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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

RESISTANCE TO APPLICATION FOR FURTHER REVIEW OF COURT OF APPEALS DECISION DATED MAY 27, 2026

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STATEMENT IN RESISTANCE OF FURTHER REVIEW

The Application for Further Review should be denied. Further review is discretionary and is not granted in normal circumstances. Iowa R. App. P. 6.1103(1)(b). This case does not present a conflict in Iowa law, a substantial constitutional question, an unsettled important question of law, or an issue of broad public importance requiring Supreme Court intervention.

The Court of Appeals affirmed on a narrow, record-bound ground. Even assuming Four Seasons' deemed admissions established contract formation, Four Seasons still had to prove damages. *FS, Inc. v. Jefferson Cty. Conservation Bd.*, No. 25-0556, at *7-10 (Iowa Ct. App. May 27, 2026) (Decision). The court held the claimed lost-profit damages were overly speculative because the only damages proof was the president's testimony about an anticipated twelve-percent margin, unaccompanied by cost records, material costs, equipment costs, or a concrete explanation of how that percentage was reached. Id. at *8-10.

That holding does not change Iowa law. It applies settled law. A breach-of-contract plaintiff must prove damages as a result of the breach. *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998). Iowa law permits reasonable approximation, but it does not permit recovery of overly speculative damages. *Olson v. Nieman's, Ltd.*, 579 N.W.2d 299, 309 (Iowa 1998).

The Court of Appeals used those well established rules and affirmed the fact-finder's conclusion on this record.

Four Seasons' application attempts to convert that fact-bound affirmance into three broader questions. Those questions are either not presented by the Court of Appeals decision, were not preserved as the case was tried and briefed, or are unnecessary to the judgment. The Court of Appeals did not decide the effect of the deemed admissions; it assumed the admissions could establish a contract and affirmed because damages were not proven. Further review of the admissions issue would therefore be advisory to the judgment below. Likewise, Four Seasons' new nominal-damages framing does not warrant review where Four Seasons tried and appealed a claim for $97,013.28 in alleged lost profits, not a request for nominal damages.

The Court of Appeals' decision should stand, and procedendo should issue.

ARGUMENT

I. Further review is not warranted because the Court of Appeals applied settled law to a fact-bound record.

Rule 6.1103 sets a demanding threshold. Further review is not a second appeal as of right. It is discretionary, and the rule expressly provides that an application 'will not be granted in normal circumstances.' Iowa R. App. P.

6.1103(1)(b). The examples in the rule focus on conflict with appellate precedent, substantial constitutional or important unsettled legal questions, changing legal principles, or broad public importance. Id. None of these examples from the rule comport with the facts of this very straightforward public-sector contracting case.

The court did not announce a new damages rule. It quoted the familiar *Molo Oil* elements and *Olson's* rule that some speculation is acceptable but overly speculative damages cannot be recovered. Decision at *7-*10. Then it applied those settled rules to the record presented at a bench trial. The court emphasized the absence of ascertainable cost evidence and the absence of an explanation supporting the twelve-percent margin. Id. at *8-*10. That is ordinary appellate review of sufficiency of proof.

Four Seasons identifies no published Court of Appeals or Supreme Court decision with which the decision conflicts on an important matter. The application relies instead on recharacterizing the Court of Appeals' damages analysis. But a disagreement with how the Court of Appeals weighed a trial record is not a ground for further review. The Court of Appeals decided only that this proof was not enough. That narrow holding should not be converted into Supreme Court review of public-construction bidding, requests for admission, nominal damages, and lost-profit proof all at once.

This case is also a poor vehicle for broad legal pronouncements. The district court found no enforceable contract because the bid opening was conditioned on engineer review; Four Seasons submitted only a five-percent bid bond after the Board had fixed a ten-percent bid-security requirement; and the Court of Appeals affirmed without needing to reach the admissions issue. A narrow affirmance on damages is precisely the type of case that should end in the Court of Appeals.

II. The damages holding does not conflict with Iowa law.

Four Seasons' first two questions rest on the same premise: that the Court of Appeals supposedly confused the existence of damages with their amount. The opinion does not do that. The court concluded Four Seasons did not prove recoverable lost profits because the proof was too speculative. Decision at *8-*10. That conclusion is consistent with *Molo Oil*, *Olson*, and *Orkin*.

