

SUPREME COURT OF MINNESOTA

Sayer v. Minnesota Department of Transportation

Sayer v. Minn. Dep't of Transp., 790 N.W.2d 151 (Minn. 2010) · Decided October 28, 2010

SUMMARY

The Minnesota Supreme Court considered whether Flatiron-Manson's proposal for replacing the I-35W bridge complied with MnDOT's request for proposals under Minnesota's design-build best-value procurement statute. The court held that the proposal was materially responsive and affirmed the award of the contract and the lower courts' decisions.

CASE DETAILS

COURT	Supreme Court of Minnesota
WRITING FOR THE COURT	Page, Justice; Page; Anderson; Been; Consideration; Dietzen; Gildea; Paul; Stras; Took
JURISDICTION	Minnesota
DECIDED	October 28, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants challenged MnDOT's design-build best-value bidding process and contract award, seeking injunctive and declaratory relief. The district court denied injunctive and declaratory relief and granted summary judgment to MnDOT and Flatiron-Manson. The court of appeals affirmed, and the Minnesota Supreme Court granted review.
STANDARD OF REVIEW	On appeal from summary judgment, the court determines whether genuine issues of material fact exist and whether the district court correctly applied the law. When no material facts are disputed, legal issues are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Minnesota; precedential.
PARTIES	Scott Sayer, Wendell Phillippi v. Minnesota Department of Transportation, Flatiron-Manson

TOPICS

bid protests

government contracts

construction law

statutory interpretation

judicial review of agency action

PRACTICE AREAS

construction law

government contracts

public procurement

statutory interpretation

administrative law

QUESTIONS PRESENTED

1. Whether the traditional common-law definition of bid responsiveness applies to Minnesota's design-build best-value procurement process.
2. Whether Flatiron-Manson's proposal was nonresponsive because it proposed work requiring additional right-of-way at Second Street.
3. Whether Flatiron-Manson's concrete-box design was nonresponsive because it used two webs per concrete-box girder rather than three webs per girder.

HOLDINGS

1. The traditional common-law rule requiring strict conformity with every bid specification does not govern responsiveness determinations under Minnesota's design-build best-value procurement process; the proposal must be evaluated under the applicable statute, RFP, and instructions to proposers.
2. Flatiron-Manson's proposal was responsive even to the extent it proposed work outside the existing right-of-way at Second Street because the RFP's prohibition on additional capacity or right-of-way was not a project-wide prohibition.
3. Flatiron-Manson's concrete-box design was responsive because the RFP required three webs for the concrete-box design generally, not three webs per concrete-box girder, and Flatiron-Manson proposed four webs per direction of traffic.
4. Flatiron-Manson's proposal was materially responsive to the RFP, and MnDOT's award of the I-35W bridge contract did not violate Minnesota Statutes section 161.3426, subdivision 1(a).

KEY QUOTATIONS

“In scoring the technical proposals, the Technical Review Committee is required to “reject any proposal it deems nonresponsive.”” (at 157)

“Accordingly, we hold that Flatiron-Manson’s proposal was materially responsive to the Request for Proposals, and MnDOT’s award of the I-35W bridge contract to Flatiron-Manson did not violate Minn.Stat. § 161.3426, subd. 1(a).” (at 161)

FACTUAL BACKGROUND

Following the collapse of the I-35W bridge, MnDOT used Minnesota's design-build best-value procurement process to select a contractor for its replacement. Flatiron-Manson's proposal received the highest technical score and the lowest adjusted score after application of the statutory best-value formula, so MnDOT awarded it the contract. Appellants contended that the proposal was nonresponsive because it allegedly required work outside the right-of-way and used fewer than three webs per concrete-box girder.

