CITATION: 1114136 Ontario Inc. v. Feltz Design Build Inc., 2026 ONSC 1512
COURT FILE NO.: CV-20-293-00SR
DATE: 2026/03/13

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
1114136 ONTARIO INC. c.o.b. as CORE TEC. CONTRACTING	)	
Plaintiff	)	Benjamin E. Jefferies and Tanisha Merkley, Counsel for the Plaintiff
– and –	)	
FELTZ DESIGN BUILD INC.	)	
Defendant	)	Michael A. van Bodegom and Mark E. Day, Counsel for the Defendant
	)	**HEARD:** June 10 – 13, 2025

THE HONOURABLE JUSTICE I.R. SMITH

REASONS FOR JUDGMENT

1. Introduction

[1] In 2019, the Avon Maitland District School Board (the "Board"), was preparing for renovations and the construction of an addition to the Stratford Central Secondary School (the "project"). Marklevitz Architects Inc. (the "project manager") was retained as the project manager. On April 15, 2019, the Board issued a call for tenders which had been prepared by the project manager. Bids were to be submitted to the Board by May 8, 2019.

[2] The defendant, Feltz Design Build Inc. ("Feltz") is a general contractor. Feltz was included on a list of pre-qualified contractors who were permitted to bid to become the general contractor

on the project. Feltz submitted a bid on May 8, 2019, and was the successful bidder. It entered into a contract with the Board on May 28, 2019.

[3] The plaintiff, Core Tec Contracting ("Core Tec") is a masonry contractor. Core Tec says that it entered into a bidding contract with Feltz on May 8, 2019, to be the masonry subcontractor on the project. Core Tec further alleges that Feltz breached that contract when it later named another company, Con-Tact Masonry Ltd. ("Con-Tact"), as the successful bidder for the masonry work. Core Tec seeks damages for profit it would have earned on the project but for the breach by Feltz.

[4] Feltz says that it never had a contract with Core Tec and, therefore, that it was not in breach of a contract with Core Tec. In the alternative, Feltz says that Core Tec has failed to establish that it suffered any damages.

[5] For the reasons which follow, I find for Feltz. The action is dismissed.

2. Background

[6] The evidence establishes that, as a general matter for Board construction projects, with the assistance of the project manager, the Board "prequalifies" various general contractors which meet the experience and qualifications requirements to bid for the work. Prior to a specified deadline date, subcontractors who hope to work on the project are generally invited to submit their bids to the various prequalified general contractors, all of which are identified in the tender call. In turn, the general contractors, when they submit their bids to the Board, must identify the subcontractors which they intend to use to do the work should their bid be accepted. The rules of the bidding process are set out in the tender call prepared and circulated by the project manager. Typically, a general contractor who submits a bid must also pay a bid bond for the purpose of ensuring that it will comply with the rules of the bidding process and, if its bid is accepted, it will enter into a contract with the Board at the tendered price.

[7] As noted above, in this case, the Board's call for tenders for the project was issued on April 15, 2019. It included a list of pre-qualified general contractors, including Feltz. Pre-qualified

subcontractors were also named for some subtrades, but no pre-qualified masonry subcontractors were named. Accordingly, prospective general contractors were free to name any qualified masonry subcontractor they wished. The scope of the masonry work involved in the project was set out in section 4200 of the call for tenders (the "scope of work").

[8] The tender form appended to the Board's call for tenders required that the bidding general contractor identify all subcontractors that it contemplated using to do the subject work. The tender form specifically stated that the contractor was prohibited from substituting any subcontractors without the express approval of the Board. In this respect, it reads as follows (emphasis in the original): "**No substitution** of subcontractors is permitted after these documents are submitted without the [Board]'s approval." The project manager's principal architect, Terry Marklevitz, said in his affidavit[1] that "this stipulation is important: it serves to prevent a contractor from securing the contract based on the qualifications of the various subtrades that it listed in its bid, and, thereafter, substituting in a less qualified subcontractor."

[9] Bids for the project were to be submitted in person to the Board by no later than 2:00 p.m. on May 8, 2019. At approximately 1:30 p.m. on that day, by fax, Feltz received an unsolicited bid for the masonry work on the project from Core Tec. Core Tec and Feltz had had no prior communication about the project. Core Tec had become aware of the call for tenders through a notice posted by the Grand River Construction Association.

[10] Core Tec's bid quoted a price of $769,900 + HST for the masonry work, was open for 30 days, and listed various exclusions. In other words, the Core Tec bid noted that its quote did not include prices for work on several of the requirements listed in the scope of work. These exclusions included, among others, ties and anchors to metal work and precast concrete. Core Tec had all the qualifications (ability to undertake the work required, years of operations, and experience working on similar projects) set by the Board for bidders for subcontract work on project.

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[1] At trial, the evidence in-chief of the witnesses was received in affidavit form.

[11] Feltz says that at about 1:47 p.m., on May 8, 2019, it received an unsolicited quote for the masonry work by e-mail from Con-Tact. That quote was for a price of $758,000 + HST, was open for 60 days, and listed fewer exclusions than had Core Tec.[2] Like Core Tec, Con-Tact had all the qualifications necessary to be a subcontractor on the project.