A. Lost profits require proof of net profit, and the missing cost evidence mattered.

Four Seasons sought lost profits. Lost profits are not gross receipts. They require evidence from which a fact finder can determine net gain after the costs of performance. That is why the Court of Appeals focused on costs. The court noted that Four Seasons did not provide evidence of ascertainable costs, including

material costs or equipment costs. Decision at *9. Without those inputs, the twelve-percent figure could not be tested against the work actually required by the project.

Four Seasons now argues those costs were implicit in the bid. But a bid does not prove the accuracy of the underlying cost assumptions, the risk of the project, the expected labor or equipment burden, or the actual profit that would have resulted. The bid proves what Four Seasons offered to charge. It does not prove what Four Seasons would have netted. The trial court was not required to accept a self-selected percentage as proven lost profit merely because it was embedded in line items.

The record reinforces the Court of Appeals' conclusion. Four Seasons' president testified that construction projects may produce a profit range from five percent to twenty-five percent and even stated that 'the sky's the limit.' Decision at *8. He also acknowledged that construction work involves risk. The Court of Appeals could reasonably treat those generalities as confirming the need for project-specific cost proof, not eliminating it. A broad profit range from other projects does not prove that this particular public campground project would have generated any specific net profit.

Orkin and *Olson* do not require a different result. *Orkin* recognizes a distinction between the fact of damage and the amount of damage, but it also confirms that recovery is denied when the question of whether damages have been

sustained is speculative and uncertain. *Orkin Exterminating Co. v. Burnett*, 160 N.W.2d 427, 430 (Iowa 1968). *Olson* likewise allows reasonable approximation only after the evidence supplies a reasonable basis. *Olson*, 579 N.W.2d at 309. Here the Court of Appeals held that the evidentiary foundation was missing. That is not a conflict with *Orkin* or *Olson*; it is an application of them.

Four Seasons' framing would collapse the plaintiff's burden. If a contractor could prove lost profits simply by saying that it hoped to earn a percentage of the bid, without cost sheets, material quotes, equipment costs, labor assumptions, subcontractor costs, or other project-specific proof, the reasonable-basis requirement would do little work. The Court of Appeals correctly declined to adopt that approach.

B. Nominal damages do not justify further review.

Four Seasons' second question reframes the case around nominal damages. That is not how the case was tried, decided, or originally presented on appeal. Four Seasons sought $97,013.28 in lost profits in the District Court. Its reply brief asked the appellate court to remand with instructions to enter judgment in that amount. It did not ask the Court of Appeals to reverse for nominal damages.

The Supreme Court generally does not grant further review to decide a new remedial theory that was not the basis of the trial, the district court ruling, or the

Court of Appeals decision. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal. The reason for this principle relates to the essential symmetry required of our legal system." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)(internal quotations and citations omitted). The application should be denied for that reason alone.

Nor does *UE Local 893 v. State* create the conflict Four Seasons asserts. There, the Iowa Supreme Court affirmed actual monetary damages for a proved contractual breach involving union dues. *UE Local 893 v. State*, 997 N.W.2d 1, 11-12 (Iowa 2023). The Court did not hold that a party who fails to prove the damages it requested may avoid *Molo Oil's* fifth element (that Plaintiff suffered damages as a result of a breach) by raising nominal damages for the first time on further review. It did not overrule *Olson's* rule that overly speculative damages cannot be recovered.

Even if nominal damages could be available in an appropriate preserved case, that would not warrant granting further review here. The Court of Appeals addressed the only damages theory Four Seasons pursued: lost profits. It held that theory too speculative. A possible nominal-damages remedy, not requested as relief in the trial or original appeal, does not transform this case into an important question requiring Supreme Court review.

C. Horsfield and Boyle Built do not create a conflict.

Four Seasons' reliance on *Horsfield Construction, Inc. v. Dubuque County* does not show a conflict with existing precedent. *Horsfield* involved a different procedural posture and did not hold that lost profits are presumed or that detailed damages proof is unnecessary. See 653 N.W.2d 563, 573-74 (Iowa 2002). It addressed contract formation and remanded for damages proceedings. *Id*. Nothing in *Horsfield* conflicts with an appellate court later affirming a trial court's finding that a different contractor failed to prove lost profits at a completed bench trial.

Boyle Built Enterprises, LLC v. Benson also does not help Four Seasons. The Court of Appeals expressly distinguished *Boyle Built* on the facts concerning the proof supporting lost profits. Decision at *8 n.1. At most, *Boyle Built* illustrates that different records produce different outcomes. That is not a conflict warranting further review. It is the ordinary operation of the substantial-evidence and sufficiency-of-proof standards.