PROCEDURAL HISTORY

After the I-35W bridge replacement contract was awarded to Flatiron-Manson, Sayer and Phillippi sued as private attorneys general under Minnesota Statutes section 8.31, subdivision 3a. The district court rejected their argument that traditional common-law responsiveness standards governed the design-build best-value process, denied their requested injunction, and entered summary judgment dismissing their declaratory claims. The court of appeals affirmed, and the Minnesota Supreme Court affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Sayer v. Minn. Dep't of Transp., 769 N.W.2d 305 (Minn. App. 2009)
- Patterson v. Wu Family Corp., 608 N.W.2d 863 (Minn. 2000)
- Kelly v. State Farm Mut. Auto. Ins. Co., 666 N.W.2d 328 (Minn. 2003)
- Foley Bros., Inc. v. Marshall, 266 Minn. 259, 123 N.W.2d 387 (1963)
- Griswold v. Ramsey Cnty., 242 Minn. 529, 65 N.W.2d 647 (1954)
- Coller v. City of Saint Paul, 223 Minn. 376, 26 N.W.2d 835 (1947)
- Carl Bolander & Sons Co. v. City of Minneapolis, 451 N.W.2d 204 (Minn. 1990)
- Vanguard Sec., Inc. v. United States, 20 Cl. Ct. 90 (1990)
- Blake Constr. Co. v. United States, 202 Ct. Cl. 794 (1973)
- Carl Bolander & Sons, Inc. v. United Stockyards Corp., 298 Minn. 428, 215 N.W.2d 473 (1974)
- Art Goebel, Inc. v. N. Suburban Agencies, Inc., 567 N.W.2d 511 (Minn. 1997)
- Minneapolis Pub. Hous. Auth. v. Lor, 591 N.W.2d 700 (Minn. 1999)
- Country Club Oil Co. v. Lee, 239 Minn. 148, 58 N.W.2d 247 (1953)
- Anderson v. Kammeier, 262 N.W.2d 366 (Minn. 1978)

OPINION

Sayer v. Minnesota Department of Transportation 790 N.W.2d 151

PER CURIAM.

OPINION

PAGE, Justice. On August 1, 2007, the Interstate 35W (I-35W) highway bridge spanning the Mississippi River in Minneapolis collapsed killing 13 people , and injuring many others. To replace the bridge, one of the most heavily traveled in the state, respondent Minnesota Department of Transportation (MnDOT) elected to use the relatively new design-build best-value bidding process to choose the new bridge's design and construction. See Minn.Stat. §§ 161.3410-.3428 (2008). Respondent Flatiron-Manson was declared the winning bidder and its proposal to rebuild the bridge was accepted. Appellants Scott Sayer and Wendell Phil-lippi brought an action as private attorneys general under Minn.Stat. § 8.31, subd. 3a (2008), challenging the bidding process and claiming that MnDOT's contract with Flatiron-Manson was illegal. Specifically, appellants

claim that MnDOT failed to apply the proper test for responsiveness and that Flatiron-Manson's proposal was not responsive to the request for proposals (RFP) and instructions to proposers issued by MnDOT. The district court concluded that the common law definition of "responsiveness" does not apply to the design-build best-value bidding process and that the determination of the Technical Review Committee that Flatiron-Manson's proposal was responsive was within the Technical Review Committee's discretion. The court of appeals affirmed. Because we conclude that Flatiron-Manson's bid was responsive to the RFP and the instructions to proposers, we affirm. Three days after the I-35W bridge collapse, MnDOT began the process of replacing the bridge. MnDOT's Commissioner elected to evaluate proposals for the bridge-construction contract using a design-build best-value procurement process instead of the traditional lowest responsible bidder procurement process. As required by the design-build best-value procurement process, the Commissioner issued a request for qualifications to contractors interested in undertaking the design and construction of the bridge. See Minn.Stat. § 161.3420, subd. 3. After five qualifying contractors were identified, the Commissioner sent each qualifying contractor an identical RFP containing detailed project-specific requirements. See Minn.Stat. § 161.3422. The Commissioner subsequently issued instructions to proposers that described the weighted criteria by which proposals would be evaluated, and informed bidders that only bids meeting the standards established by MnDOT would be evaluated. See Minn.Stat. § 161.3422(2). The Commissioner appointed a six-member Technical Review Committee to evaluate the proposals. See Minn.Stat. § 161.3420, subd. 2. Four contractors' — C.S. McCrossan, Ames-Lunda, Flatiron-Manson, and Walsh-American Bridge — submitted proposals to MnDOT. After reviewing the proposals, the Technical Review Committee submitted to the Commissioner the technical scores it assigned to each proposal. The technical scores were accompanied by an itemized list of each proposal's score on the categories described in the instructions to proposers, with detailed comments for each score. Flatiron-Manson's proposal received the highest technical score: 91.47 out of 100 possible points. The next highest score, 67.88 out of 100, was awarded to Walsh-American Bridge's proposal. MnDOT determined the adjusted scores for the proposals by applying the formula set out in Minn.Stat. § 161.3426, subd. 1(c), which in this case required it to multiply the number of days proposed to complete the project by a "Road User Cost" of \$200,000 per day, add that product to the contractor's bid, and divide the result by the proposal's technical score. Although Flatiron-Manson had the highest price and was tied with another bidder for the longest period needed to complete the construction of the bridge, its high technical score yielded the lowest adjusted score, constituting the "best value"; thus, Flatiron-Manson was awarded the contract. Appellants sued, seeking both injunctive and declaratory relief based on their claim that Flatiron-Manson's proposal was not responsive to the RFP and instructions to proposers and should have been rejected, *155and therefore the contract awarded to Flatiron-Manson was illegal. According to appellants, Flatiron-Manson's proposal was not responsive to the RFP because it failed to comply with a number of the RFP's specifications, only two of which are at issue before