[12] Hainsley Bailey is a manager of long experience at Feltz. He was responsible for preparing Feltz's bid for the project. Part of that responsibility included receiving bids from subcontractors and selecting from among those bids which subcontractors to include in Feltz's bid to the Board. He was at Feltz's offices on May 8, 2019, and was receiving bids from subcontractors as the 2:00 p.m. deadline approached. His Feltz colleague, Cameron Scott, was at the offices of the Board so that Feltz's bid could be submitted in person as required. Mr. Bailey received bids and decided on which subcontractors to include in Feltz's bid. He then called and conveyed that information to Mr. Scott, who wrote the information he received from Mr. Bailey onto the pre-printed tender form.

[13] According to Mr. Bailey, he reviewed and compared the Core Tec and Con-Tact bids. He says he concluded that Con-Tact's bid was the superior bid and decided that Con-Tact would be the named masonry subcontractor for Feltz's bid. At some point after 1:47 but before 2:00 p.m., Mr. Bailey called Mr. Scott to advise him of the selection of Con-Tact, among other decisions he had made. As Mr. Bailey put it in his affidavit, "for whatever reason, Scott incorrectly entered "CORE TECK" instead of "Con-Tact." Mr. Bailey says that this was a simple mistake.

[14] In cross-examination, Mr. Bailey denied that in the rush leading up to the 2:00 p.m. deadline he had not had time to review the Con-Tact bid, denied that he had intended to tell and did tell Mr. Scott to enter Core Tec's name on the bid form, and denied that he only discovered after the deadline that Con-Tact had submitted a lower bid than Core Tec's.

[2] In cross-examination, Mr. Bailey agreed that Con-Tact actually had more exclusions than Core-Tec but maintained that Con-Tact's exclusions were narrower in scope than those specified by Core-Tec.

[15] In any case, Mr. Marklevitz reviewed the various bids and recommended to the Board that Feltz should be the general contractor on the project. Mr. Marklevitz said that he noticed that CORE TECK had been listed for the masonry work on Feltz's tender form and he said that he understood this to be a reference to Core Tec, a company that met the pre-requisites to be a subcontractor on the project.

[16] The Board and Feltz entered into a contract on May 28, 2019. On June 5, 2019, Feltz issued a purchase order to Con-Tact for the masonry work on the project. On June 25, 2019, Feltz submitted its contact list for the project to the project manager. Contact information for each subcontractor was included. The list includes Con-Tact as a masonry subcontractor. At no time, either before or after the bidding process, did Feltz ever contact Core Tec to discuss the masonry work on the project. Mr. Marklevitz says that he never received a formal request to substitute Con-Tact for Core Tec as the masonry subcontractor, nor did he believe that the Board had approved such a formal request.

[17] Construction on the project began in July of 2019, with the masonry work by Con-Tact commencing in November of that year.

[18] Eddy Beland is the president of Core Tec, a company he has operated with his wife, Connie Beland, for about 30 years. Mr. Beland said that he heard nothing about Core Tec's bid on the project until October 15, 2019, when he received an email from a building supplier who wanted to know whether Core Tec needed to order materials for the masonry work on the project. In the ensuing email exchange, the supplier advised Mr. Beland that he had learned from the project manager that Core Tec had been the successful bidder for the masonry work. On December 5, 2019, Mrs. Beland called the project manager's office and was told that Core Tec had been selected to work on the project. However, when she called Feltz on December 9, 2019, to confirm this information, she learned that Feltz had awarded the masonry work to another company.

[19] In the face of this conflicting information, using the procedures set out in the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F-31, Core Tec submitted a request for

a copy of the Feltz bid on the project. It was then that Core Tec learned that Feltz's bid had named "CORE TECK" as its selection for the masonry work. As Mr. Beland puts it in his affidavit:

> While this is not the proper spelling of our operating name, I understood that Feltz intended to carry Core Tec as its masonry subcontractor. Likewise, I verily believe based on my interaction with [the supplier] and Connie's interactions with [the project manager], that other third parties involved in the project also understood that Core Tec was to have been the masonry subcontractor.

[20] Mr. Bailey said in his affidavit that Feltz received a telephone call from an employee of the project manager on December 5, 2019, who reported on the call from Mrs. Beland earlier that day. Mr. Bailey said that "it was at this time that Feltz discovered that 'CORE TECK' had been listed as the masonry subcontractor in error in its bid form."

[21] In his affidavit, Mr. Marklevitz says that after Mrs. Beland contacted his office on December 5, 2019, he e-mailed Mr. Bailey at Feltz, who advised that Con-Tact would be doing the masonry work. Mr. Marklevitz continues as follows:

> I was advised by Hainsley Bailey that it had listed Core Tec in its tender in "error" and that Core Tec had not offered the lowest bid for the work. This was a concern to me given that Feltz's bid had been reviewed, assessed and accepted based on the understanding that Core Tec would be doing the masonry work. That said, Con-Tact Masonry also met the qualification requirements stipulated in the tender package and it had already started the work. To have insisted on substituting another masonry subcontractor would have delayed the progress of the work. The … Board, therefore, elected to have Con-Tact Masonry finish the masonry work.

[22] Mr. Bailey said that it was only on December 5, 2019, that he came to learn that Con-Tact had not been named on Feltz's tender form. After his call with the project manager's office that day, Mr. Bailey sent copies of both Core Tec's and Con-Tact's quotes to Mr. Marklevitz. Mr. Bailey deposes that neither the project manager nor the Board raised any issue with Feltz's correction of the name of its chosen masonry subcontractor. He said as follows:

> At no time did the Architect advise Feltz that Feltz would be required to contract with Core Tec. Rather, the Board and Architect consented to the continued use of Con-Tact for the masonry work. While no formal paperwork was executed,

> the Board, the Architect, and Feltz all understood and were satisfied that Con-Tact would work on the Project.

