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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0208**

Brian Conover,
Respondent,

vs.

City of St. Paul,
Appellant.

**Filed January 27, 2009
Reversed
Stoneburner, Judge**

Ramsey County District Court
File No. 62C306006503

Stephen L. Smith, 700 Lumber Exchange Building, 10 South Fifth Street, Minneapolis,
MN 55402 (for respondent)

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Hall and Court House, 15 West Kellogg Boulevard, St. Paul, MN 55102 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Stoneburner, Judge; and
Huspeni, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant city challenges a writ of mandamus, arguing that respondent did not
have standing to seek the writ and that the district court erred by ordering city to perform

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

duties not clearly imposed by law. Because the district court erred by issuing a writ of mandamus that requires city to perform duties not clearly imposed by law, we reverse.

FACTS

In 1997, appellant City of St. Paul (city) enacted St. Paul, Minn. Administrative Code § 84 (1987), the Vendor Outreach Program (VOP), to promote participation in city's prime contracts by certified women-owned, minority-owned, and small-business enterprises (respectively WBEs, MBEs, and SBEs). The VOP defines prime contracts as contracts "[for] which it is reasonably likely that the prime contractor will use, contract with, or seek bids from, one (1) or more subcontractors." VOP § 84.03.

The VOP established procedures designed to ensure that prime-contract bidders actively solicit and accept bids from certified WBEs, MBEs, and SBEs. The VOP provides prime-contract bidders with two alternative methods of compliance. The first method, in relevant part, requires prime-contract bidders to:

(6) [S]olicit bids from certified SBEs, MBEs and WBEs, which have been identified . . . as being available and capable of performing the necessary work, for the subcontracts within the prime contract at least ten (10) days prior to bid opening, by phone, advertisement in a local paper and the relevant minority publications on the list . . . or other means . . . by written notice to the [certified] bidder. The bidder for the prime contract must solicit bids from a minimum of five (5) such certified businesses for each subcontract. . . . If the applicable certified list . . . is five (5) or fewer, such bidder must contact the entire list.

. . . .

(9) [S]ubmit documentation if bids from certified SBEs, MBEs or WBEs were rejected, giving the complete basis for the rejection and evidence that the rejection was justified.

VOP § 84.08(c). The second method provides:

Alternative compliance. Notwithstanding the foregoing, [i.e., the requirements listed in VOP § 84.08(c)] *a bidder on a prime contract shall be deemed to have complied with the above outreach requirements . . . if such a bidder submits evidence with its prime contract bid documents that it has already entered into binding contracts with certified subcontractors [A subcontractor is certified. . .if it is] certified before the award of the contract. . . . The bidder may include first and second tier subcontractors and suppliers as meeting the desired levels of participation.*

VOP § 84.08(d) (emphasis added). City does not dispute the district court’s finding that its bid forms are designed primarily to demonstrate compliance under VOP § 84.08(d).

Respondent Brian Conover, an MBE owner, accused city of noncompliance with the VOP, asserting that prime-contracts bidders did not timely solicit his subcontract bids and did not inform him of why his bids were rejected, as required by VOP § 84.08(c)(6) and (9). He sought a writ of mandamus to compel city to require that all prime-contract bidders comply with these provisions.

Both parties moved for summary judgment. The district court concluded that Conover asserted a sufficient injury to his business interests to give him standing to pursue the writ, but found that genuine issues of material fact precluded granting summary judgment to either party. The matter proceeded to trial, after which the district court issued a writ of mandamus¹ requiring city to “develop and implement a new process

¹ Conover brought this action seeking a writ of mandamus. In its first order, the district court continued the matter to trial “on the issue of whether a writ of mandamus directing the City to enforce Section 84.08(c)(6) and (9) should be issued only.” Following trial, the district court issued an order for judgment directing City’s enforcement of those

and/or form or make additions to an existing form” to ensure that an apparent low bidder on a prime contract has complied with both §84.08 (c) (6) and (9) and §84.08 (d). City appeals.