us: first, that “[p]roposed work for this project shall not include additional capacity or Right of Way” and, second, that concrete-box designs feature “[a] minimum of three webs.” Appellants first moved for a temporary restraining order on October 31, 2007, which the district court denied.¹ On July 16, 2008, appellants moved for a temporary injunction to prevent MnDOT from incurring additional costs or expenses under the contract while their claims were being litigated. On that same date, Flatiron-Manson moved for summary judgment seeking denial of appellants’ claims for injunctive relief and dismissal of appellants’ claims for declaratory relief. In separate orders, the district court denied appellants’ motions for injunctive and declaratory relief and granted summary judgment to MnDOT and Flatiron-Manson, dismissing appellants’ claims for declaratory relief. In doing so, the district court rejected appellants’ argument that the Technical Review Committee should have used the traditional common law definition of “responsive” to evaluate Flatiron-Manson’s proposal. Instead, the district court concluded that, under the design-build best-value procurement process, whether a proposal is responsive to the RFP “is a product of the scoring methodology” rather than the “proposal’s strict conformity with each and every requirement of the RFP.” Appellants’ separate appeals from the district court’s orders were consolidated at the court of appeals, which affirmed. The court of appeals held that the common law definition of “responsiveness” does not apply to the design-build best-value procurement process and that the Technical Review Committee acted within its discretion when it determined that Flatiron-Manson’s proposal was responsive. *Sayer v. Minn. Dep’t of Transp.*, 769 N.W.2d 305, 310-11 (Minn.App.2009). We granted appellants’ petition for review. “On appeal from a grant of summary judgment, we must determine whether any genuine issues of material fact exist and whether the district court erred in its application of the law.” *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 866 (Minn.2000). When there are no disputed issues of material fact, we review de novo whether the district court erred in its application of the law. *Kelly v. State Farm Mut. Auto. Ins. Co.*, 666 N.W.2d 328, 330 (Minn.2003). Traditionally, Minnesota public construction contracts have been awarded using the lowest responsible bidder approach to procurement. *Dean B. Thomson, et al., A Critique of Best Value Contracting in Minnesota*, 34 Wm. Mitchell L.Rev. 25, 26 (2007); see also *Foley Bros., Inc. v. Marshall*, 266 Minn. 259, 262, 123 N.W.2d 387, 389-90 (1963); *Griswold v. Ramsey Cnty.*, 242 Minn. 529, 533, 65 N.W.2d 647, 650 (1954); *Coller v. City of Saint. Paul*, 223 Minn. 376, 378, 26 N.W.2d 835, 836-37 (1947). That approach requires a public agency to choose a design and release specifications for that design to contractors for bidding. Minn.Stat. § 161.32, subd. 1b (2008); *Coller*, 223 Minn. at 378, 26 N.W.2d at 837. When the time for submitting bids expires, the agency then eliminates all bids from contractors that do not qualify due to a material variation from the given specifications. *Foley Bros., Inc.*, 266 Minn. at 263, 123 N.W.2d at 390; *Coller*, 223 Minn. at 385, 26 N.W.2d at 840. Of the remaining bids, the agency awards the contract to the qualified contractor with the lowest bid. *Coller*, 223 Minn. at 385, 26 N.W.2d at 840. The Legislature has been cautious of giving agencies substantial discretion in contracting for public works to avoid “such abuses as fraud, favoritism, extravagance, and