[23] In cross-examination, Mr. Marklevitz confirmed that the Board became aware that Con-Tact was working on the project and permitted that company to continue with and complete its work.

[24] Core Tec says that Feltz's decision to use Con-Tact caused Core Tec significant damages. In his affidavit, Mr. Beland said further that Core Tec was unable to mitigate those damages because, although it had bid on other projects in 2019, it was awarded none.

3. Discussion

3.1 Issues

[25] The key issue is whether there was a contract between Core Tec and Feltz. Core Tec says that there was as soon as Feltz included Core Tec's name on the tender form and submitted that form to the Board, while Feltz says that its submission of the tender form created a contractual relationship between Feltz and the Board only.

[26] I have concluded that there was no contract between Core Tec and Feltz and, therefore, that there was no breach of any contract.

[27] In addition, however, in the event that there was a contract and that it was breached, I have also concluded that Core Tec has failed to establish that it has suffered any damages.

3.2 The positions of the parties

[28] Both parties rely on the same body of prior authority respecting the creation of contracts in the bidding process, but they draw very different conclusions from those cases.

[29] In *The Queen v. Ron Engineering*, [1981] 1 S.C.R. 111, at pp. 118, 121 – 123, Estey J. described the contracts created between the owner and a contractor when bids are submitted on a construction project. "Contract A" is a "unilateral contract" that is created when the contractor

submits a bid to the owner which bid cannot be withdrawn. In other words, by submitting the bid the contractor agrees that if its bid is accepted it will be obliged to carry out the work bid for at the price quoted or forfeit its deposit. "Contract B" is the construction contract itself, which is created when the owner selects and accepts the contractor's bid: see also *Double N Earthmovers Ltd. v. Edmonton*, 2007 SCC 3, at paras. 1 – 3.

[30] Core Tec applies this analytical framework to bids submitted by subcontractors to prospective general contractors and argues that, in this case, the Board's naming of Feltz as a pre-qualified general contractor constituted a bid call – or an invitation to subcontractors to submit bids to Feltz – and that one of the terms of that bid call was that Feltz would be obliged to use the subcontractors identified in the tender form it submitted to the Board. Feltz's naming of Core Tec in the tender form, then, created a Contract A in this case.

[31] Feltz says that no Contract A was ever created between it and Core Tec. The only Contract A created in this case was between Feltz and the Board. That is so because Feltz never issued a call for tenders to subcontractors and did not agree to the terms of a bidding process for subcontractors. The quote from Core Tec was unsolicited by Feltz. Feltz's submission of a bid form that named CORE TECK was an obvious mistake, especially given that it is an implied (albeit qualified) term of any bidding process that the party calling for bids will accept and contract with the lowest bidder: *Ron Engineering*, at p. 123; *Martel Building Ltd. v. Canada*, 2000 SCC 60, at paras. 81 – 85. In any case, Core Tec could only rely on the creation of a Contract A if its bid was compliant with the terms call for tenders. Feltz asserts that it was not. Further, the terms of the Board's call for tenders permitted changes in subcontractors. For all these reasons, according to Feltz, no contract was ever created between Core Tec and Feltz: *Martel*, at paras. 82, 88.

3.3 Was there a contract?

3.3.1 The *Ron Engineering* Framework

[32] Important elements of the Contract A/Contract B framework from *Ron Engineering* were helpfully summarized by Klowak J. in *Tectonic Infrastructure Inc. v. Middlesex Centre*, [2004] O.T.C. 1073 (S.C.J.), as follows (at paras 35 – 38, 131; emphasis added):

> The leading Canadian cases on the law of tenders are […] *Ron Engineering* […]; and *M.J.B. Enterprises Ltd. v. Defence Construction* (*1951*) *Ltd.*, [1999] 1 S.C.R. 619.
>
> These cases stand for the proposition that the submission of a tender in response to an invitation to tender may give rise to contractual obligations (Contract A), quite apart from the obligations associated with the construction contract (Contract B) to be entered into upon the acceptance of a tender.
>
> Whether Contract A arises, depends upon whether the parties intend to initiate contractual relations by the submission of a bid. If such a contract does arise, its terms are governed by the terms and conditions of the tender call. See *M.J.B.*, *supra*.
>
> *M.J.B.*, *supra*, also stands for the proposition that the courts will imply a term into Contract A that the owner will accept only bids compliant with the tender documents, unless a contrary intention can be shown; and that the privilege clause in the tender documents in that case allowed the owner to accept bids other than the lowest bid.
>
> […]
>
> Iacobucci J. held [in *M.J.B.*] that it is always possible that Contract A does not arise upon the submission of a tender, and that whether or not it arises depends upon whether the parties intended to initiate contractual relations by the submission of a bid in response to the invitation to tender. Contract A arises where the owner offers, in inviting tenders through a formal tendering process involving complex documentation and terms, to consider bids for Contract B, and the offer is accepted when the contractor submits its tender. This is what occurred in the case before me and I consequently find Contract A arose.

3.3.2 Feltz's intentions

[33] I begin my discussion, then, with the intentions of Feltz respecting Core-Tec, and with my conclusion that I accept Mr. Bailey's evidence that he intended to name Con-Tact – not Core Tec – as the successful bidder for the masonry work on the project and that he intended to tell Mr. Scott to enter Con-Tact's name – not Core Tec's – on the tender form.