DECISION

I. Standing

Challenges to standing are questions of law, which this court reviews de novo. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). To have standing to maintain a suit, an individual must be able to show an “injury to some interest, economic or otherwise, which differs from [the] injury to the interests of other citizens generally.” *Vern Reynolds Constr., Inc. v. City of Champlin*, 539 N.W.2d 614, 617 (Minn. App. 1995) (quotations omitted), *review denied* (Minn. Dec. 20, 1995).

Conover alleges that repeated, unexplained rejection of his bids, despite the VOP’s procedures for ensuring participation of MBEs in city’s prime contracts, injured his business interests. The district court found this “injury” sufficient to support standing to seek the writ. Because we conclude that, even if Conover had standing, the district court erred by issuing the writ, we do not reach the merits of city’s challenge to Conover’s standing.

sections but did not use the term “writ of mandamus.” We refer to this order as a writ of mandamus.

II. Writ of Mandamus

“When the district court’s decision on a petition for a writ of mandamus is based solely on a legal determination, this court reviews that decision de novo.” *Breza v. City of Minnetrista*, 706 N.W.2d 512, 518 (Minn. App. 2005) (quotations and citations omitted), *aff’d* 725 N.W.2d 106, (Minn. 2006). The writ of mandamus here was based on a legal determination.

“To be entitled to mandamus relief the petitioner must show three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate remedy.” *Id.* (citations and quotations omitted). Here we conclude that Conover failed to show that city failed “to perform a duty clearly imposed by law.”

The district court agreed with Conover’s assertion that the VOP mandates city to enforce the requirements that prime-contract bidders timely solicit subcontractor bids and inform rejected subcontractor bidders of the reasons for their rejections (VOP § 84.08(c)(6) and (9)) even when prime-contract bidders demonstrated compliance with VOP § 84.08(d) by submitting evidence of contracts with certified subcontractors. But the plain language of the VOP allows prime-contract bidders to comply with either VOP § 84.08(c) or VOP § 84.08(d) and does not mandate that city require compliance with both alternatives. Although the district court correctly noted that enforcing both provisions will more fully effect the purpose of the VOP, the district court erred by

concluding that the VOP clearly imposes an official duty to require compliance with both alternatives in each bid.

Prime contract bidders who use VOP § 84.08(d) are “deemed to have complied with” the requirements of VOP § 84.08(c). The writ effectively eliminates the “deemed to have complied with” language of VOP § 84.08(d) by requiring proof of compliance with § 84.08(c). Altering language in a city’s ordinance is a matter for the city council, not the district court. *See Chanhassen Estates Residents Ass’n v. City of Chanhassen*, 342 N.W.2d 335, 339 n.3 (Minn. 1984) (“Ordinances are construed according to the recognized principles of statutory construction.”); *Roer v. Dunham*, 682 N.W.2d 179, 181 (Minn. App. 2004) (“[T]he statutory rule of construction [is] that this court cannot add language that is not present in the statute or supply what the legislature purposely omits or inadvertently overlooks.”).

Because prime contract bidders may choose to follow either the provisions of VOP § 84.08(c) or of VOP § 84.08(d), there is no “duty clearly imposed by law” for city to enforce provisions of VOP § 84.08(c) when the prime contract bidder has complied with § 84.08(d). Absent a breach of a duty clearly imposed by law, the district court erred in issuing the writ of mandamus in this case.

“Mandamus is an extraordinary legal remedy that courts issue only when the petitioner shows that there is a clear and present official duty to perform a certain act.” *Breza*, 706 N.W.2d at 518. Respondent’s failure to show that city had a “clear and

present official duty” to enforce VOP § 84.08(c)(6) and (9) means that he is not entitled to this “extraordinary legal remedy.”²

Reversed.

² City also argues in the alternative that the writ is defective because it lacks specificity. Because our reversal of the writ moots this issue, we do not address it.