improvidence in connection with the letting of contracts.” *Coller*, 223 Minn. at 387, 26 N.W.2d at 841. Requiring officials to reject nonresponsive proposals eliminates opportunities for committing such abuses and promotes honesty, economy, and above-board dealing in the letting of public contracts. *Id.* at 387, 26 N.W.2d at 841. After receiving bids, the only function of the contracting agency, under traditional contracting principles, is “to determine who is the lowest responsible bidder.” *Coller*, 223 Minn. at 385, 26 N.W.2d at 840. A traditional approach bid is a definite offer to contract that can be accepted without further negotiations, but it must conform substantially to the advertised plan and specifications. *Id.* at 385, 26 N.W.2d at 840. A variance between the bid and the advertised plan and specifications is material if “it gives a bidder a substantial advantage or benefit not enjoyed by other bidders.” *Id.* at 385, 26 N.W.2d at 840. Responsiveness is determined at the time of the opening of the bid. *Carl Bolander & Sons Co. v. City of Minneapolis*, 451 N.W.2d 204, 206 (Minn.1990). In 2007, the Minnesota Legislature enacted a design-build best-value alternative to the lowest responsible bidder method of awarding public construction contracts. See Act of May 25, 2007, ch. 148, art. 3, 2007 Minn. Laws 2290, 2290-2303 (codified at Minn.Stat. §§ 161.3410-3428 (2008)). Under the design-build best-value approach, the contractor submits a project design and a bid for constructing that design, based on design specifications provided by the State. Minn.Stat. § 161.3426, subd. 4(c)(1). The design-build best-value process differs from the lowest responsible bid process in that it allows public agencies to consider factors other than cost when awarding contracts. Under the design-build best-value approach, agencies may also consider:

- (1) the quality of the vendor’s or contractor’s performance on previous projects;
- (2) the timeliness of the vendor’s or contractor’s performance on previous projects;
- (3) the level of customer satisfaction with the vendor’s or contractor’s performance on previous projects;
- (4) the vendor’s or contractor’s record of performing previous projects on budget and ability to minimize cost overruns;
- (5) the vendor’s or contractor’s ability to minimize change orders;
- (6) the vendor’s or contractor’s ability to prepare appropriate project plans;
- (7) the vendor’s or contractor’s technical capacities;
- (8) the individual qualifications of the contractor’s key personnel; or
- (9) the vendor’s or contractor’s ability to assess and minimize risks.

Minn.Stat. § 16C.02, subd. 4a (2008). Although the lowest responsible bidder is still the preferred method for choosing a *157contractor, the Legislature has determined that in certain situations the design-build best-value procurement approach is in the public’s best interest. See MinnStat. § 161.3414, subd. 1 (“A design-build contracting procedure ... may be used for a specific project only after the commissioner determines that awarding a design-build contract will serve the public interest.”); Minn.Stat. § 161.3412, subd. 3 (“The number of design-build contracts awarded by the commissioner in any fiscal year may not exceed ten percent of the total number of transportation