[34] First, Mr. Bailey presented as a credible witness and was unshaken in cross-examination. More importantly, however, his evidence makes sense.

[35] Mr. Bailey had no incentive to pick Core-Tec's higher bid. I accept his testimony – supported by the case law in this respect – that, all things being equal,[3] the most important consideration in selecting a qualified subcontractor is the price which has been quoted. Here, Con-Tact clearly submitted the lowest bid. It was in Feltz's interest to select Con-Tact – not Core Tec.

[36] Moreover, by having Mr. Bailey in the office and Mr. Scott on site at the Board on May 8, 2019, Feltz had prepared itself to be in a position to accept a low bid that was submitted very late in the process. Indeed, it seems that they expected such bids to materialize. The evidence before me suggests that the rushed finalization and submission of bids which played out in this case is not at all uncommon. While Mr. Bailey said that some bids do come too late to be considered, a bid submitted 13 minutes before the deadline – as Con-Tact's was – does not fall into that category given that Feltz would not have submitted its tender form earlier than three or four minutes before the 2:00 p.m. cut off. In all these circumstances, it is unlikely that Feltz would have allowed a bid submitted at 1:47 p.m. to go unnoticed and unconsidered. Doing so was not in its interests.

[37] The evidence also suggests that, given this hurried reality, mistakes on tender forms are also not uncommon. Here, the confusion of two masonry contractors having very similar names – both of which had submitted bids for the same project within minutes of each other – seems, if not completely predictable, thoroughly understandable.

[38] Core Tec asserts that Feltz discovered only after 2:00 p.m. on May 8, 2019, that Con-Tact had submitted a lower bid. Mr. Jefferies put it in oral argument as follows:

> …it was after the proverbial dust had settled, after the Feltz bid was submitted that Mr. Bailey reviews the Con-Tact quote for the first time, and by alleging a mistake, is able to realize a cost savings on the masonry subcontract work.

[3] Although I am inclined to accept Mr. Bailey's evidence that, quite apart from price, he regarded Con-Tact's bid to be superior to Core Tec's because its exclusions were less extensive than the exclusions listed by Core Tec, in the end little turns on this determination. The bids were similar in nature, and they were both non-compliant with the terms of the tender in that they both listed exclusions. The key distinguishing factor was that Con-Tact quoted a lower price.

[39] As I have said, I accept Mr. Bailey's evidence. I accept both his denial of this allegation of dishonesty and his evidence that Feltz did not appreciate that it had made a mistake on the tender form by naming CORE TECK until December 5, 2019. There is no evidence to the contrary. The evidence either supports Mr. Bailey's position in this respect or is at least as consistent with that position as it is with Core Tec's assertion to the contrary: after being named general contractor, Feltz promptly issued a work order to Con-Tact and named Con-Tact on the project contact list; Feltz never contacted Core Tec about anything; and when questioned in December, 2019, Feltz immediately advised the project manager that it had all along intended to name Con-Tact because it had submitted the lower bid before the 2:00 p.m. cut off.

[40] In all these circumstances, I am satisfied on a balance of probabilities that Feltz intended to name Con-Tact as the masonry subcontractor on the project and that the insertion of the name CORE TECK was a simple mistake. In other words, I am satisfied that Feltz did not intend to contract with Core Tec.

3.3.3 Was there an offer?

[41] Quite apart from the mistake of failing to record Con-Tact in the tender form, it is apparent that Feltz did not intend to enter into contractual relations with Core Tec. As Feltz submits, *Ron Engineering* does not stand for the proposition that ordinary principles of contract law – offer and acceptance – do not apply to the bidding process. On the contrary, the *Ron Engineering* framework provides that a Contract A will be complete where one party offers to accept, review and consider quotes and the other party accepts that offer by submitting a compliant bid.

[42] Here, as Feltz argues, Feltz never made any offer at all. To the extent that an offer was made, it was made by the Board and it was made to the pre-qualified general contractors who were asked to make bids on the project. The terms of the Board's offer were set out in the detailed bid documents which accompanied the call for tenders. Accordingly, when Feltz submitted its bid, it was accepting the Board's offer and a contract A between them was complete: *Ron Engineering*, at p. 122.

[43] But Feltz had no similar arrangement with the subcontractors which submitted bids to it. Feltz put out no call for tenders. It did not have its own terms described in tender documents. No masonry contractors were pre-qualified. It solicited no quotes from masonry contractors. It never once communicated with Core Tec during the bidding process. It never took a single step to make a Contract A offer. Accordingly, when Core Tec sent its bid to Feltz, it was not accepting an offer because no offer had been made.

[44] To the extent that Core Tec relies on cases which have found the *Ron Engineering* framework to apply to binding contracts between general contractors and subcontractors (as opposed to contracts between owners and general contractors), those cases are distinguishable because they involved the use of a formalized bid depository system for the receipt and selection of bids from subcontractors.[4] The key distinction is that, in those cases, the rules of the bid depository system will govern the relationship between the bidding subcontractor and the general contractor. In effect, these rules fill the void that exists in this case because Feltz made no offer, as described in the previous paragraph. The rules of a bid depository will expressly require the general contractor who submits a bid to agree to use the subcontractors named in that bid. As Feltz submits, the rules of the bid depository system provide the terms and conditions under which a Contract A is created between the contractor and subcontractor.

