

# **Court Upholds Design-Build Statute "Best-Value" Method in High Profile Minnesota Bridge Collapse Case**

*By: Patrick M. Miller\**

On August 1, 2007, the I-35W bridge – spanning the Mississippi River in Minneapolis – collapsed, killing 13 and injuring 145. The Minnesota Department of Transportation immediately began the process of replacing the bridge, and it decided to use the design-build statute ("best value" method) to award the contract. The project was completed on time and under budget, and the bridge re-opened on September 18, 2008. This is the story most people know. But now, a post script – constituting a major victory for public design-build – has been added.

## **The Dispute**

On October 8, 2007 – after receiving the technical review committee's (TRC) scores and adjusting for price and schedule – MnDOT awarded the design-build contract to the team with the highest price proposal: Flatiron-Manson, a Joint Venture. Flatiron received the award in spite of its high price because its technical score resulted in an adjusted price that yielded the "best value" for the taxpayers (this possibility is present in virtually all design-build statutes in the Great Lakes Region). Eight days later the losing teams filed suit. The trial court threw the case out, the losing teams appealed, and the project moved forward.

## **The Decision**

On July 28, 2009, the Minnesota Court of Appeals – creating new Minnesota law – upheld the TRC's decision and Minnesota's design-build statute.

## **The Analysis**

The court considered two important issues regarding whether the TRC's actions – and design-build statute – were legally proper:

- 1) Did the TRC have discretion to determine whether a design-build team's proposal adequately responds to the Request for Proposals? and
- 2) Did the TRC err in determining that Flatiron's proposal was responsive?

The answer to the first issue was a resounding "YES." The answer to the second issue was a resounding "NO." First, the court concluded that the TRC has the authority to decide which proposals are responsive:

*"[t]he plain terms of the design-build statute indicate that the legislature's intent is to permit the TRC, by applying its judgment based on the advertised selection criteria, to evaluate proposals where no finished design exists to which the proposals must conform."*

Second, the court determined that the TRC's evaluation of the teams' proposals was proper. The losing teams argued that the TRC's decision was improper because Flatiron's proposal included work outside the right-of-way and a design for concrete-box girders with only two webs instead of three. The court analyzed the RFP and Flatiron's proposal and rejected these arguments because: 1) the RFP allowed for work outside the right-of-way; and 2) Flatiron's proposal had four webs per direction of traffic even though its individual concrete-box girders had only two webs (and this design satisfied the requirements in the RFP).

### **The Impact**

There are few cases like this in the United States, and the decision represents a major victory for all public design-build statutes. While each state has unique procurement rules, bid protest laws, and court decisions, the design-build "best value" method is remarkably consistent across jurisdictions (in no small part due to DBIA's ongoing legislative efforts). This means the decision – while not binding outside Minnesota – is great ammunition for those defending the design-build process.

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