE OF FILING & SERVICE

The undersigned certifies a copy of this Brief was filed with the Clerk of the Iowa Supreme Court as required by Court Appellate Rules via EDMS and served upon all counsel of record via EDMS on this 11th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type volume limitations of Iowa Rule App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) using proportionally spaced GEORGIA type face with 14 point double spaced text with 5,058 words.

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