[45] In *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58, the bid depository rules in play in that case required the bidding general contractors to employ the subcontractors proposed by them if their bid was accepted (see para. 44). Binnie J. (writing for the court) was quick to distinguish this circumstance from cases where no bid depository was used. He wrote as follows (at para. 45; italics in the original; underscoring added):

> Outside the framework of a bid depository or comparable scheme, such provisions might operate solely between the owner and the prime contractor, and be of no assistance to a stranger to their contract, such as an aspiring

[4] The cases relied upon by Core Tec in this regard include *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 and *R.G. Lamarche & Associates Ltd. v. Lundy Construction (Ontario) Ltd.* (2000), 6 C.L.R. (3d) 111 (Ont. S.C.J). The paragraph of *Lamarche* on which the plaintiff relies most heavily (para. 5), is expressly referable to cases involving the use of a bid depository.

> subcontractor. However, in this case, there was a structured Bid Depository, and these standard printed-form documents between the prime contractor and the owner constituted part of the Bid Depository regime as implemented, and formed the contractual basis on which the subcontractors tendered. Indeed, it was on this basis that the Bid Depository *could* assure them that their bids would not be "shopped". The assurance of a subcontract to the carried subcontractor, subject to *reasonable* objection, was for subcontractors the most important term of Contract A.

[46] Here, Core Tec is the aspiring subcontractor described by Binnie J. – a stranger to the contract between the Board and Feltz – and it can derive no assistance from that contract. The documents accompanying the Board's call for tenders bind only the Board and Feltz. They do not permit Core Tec to claim the creation of a Contract A with Feltz. In other words, even if Mr. Bailey had intended to name Core Tec and had intended to have Mr. Scott write Core Tec's name on the tender form, Core Tec cannot claim that its submission of its bid to Feltz created a Contract A which it could enforce. Nor did Feltz do anything else from which it could be concluded that Feltz had made any offer whatever to Core Tec. The choice of Con-Tact, Core Tec, or some other subcontractor altogether, to do the masonry work on the project was, therefore, a matter between the Board and Feltz and no-one else, and was to be determined based on the terms of the contract between those two parties. No non-party to those terms and conditions could seek to enforce them, and Core-Tec cannot do so here.

3.3.4 Did the Board approve of the substitution of Con-Tact for Core Tec?

[47] Nevertheless, Core Tec emphasizes one of the terms of the contract between the Board and Feltz. That term is set out in the tender documents and, as noted above, provides that "**No substitution** of subcontractors is permitted after these documents are submitted without the [Board]'s approval." Core Tec argues that the existence of this clause, mandatory on its face, supports the idea that the successful general contractor was required to work with the subcontractors it had named in its bid. This is said to support Core Tec's contention that the naming of CORE TECK had completed a Contract A.

[48] I cannot accept this argument. First, Core Tec, as I have already observed, is not a party to the contract between the Board and Feltz and, as a stranger to their contract, it cannot seek to enforce this (or any other) term of that contract.

[49] Moreover, there is considerable force to Feltz's argument that it and the Board complied with this term. As soon as Feltz became aware of the fact that it had mistakenly listed CORE TECK on its tender form, it advised the Board of the mistake and of its intention to have named Con-Tact and, in response to having received this information, the Board approved of the use of Con-Tact as the masonry subcontractor on the project. In other words, a substitution of subcontractors was permitted with the Board's approval. This is all that the contract required. This term of the contract between Feltz and the Board provides no assistance to Core Tec.

3.3.5 Was Core Tec's bid compliant?

[50] Further, however, assuming that the *Ron Engineering* framework could be applied to this case (contrary to the conclusions I have reached thus far), if Core Tec's bid was non-compliant with the terms of the Board's tender documents, Core Tec could never have insisted that a Contract A was created even if it could be said that Feltz had made an offer which Core Tec could have accepted by submitting a bid.[5] That is because a non-compliant bid responding to a call for tenders does not constitute an acceptance of the offer which the call for tenders represents. On the contrary, it amounts to a counteroffer: *Winbridge Construction Ltd. v. Halifax Regional Water Commission*, 2015 NSSC 275, at para. 44. In the absence of communicated acceptance of that counteroffer by the general contractor, then, no contract is created: *Naylor Group Incorporated v. Ellis-Don Construction Ltd.* (1999), 43 O.R. (3d) 325 (C.A.); *Scott Steel (Ottawa) Ltd. v. R.J. Nicol Construction (1975) Ltd.*, [1992] O.J. No. 3005 (Div. Ct.), at para. 17; *Derrick Concrete Cutting & Coring Ltd. v. Central Oilfield Service Ltd.*, 1995 ABCA 428.

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[5] Core Tec concedes this point. In his closing argument, Mr. Jefferies submitted as follows: "The issue of compliance is relevant to the formation of the Contract A that's essential for my client's success in this litigation. If Core Tec's bid is non-compliant, technically non-compliant, then the caselaw would say that no Contract A forms."

[51] These principles were plainly stated by George J.A. in *Canada Forgings Inc. v. Atomic Energy of Canada Limited*, 2024 ONCA 677, where he wrote as follows (at para. 38; emphasis added):

> The Supreme Court in *M.J.B. Enterprises Ltd.* […], held that Contract A can only be formed between a procuring authority and compliant bidders; in other words, a procuring authority is contractually obliged, by Contract A, to accept only compliant bids and, more importantly for present purposes, only compliant bidders have legal remedies arising from the procurement process as against the procurement authority. Whether Contract A is formed depends on the parties' intentions to create a legal relationship through a call for tenders and the submission of a compliant bid.

[52] Therefore, where a subcontractor has submitted a non-compliant bid, no Contract A is completed even if that subcontractor has been named in the general contractor's own bid: *Scott Steel; Derrick Concrete*.