construction contracts awarded by the commissioner in the previous fiscal year.”). When the Commissioner determines that the design-build best-value method is the appropriate means of awarding a contract, the Commissioner is required to appoint a Technical Review Committee of at least five members, one member of which is chosen by the Minnesota Chapter of the Associated General Contractors. Minn. Stat. § 161.3420, subd. 2. The Technical Review Committee scores each bidder’s technical proposals using the criteria set forth in the RFP and then submits those technical scores to the Commissioner. Minn.Stat. § 161.3426, subd. 1(a). In scoring the technical proposals, the Technical Review Committee is required to “reject any proposal it deems nonresponsive.” Id. In this case, the instructions to proposers accompanying the RFP stated that “Mn/DOT will conduct an initial review of the Technical Proposals for responsiveness to the requirements set forth in the RFP... Technical Proposals will ... require a minimum technical score of 50 points to be responsive.” Because the Technical Review Committee assigned Flatiron-Manson’s proposal a technical score of 91.47, it implicitly determined that Flatiron-Manson’s proposal was responsive. We begin our analysis by comparing Flatiron-Manson’s bid with the language of the RFP. Although an RFP is not an offer to enter into a contract, RFPs are generally construed using traditional principles of contract interpretation. See, e.g., *Vanguard Sec., Inc. v. United States*, 20 Cl.Ct. 90, 103 (1990) (citing *Blake Constr. Co. v. United States*, 202 Ct.Cl. 794, 798 (1973)). We therefore interpret the meaning of the RFP in accordance with its plainly expressed intent. See *Carl Bolander & Sons, Inc. v. United Stockyards Corp.*, 298 Minn. 428, 433, 215 N.W.2d 473, 476 (1974) (“Where the words of a written contract are plain and unambiguous, its meaning should be determined in accordance with its plainly expressed intent.”). We deem an RFP ambiguous only if its language is susceptible to more than one reasonable interpretation. See *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn.1997) (“A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation.”). If the provisions of the RFP are unambiguous, they must be given their plain and ordinary meaning. See *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn.1999). Further, we must consider the RFP as a whole, interpreting the entire instrument so as to harmonize all of its parts as far as is reasonably possible. See *Country Club Oil Co. v. Lee*, 239 Minn. 148, 151-52, 58 N.W.2d 247, 249 (1953). Finally, because the RFP at issue here and the accompanying instructions to bidders relate to the same project, we construe them with reference to each other. See *Anderson v. Kammeier*, 262 N.W.2d 366, 371 n. 2 (Minn.1977). Appellants first contend that Flatiron-Manson’s proposal was- not responsive to the RFP because it proposed work outside of the right-of-way as defined in the RFP, in violation of Section 4.3.3.5.1 of *158the instructions to proposers. Specifically, appellants claim that a map included in Flatiron-Manson’s proposal shows that Flatiron-Manson’s proposal required work outside the right-of-way for the purpose of lowering Second Street, which runs underneath the I-35W bridge along the north side of the Mississippi River. Section 4.3.3.5.1 of the instructions to proposers provides: Any work that is proposed to be constructed on I-35W with this project shall

not extend beyond the 4th Street Bridge to the north and shall not extend beyond the project limits shown on the Preliminary Design Drawing to the south. The actual northerly project limits on 35W shall be determined by the Contractor, but not beyond 4th Street for this project, based on their proposed profile and alignment and their determination of the current and future improvements to I-35W, University Ave. and 4th St. No proposed work shall occur with this project on Washington Ave., University Ave., and 4th Street beyond the ramp termini shown on the Preliminary Design Drawing. Proposed work for this project shall not include additional capacity or Right of Way. The Proposer shall discuss how their proposed geometric enhancements will improve the geometries and clearances of 35W, University Ave., and 4th Street after this project is completed and how the proposed geometric enhancements allows flexibility for future design and construction projects on 35W and at the interchanges. The Proposer shall also discuss any restrictions, deficiencies, utility impacts, contaminated materials impacts, or design exceptions that their proposed geometric enhancements may create for this project and for future projects on I-35W, University Ave., and 4th Street. (Emphasis added.) Appellants focus our attention on the sentence in Section 4.3.3.5.1 that reads, “Proposed work for this project shall not include additional capacity or Right of Way.” Read in isolation, the sentence appears to preclude the acquisition of additional capacity or right-of-way in order to perform work on the bridge project. However, reading the sentence in isolation would require us to ignore our obligation to read each sentence in Section 4.3.3.5.1 in context with the rest of the section and the RFP. Reading Section 4.3.3.5.1 in context and in conjunction with the RFP as a whole, it is evident that the bar in Section 4.3.3.5.1 against including “additional capacity or Right of Way” was not intended to be a project-wide directive, but a statement that was modified by other language in the section. The paragraph in which the sentence is found addresses specific limits on work performed on Washington Avenue, University Avenue, and Fourth Street. The remainder of the section discusses work on University Avenue and Fourth Street. The sentence preceding the bar on additional right-of-way prohibits work on University Avenue, Washington Avenue, or Fourth Street outside the ramp termini. The sentence following the bar on additional right-of-way instructs proposers to describe how changes made under Section 4.3.3.5.1 will improve the geometries and clearances of University Avenue and Fourth Street. Read in context, then, the sentence that appellants contend is a project-wide limit on right-of-way is instead a bar against use of additional right-of-way only in the areas of Washington Avenue, University Avenue, and Fourth Street. *159Our conclusion that Section 4.3.3.5.1 is not a project-wide prohibition against the use of additional right-of-way is supported, and appellants’ contention that Flatiron-Manson’s bid was not responsive because it proposed work outside of the right-of-way is undermined, by the plain language of other provisions of the RFP. Section 7.5 of the RFP, titled “Acquisition Activities,” contemplates contractors acquiring additional easements and right-of-way. Section 7.5.1 sets out the process to be followed for obtaining construction easements. Section 7.5.1 provides that: The Contractor shall notify Mn/DOT in writing of all Construction Easements necessary for construction of the