The damages issue therefore presents no basis for further review. The Court of Appeals applied existing law, considered the proof actually offered, and affirmed.

III. The admissions issue is not a reason to grant further review.

The application also asks the Supreme Court to decide whether the Board's deemed admission that it 'accepted' Four Seasons' bid conclusively established an unconditional acceptance and contract formation. That issue is not necessary to the judgment below. The Court of Appeals assumed, for purposes of its analysis, that admission number five could conclusively establish acceptance and contract formation. Decision at *7-*8. It affirmed anyway because Four Seasons failed to prove damages. Id. at *10.

Further review should not be granted to decide an issue that the Court of Appeals deliberately bypassed and that would not change the outcome unless the Supreme Court also reverses the damages holding. The admissions issue is especially unsuitable for further review because it is tangled with record-specific public-bidding facts: the bid opening statement was subject to engineer review; the engineer later reviewed the bid; the Board had fixed bid security at ten percent before publication; Four Seasons submitted only five percent; and the district court found the acceptance conditional.

If the Court reaches the issue, the Board maintains the district court was correct. A request for admission may conclusively establish the admitted matter, but it does not make the word 'accepted' mean 'final, unconditional, statutory-compliant acceptance' when the request did not say that. See Iowa Rs. Civ. P. 1.510, 1.511. The district court allowed evidence to explain the nature and context

of the bid opening statement. The Court of Appeals did not hold otherwise, and there is no Court of Appeals holding on this issue for the Supreme Court to correct.

Nor did the admissions establish damages. None of the thirty admissions supplied the missing cost proof or established a non-speculative lost-profit amount. Even accepting all admissions as conclusively established, the damages element remained Four Seasons' burden. That is the basis on which the Court of Appeals affirmed.

IV. Chapter 26 and the public-bidding record make this a poor vehicle for further review.

The broader public-construction context confirms that further review should be denied. Iowa Code section 26.8 requires each bidder to accompany its bid with bid security. The governmental entity must fix that amount before publication of the notice to bidders, and the amount must be at least five percent but not more than ten percent. Iowa Code section 26.8(1)-(2). The Board fixed ten percent. Four Seasons submitted five percent. The engineer identified that deficiency during the very review to which the bid opening announcement was subject.

That context matters because a governmental body's acceptance of a bidder's proposal must be absolute and unconditional to be binding. *City of Fairfield v. Harper Drilling Co.*, 692 N.W.2d 681, 685 (Iowa 2005). The district court found

the bid opening statement was conditional, and the Court of Appeals did not disturb that finding because it affirmed on damages.

Public-bidding law protects taxpayers and other bidders as well as the apparent low bidder. Iowa courts have long recognized that those contracting with public entities must take account of statutory limitations and prerequisites. *Thompson v. L.J. Voldahl, Inc.*, 188 N.W.2d 377, 380 (Iowa 1971). Iowa courts are also reluctant to interfere with local-government determinations in public-bidding matters absent proof of fraud, arbitrariness, bad faith, or abuse of discretion. *Istari Constr., Inc. v. City of Muscatine*, 330 N.W.2d 798, 800 (Iowa 1983).

Four Seasons seeks to use default admissions to bypass that public-bidding framework and impose nearly $100,000 in alleged lost profits on the Board despite a deficient bid-security submission and a conditional review process. The Court of Appeals avoided that broader problem by deciding the narrower damages issue. This Court should do the same by denying further review.

The district court and the Court of Appeals reached the correct result. At minimum, the Court of Appeals' damages holding supplies an independent and sufficient basis to affirm. No rule 6.1103 ground justifies further review.

CONCLUSION

The Application for Further Review should be denied. The Court of Appeals applied settled Iowa law to a fact-bound damages record and affirmed because Four Seasons did not prove recoverable lost profits. The admissions issue was not reached and is unnecessary to the judgment. The public-bidding context only confirms that this is not a proper vehicle for further review. The Board respectfully requests that the Court deny further review and issue procedendo.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that a copy of this Resistance to Application for Further Review was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon counsel of record by EDMS on the 22nd day of July, 2026.

/s/ Chauncey Moulding

Chauncey Moulding

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This resistance complies with the typeface requirements and type-volume limitation of Iowa Rule of Appellate Procedure 6.1103(5) because it has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 2,947 words, excluding the parts exempted by Iowa Rule of Appellate Procedure 6.1103(5)(a).

/s/ Chauncey Moulding

Chauncey Moulding