[53] In *Transit Glass & Aluminum Ltd. v. Sakto Corporation*, 2008 CanLII 10394 (Ont. S.C.J), Polowin J. wrote as follows respecting the court's means of assessing compliance (at para. 124):

> […] To reiterate, Contract A only arises if a compliant bid is submitted. To determine whether a bid is compliant, one must review the tender package. Whether or not a bid is compliant must be reviewed by means of an objective analysis.

See also *Rankin Construction Inc. v. Ontario*, 2014 ONCA 636, at para. 26.

[54] In this case, as between the Board and Feltz, the Board's terms are set out in the tender package. As between Feltz and any subcontractors, in the absence of terms set out in writing by Feltz or the rules of a bid depository system, terms must be inferred. As Mr. van Bodegom submitted in oral argument however, "if there were terms of a tender call here, one thing we can say is that they would be no less onerous on [the] trades than the [Board]'s obligations … [imposed on] Feltz." In other words, it may be safely inferred that the bid from Core Tec will be non-compliant if it does not comply with the specifications for the masonry work set out in the Board's tender package, among other requirements. Core Tec resists this conclusion but significant portions of its submissions on compliance were organized around compliance with requirements

specified by the Board. I note also that this point was effectively accepted by Mr. Beland during his cross-examination, when he agreed that Core-Tec's bid was governed by the Board's tender documents and that Core Tec was required to follow all the rules found in those documents.

[55] I have concluded that Core Tec's bid was materially non-compliant in several respects. First, its bid was expressly subject to Core Tec's "Review of Final Working Drawings". In other words, Core Tec's bid was expressly conditional, not final.

[56] Further, Core Tec's bid included a list of 26 exclusions. That is, its bid indicated that it was excluding from its quoted price the work required to be done on items included in the masonry scope of work. In other words, Core Tec was saying that there were portions of the scope of work that it did no intend to complete. These exclusions included most significantly the installation of composite wall ties, precast concrete sills,[6] and fastening ties. Mr. Marklevitz testified that each of these tasks – each described in the scope of work – was necessary for the completion of the masonry work and that if Feltz's bid to the Board had excluded these items, Feltz would not have been selected as the general contractor for the project. In other words, a bid that did not commit to completing all three of these items of work would be non-compliant.

[57] While emphasizing the three exclusions identified in the previous paragraph, Feltz relies on many of the exclusions listed by Core Tec as evidence of Core Tec's non-compliance.[7] From Feltz's point of view, the price it quoted to the Board included the cost of doing all the masonry work listed in the Board's scope of work irrespective of whether the masonry contractor had agreed to do all of that work. The thrust of Mr. Marklevitz's evidence was that the Board was not going to pay extra for work which a subcontractor selected by Feltz had excluded. Feltz would be responsible to pay for that work. Therefore, a bid from a masonry subcontractor which did not

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[6] Core Tec argues with some force that it did not exclude the pre-cast sills from its bid. On page one of its two-page bid, it included the sills (and other pre-cast concrete elements), but on the second page it excluded "precast concrete" work without qualification. I am inclined to think that the apparent contradiction in Core Tec's bid would be enough for Feltz to have found the bid non-compliant – especially in the necessarily fast-paced process of finalizing the Feltz bid before 2:00 p.m. on May 8, 2019 - but even if I am wrong in this respect, to be compliant, Core Tec's bid had to be compliant in all material respects. Here, Feltz alleges more than one deficiency.

[7] These include, for example, the cost of supplying winter weather protection measures and the cost of multiple mobilizations.

commit to fulfill the entirety of the scope of work was non-compliant because it leaves the price at which the work is to be completed uncertain – one of the very uncertainties the bidding process is intended to eliminate.[8] In *Double N*, the court held (at para. 41), that material non-compliance was non-compliance which affected "the price or performance of Contract B."

[58] In addition, although less significant, Core Tec failed to comply with some of the formal terms associated with the bid process, all of which were set out in the Board's tender package, including that its bid was not submitted in person, it was not signed by all of Core Tec's signing officers, and it did not bear a corporate seal.[9] While these formalities may be less significant than some of the other indicia of non-compliance, as Feltz submits, if Core Tec seeks to argue that the bidding rules set out in the tender package bind Feltz, Core Tec cannot the pick and choose which of the rules apply to and bind itself. Feltz put the point this way in its written submissions: "… the Tender's terms are not a menu that Core Tec gets to freely choose from when submitting its own purported bid."

[59] Core Tec's argument in favour of the proposition that its bid was compliant, or was compliant enough, amounts to an argument that the tender package of documents defines the contractual relationship between the Board and bidding general contractors, but does not necessarily define the relationship between the general contractor and bidding subcontractors. In this respect, Core Tec relies on Mr. Marklevitz's evidence that the Board did not concern itself with the contents of the contracts between the general contractor and the subcontractors because it

[8] In addition to demonstrating the non-compliance of the Core Tec bid, price uncertainty tends to lead to the conclusion that Core Tec did not regard the quote it submitted in this case as part of the kind of tender process described in *Ron Engineering* and other cases whereby bids are submitted and are accepted or not. Instead, it seems that Core Tec did not intend to be bound by its quote and foresaw future negotiation of both the scope and price of its work on the project. As Mr. van Bodegom put it in oral argument, "you don't do that in a tender process. In a tendering process, you get a document, and you pick that document. Done. And you have to live with what it says." If Core Tec did not regard the process engaged in here as binding on it, it cannot assert that Feltz assumed any obligations to Core Tec by naming CORE TECK in its bid to the Board even if doing so was not a mistake.