Project based on the Contractor's Release for Construction (RFC) designs. This written notification shall identify the Construction Easements sought and shall include drawings depicting proposed construction limits and cross-sections. Mn/DOT will be responsible for the acquisition of all Construction Easements for the Project at the Contractor's cost. Acquisition of Construction Easements by Mn/DOT could take up to 16 calendar months for the first 10 parcels and 30 days for each additional parcel from the time the written notification is submitted by the Contractor. Schedule implications associated with the acquisition of Construction Easements shall be the responsibility of the Contractor. Payment for Construction Easements shall be made by Mn/DOT and deducted from the Contractor's monthly progress payment. The cost of Construction Easements shall be included in the Contractor's Proposal Price. This section requires the contractor to notify MnDOT in writing of construction easements necessary for the project, specifies that MnDOT will be responsible for acquiring the easements, and puts bidders on notice as to how long acquisitions of such easements could take. Section 7.5.4 of the RFP lays out procedures for acquiring additional right-of-way after construction on the bridge has begun: If the Contractor determines that additional R/W is necessary or required by a Change Order, the Contractor shall prepare and submit a written request to Mn/DOT for consideration. This request shall identify the additional R/W sought, along with a justification for its need, and shall include drawings depicting proposed construction limits and cross-sections. Mn/DOT will review the request, determine whether the acquisition is acceptable and within the scope of the environmental documentation, and notify the Contractor in writing regarding the schedule and process required to complete the acquisition. Mn/DOT is responsible for obtaining any required Municipal Consent, if necessary, due to the additional R/W acquisition. The Contractor shall reimburse Mn/DOT for all costs associated with such acquisitions, subject to Book 1, Section 6.1.2. Mn/DOT will require up to 16 calendar months for acquisition of the first 10 parcels and 30 Days for each additional parcel from the time of the written request. Schedule implications shall be included in the Contractor's schedule. Given the plain language of Sections 7.5.1 and 7.5.4, we conclude the language relied on by appellants was not a project-wide ban on proposing work outside the right-of-way. Finally, our conclusion that the language of Section 4.3.3.5.1 relied on by appellants was intended to address work on the project at University Avenue, Washington Avenue, and Fourth Street and not beyond is also supported by the affidavit of Jon Chiglo, MnDOT's project manager for the I-35W bridge replacement project. In his affidavit, he states that the right-of-way *160 instruction in Section 4.3.3.5.1 of the instructions to proposers was added after MnDOT received a request for clarification from a contractor that was planning to propose taking additional right-of-way and adding traffic capacity at or near the University Avenue and Fourth Street interchange. According to Chiglo, this plan would have required "more environmental review and more municipal consent." In his affidavit, Chiglo states that the instruction in Section 4.3.3.5.1 of the instructions to proposers — barring additional right-of-way in proposals — was for the limited purpose of informing proposers that MnDOT did not want additional right-of-way impacts at University