[9] Feltz also points out that Core Tec's bid was only held open for 30 days, not the 60 days required by the tender package. Importantly, however, the tender package is not consistent on the number of days for which bidders must be bound by their bid, at one point indicating 30 days, and at others 60 days. While the weight of the evidence suggests that bids were to be open for 60 days, given the confusion created by the tender package, I have not considered this point in assessing Core Tec's compliance or lack thereof.

is the general contractor's obligation to make sure that all the specified work is complete irrespective of what it has agreed to with the subcontractors.[10]

[60] The chief difficulty with this position is that it leaves the assessment of compliance – which Core Tec concedes is essential to its success in this litigation – as a largely standardless exercise. If the tender package does not apply, then with what does Core Tec's bid have to be compliant? Core Tec's submission in this respect also underscores the force of Feltz's primary submission: *i.e.* that Feltz never made an offer capable of being accepted and forming one of the building blocks of a binding Contract A because it never sent terms to subcontractors with which their bids were required to be compliant.

[61] In any case, I am of the view that Core Tec's bid was not compliant with the terms of the tender and, for this reason also, Core Tec has not established that a Contract A was completed in this case.

3.4 Did Feltz breach the contract?

[62] As I have found that there was no contract between Feltz and Core Tec, Feltz cannot have breached such a contract. However, even if I am wrong in this respect, I am of the view that Feltz complied with any Contract A it might have had with Core Tec because the evidence shows that Feltz considered the competing bids it received from masonry subcontractors fairly and only after having done so did it enter a Contract B with Con-Tact.

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[10] In his closing oral submissions, Mr. Jefferies put this point as follows: "And Mr. Marklevitz, what, what I recall of his evidence is that he said something to the effect of, 'Look, we, being the school board and the project architect, don't really care about the terms of the contract or subcontract between the general and the sub.' And he, I think, went on further to expand that if there are gaps in, in things that the subcontractor contracts with the general to do, that gap is filled by the contract language that requires the general to manage the project and coordinate the subtrades. […] That's a significant comment. My friend alleges that these inconsistencies are gaps. They're gaps between the tender specs and the parameters of […] the Core Tec bid. And because there's a gap, there's a, there's an inconsistency that disqualifies the formation of a Contract A. And I, I think the analysis of a, the Contract A analysis between a general and a subcontractor in this case is a little bit different than the consistency analysis that you would run between a general contractor and an owner because of what Mr. Marklevitz says, and because of the fact that the tender specifications [don't] indicate what things have to go into, or many of the things that have to go into the subcontractor agreement."

[63] This point is made in the majority opinion of Abella and Rothstein JJ. in *Double N Earthmovers* (at para. 71; underscoring added):

> The conduct Double N complains of (i.e. the waiver by the City of the 1980 requirement) is conduct which occurred *after* the award of Contract B. Where an owner undertakes a fair evaluation and enters into Contract B on the terms set out in the tender documents, Contract A is fully performed. Thus, any obligations on the part of the owner to unsuccessful bidders have been fully discharged. Contract B is a distinct contract to which the unsuccessful bidders are not privy. In *Ron Engineering*, Estey J. held that the "integrity of the bidding system must be protected where under the law of contracts it is *possible* so to do" (p. 121 (emphasis added)). The law of contract does not permit Double N to require the cancellation of a contract to which it is not privy in the name of preserving the integrity of a bidding process, which is by definition completed by the time an award of Contract B is made.

[64] Here, the evidence is that Mr. Bailey considered the bids of Core Tec and Cont-Tact, he compared their exclusions and – most importantly – their quoted prices, and he selected Con-Tact. Later, Feltz sent Con-Tact a work order and thereby entered into Contract B at that time. Having fairly evaluated Core Tec's bid, Feltz's obligations to Core Tec under Contract A were fully performed. Core Tec has no standing to complain about the Contract B between Feltz and Con-Tact.

3.5 Did Core Tec suffer any damages?

[65] I am satisfied that Core Tec has failed to establish that the parties intended to enter into a Contract A, or that such a contract was breached. However, if I am found to have erred in coming to these conclusions, I turn to the question of Core Tec's damages.

[66] Damages for a breach of contract in the bidding process are measured as expectation damages: *M.J.B.*, at para 55. Accordingly, damages are the lost profits the aggrieved subcontractor could have expected to realize on the project: *Naylor* (S.C.C.), at para. 73. Of course, the calculation of damages is subject to its duty to mitigate: *Tectonic*, at para. 202.

[67] I agree with Feltz that Core Tec has failed to establish that it suffered any damages. There are two primary reasons for this conclusion: its failure to prove a reasonable expectation of profit, and the evidence respecting mitigation.

3.5.1 Core Tec's expected profit

[68] Core Tec claims $128,209.39 for the loss of the profit it would have earned had it been selected as the masonry subcontractor on the project. This number is derived from the calculations which Mr. Beland did to arrive at the quote he submitted on behalf of Core Tec to Feltz, all of which are set out in a document created by Mr. Beland which bears the title "estimate summary sheet" and in an attached spreadsheet.

[69] That document reveals that Core Tec estimated that its "direct costs" if awarded the masonry work on the project would be $641,046.93 and that its administration costs would be $128,209.39 – the latter amount being both 20% of the former and the amount claimed as damages in this case. The total of these two amounts was $769,256.32 and that is roughly the amount of the quote submitted to Feltz ($769,900.00 + HST).

[70] The estimate summary sheet includes a space for "Profit 5%", which is recorded as $38,462.82, but the sheet also indicates that that amount is being deducted from the quote. In other words, on its face, the estimate summary sheet indicates that Core Tec's quote included no provision for profit to Core Tec. As Feltz submits, it appears that Core Tec did not reasonably expect any profit on the project and that it was waiving its right to receive any profit.

[71] In his affidavit, however, Mr. Beland says as follows:

> I included an administration fee of $128,209.39, which was calculated at 20% of Core Tec's total costs. The administration fee was intended to encompass both a profit component, as well as to be applied to Core Tec's fixed operational costs, including the salaries paid to both Connie and me, neither of which were included in the labour cost calculations. In effect, the administration cost represented Core Tec's gross profit, following deduction for all project-related costs.

[72] When he was examined before trial, Mr. Beland was asked about the 20% administration cost reflected on the estimate summary sheet. He said: "that's overhead and hopefully some profit." When asked why "Profit 5%" had been deducted from the total quote to Feltz, Mr. Beland answered as follows:

> Yeah. Yeah, we were pretty aggressive on this project so I didn't want to — I went after this project. I wanted – I needed the project at the time and I went after the project. I didn't, I didn't add five more percent. Some jobs I will, some jobs I won't, but in this case here we needed this job desperately at the time.

[73] In cross-examination at trial, Mr. Beland said that the 20% administration costs reflected on the estimate summary sheet included the costs of running Core Tec's business – things like insurance, utilities for Core Tec's offices, and payments on Core Tec's equipment, among other things. He said again that he "hoped" Core Tec would profit from the work on the project, and that he had submitted a "bare bones" quote because Core Tec really needed the work. He conceded that he could not say what portion of the administration costs would be profit.

[74] Even accepting Mr. Beland's evidence that Core Tec's hoped for profit was included in the administration costs, it is clear that whatever profit Core Tec might have made from the project that profit would be an amount less than the amount Core Tec claims as damages. That is so because the administration amount includes other actual costs which Core Tec was required to pay: fixed operational costs or overhead including salaries to Mr. and Mrs. Beland[11] and the basic unavoidable costs of running any business. Even if I were convinced that Core Tec would have made a profit had it secured the work on the project, I am left with no way of calculating what that profit would be. Put another way, there is no evidence before me that allows me to say what portion of the administration costs were expenses against Core Tec's income and what portion was profit. The only conclusion I can come to with certainty is that Core Tec's profit would have been less – probably significantly less – than the $128,209.39 it has claimed as its damages.

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[11] In cross-examination, Mr. Beland conceded that the salaries which he and Mrs. Beland drew were expenses against Core Tec's income. In other words, that these salaries decreased Core Tec's profit.

3.5.2 Mitigation of Core Tec's damages

[75] In his affidavit, Mr. Beland swore to the following evidence:

> Core Tec really needed this work in 2019. As a consequence, I was more aggressive than I might normally be on my quotation. From and after May 2019, not knowing whether we would have this work or not, we bid on a number of other projects. Unfortunately, though, we were not awarded any of the other projects that we bid on in the balance of 2019. As a result, Core Tec did not realize any mitigation income during the timeframe when it might have otherwise been working on the project. Attached to this my affidavit and marked as Exhibit "P" is a list of projects that we quoted/bid on during the period of April 2019 to November 2019.

[76] However, Exhibit P, together with other evidence provided when Core Tec answered undertakings, reveals that Core Tec was awarded four other projects which it worked on between April and November 2019 and that it generated profits on those four projects totalling $120,214.92. Setting aside the obvious blow to Mr. Beland's credibility which this contradictory evidence represents,[12] it is clear that Core Tec was able to mitigate any damages it suffered by not being awarded the masonry work on the project. Moreover, the total mitigating profit is only slightly less than the $128,209.39 which Core Tec claims as damages. As was established under the previous heading, that claim for damages fails to account for various costs which Core Tec would necessarily have incurred in the day-to-day running of its business, and which would necessarily have decreased Core Tec's expected profit on the project. Moreover, almost certainly, those business costs would have been greater than the roughly $8,000 difference between the damages claimed and the mitigation Core Tec was able to achieve.

[77] In all these circumstances, Core Tec has failed to establish that it suffered any damages.

4. Conclusion

[78] For the foregoing reasons, the action is dismissed.

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[12] In cross-examination, Mr. Beland could not explain this discrepancy. When it was put to him, he said: "It's confusing to me."

[79] If the parties are unable to agree on costs, Feltz may serve and file brief costs submissions within 10 days of the release of these reasons directed to my attention by email to my judicial assistant at mona.goodwin@ontario.ca and Kitchener.SCJJA@ontario.ca. Core Tec's brief responding submissions may be served and filed within 7 days thereafter. Feltz's reply, if any, may be served and filed within 3 days thereafter.

I.R. Smith J.

Released: March 13, 2026

CITATION: 1114136 Ontario Inc. v. Feltz Design Build Inc., 2026 ONSC 1512
COURT FILE NO.: CV-20-293-00SR
DATE: 2026/03/13

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

1114136 ONTARIO INC. c.o.b. as
CORE TEC. CONTRACTING

Plaintiff

– and –

FELTZ DESIGN BUILD INC.

Defendant

REASONS FOR JUDGMENT

I.R. Smith J.

Released: March 13, 2026