Avenue, Fourth Street, and Washington Avenue. According to Chiglo, the instruction was not a “[project-wide directive to proposers on right-of-way limitations”]; and neither the instructions to proposers nor the RFP forbade “any proposer from obtaining right-of-way on [Second] Street.”² Reading all of Section 4.3.3.5.1 in context and in conjunction with the other provisions of the RFP, it is apparent that the RFP did not prohibit proposals that required additional right-of-way in areas other than University Avenue, Washington Avenue, and Fourth Street. Because we conclude that the language in Section 4.3.3.5.1 of the instructions to proposers, which provides that “[p]roposed work for the project shall not include additional capacity or Right of Way,” was not a project-wide limitation on the acquisition or use of additional right-of-way, we also conclude that to the extent that Flatiron-Manson’s bid proposed work outside the right-of-way at Second Street, the bid was responsive to the RFP and the instructions to proposers. We next address appellants’ claim that Flatiron-Manson’s proposal was not responsive because it failed to comply with the RFP’s requirement that concrete-box designs use a minimum of three webs. Contractors were permitted to choose among a number of superstructure types for the bridge’s design, including steel box girders, reinforced concrete box girders, and post-tensioned concrete box girders. Book 2, Section 13.3.3.1.2, of the RFP provides in relevant part that “[i]f the Contractor chooses a steel box girder design, a minimum of 3 boxes in each direction of traffic is required. A minimum of 3 webs are required for concrete box designs. The exterior webs of boxes shall be a constant slope no greater than 5:1(V:H) slope.” Flatiron-Manson’s proposal included eight webs, four in each direction of traffic, but only two webs per concrete-box girder. Relying on an affidavit of Randy Reiner, a civil engineer employed by C.S. McCros-san, appellants argue that Section 13.3.3.1.2 requires a minimum of three webs per concrete-box girder. In the affidavit, Reiner states that, in conforming with this section, the proper inquiry is the number of webs within each concrete box girder. Reiner does not provide a foundation for these contentions. He does not point to any express language in Section 13.3.3.1.2 requiring three webs per concrete box girder nor does he explain, beyond the mere assertion, what it is about *161the language used in that section that makes Flatiron-Manson’s and MnDOT’s reading of the language unreasonable. Because the plain language of Section 13.3.3.1.2 does not expressly require three webs per concrete box girder or preclude designs providing for four webs per direction of traffic, we conclude that appellants’ argument fails. Section 13.3.3.1.2 unambiguously states that for a steel-girder design, a minimum of three boxes in each direction of traffic is required. The next sentence provides that for concrete box design, three webs are required. The plain language of Section 13.3.3.1.2 does not say anything about the number of webs per box girder. Flatiron-Manson’s proposal exceeded the three-web minimum requirement by having four webs for each direction of traffic for a total of eight webs. On that basis, given the record before us, we conclude that appellants’ argument that Flatiron-Manson’s concrete box girder design was not responsive to the RFP fails. Accordingly, we hold that Flatiron-Manson’s proposal was materially responsive to the Request for Proposals, and MnDOT’s award of the I-35W bridge contract to Flatiron-Manson did not violate Minn.Stat. §

161.3426, subd. 1(a). Affirmed. ANDERSON, PAUL H., J., took no part in the consideration or decision of this case. STRAS, J., not having been a member of this court at the time of the argument and submission, took no part in the consideration or decision of this case. . Appellants appealed to the court of appeals from the denial of the temporary restraining order, petitioned the court of appeals to expedite the appeal, and simultaneously petitioned for accelerated review (and for expedited consideration of the petition for accelerated review) by our court. Sayer v. Minn. Dep't of Transp., Case No. A07-2118. We granted the motion for expedited consideration of the petition for accelerated review but ultimately denied accelerated review. After the court of appeals denied appellants' petition for expedited appeal, the parties stipulated to dismissal of the appeal before the court of appeals without prejudice. . Appellants claim that MnDOT told Ames/Lunda and C.S. McCrossan that they could not work outside of the Second Street right-of-way. However, the RFP expressly prohibits reliance on any instruction or representation that is not in writing. The instructions to proposers clearly states, "Mn/DOT will not be bound by, and Proposers shall not rely on, any oral communication regarding the Project or RFP documents." The instructions to proposers required MnDOT to prepare a written revision if any further instructions are issued and to send the information to all shortlisted proposers. MnDOT issued 9 clarifications that addressed 120 questions.