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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1944**

Rochester City Lines Co.,
Appellant,

vs.

City of Rochester,
Respondent,

First Transit, Inc.,
Respondent.

**Filed August 6, 2018
Affirmed
Connolly, Judge**

Olmsted County District Court
File No. 55-CV-12-1003

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and

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Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant, an unsuccessful bidder for a contract from respondent city, challenges the district court's decision after a bench trial on remand from the supreme court that the bidding process did not reflect pervasive bias either against appellant or in favor of the successful bidder, also a respondent. Appellant argues that the district court did not use the correct legal standard to evaluate a *Griswold* claim and that, if the district court had used the correct legal standard, appellant would have prevailed. Appellant also argues that the district court abused its discretion in denying appellant's request to amend its complaint on remand. Because the district court used the correct legal standard in deciding appellant's *Griswold* claim in favor of respondents and because there was no abuse of discretion in denying appellant's request to amend its complaint, we affirm.

FACTS

For 46 years, appellant Rochester City Lines Co. (RCL) contracted with respondent City of Rochester (Rochester) to provide bus service. In 2011, the Federal Transit Administration (FTA) informed Rochester that, in order to receive funds for public transit, it would be required to award future contracts based on a competitive bidding process. Rochester accordingly issued a request for proposals to operate a bus service from July 2012 through December 2016 (the 2012 RFP).

The 2012 RFP provided in relevant part that proposals would be evaluated and scored by an evaluation committee using a “best value” selection process that involved both price and qualitative components. There were four evaluation criteria: technical (40%), interviews with key management staff (30%), past performance / reference checks (20%), and financial ability (10%). Among the responsibilities of the contractor submitting the successful proposal would be “mak[ing] a good faith effort to hire employees from [Rochester’s] incumbent Contractor [i.e., RCL].” Four contractors, including RCL and respondent First Transit Inc. (FT), submitted proposals.

On February 15, 2012, RCL filed a lawsuit against Rochester, seeking an injunction to halt the bidding process. The request for an injunction was denied, and the process continued.

Of the 2,000 points possible, FT received the highest score, 1,613, and RCL the lowest, 1,175. The evaluation committee recommended awarding the contract to FT, and Rochester did so on April 2, 2012. On June 6, 2012, RCL filed an amended complaint adding a *Griswold* claim¹ against Rochester, joining FT as a defendant, and seeking an injunction against FT’s performance of the contract.

After discovery, FT and Rochester moved for summary judgment. The district court granted the motion and dismissed all of RCL’s claims. RCL appealed, and this court affirmed. *See Rochester City Lines, Co. v. City of Rochester*, 846 N.W.2d 444, 453, 455

¹ *See Griswold v. Ramsey Cty.*, 242 Minn. 529, 535, 65 N.W.2d 647, 652 (1954) (prohibiting “unreasonable, arbitrary or capricious” government action in awarding public contracts).

(Minn. App. 2014) (concluding in relevant part that “RCL has failed to present sufficient evidence for a reasonable fact-finder to conclude that the bid process and award violated the principles of competitive bidding”) *aff’d in part, rev’d in part, and remanded*, 868 N.W.2d 655 (Minn. 2015) *cert. denied*, ___ U.S. ___, 136 S. Ct. 849 (2016) (*RCL I*).² The supreme court granted review of “the appropriate standard of review for an award of a government contract through a ‘best value’ bidding process” and partially granted review of the dismissal of RCL’s “claims of unfair bias and favoritism in awarding the contract to [FT].” *RCL I*, 868 N.W.2d at 657.

The supreme court resolved the first issue by holding “that the unreasonable, arbitrary, or capricious standard adopted in *Griswold* [v. *Ramsey Cty.*, 242 Minn. 529, 535, 65 N.W.2d 647, 651-52 (1954)] is the appropriate standard for reviewing a city’s or county’s decision to award a government contract after a best-value bidding process.” *Id.* at 661. The second issue involved four RCL claims. The supreme court affirmed the summary judgment granted for respondents on three of them: that (1) the terms of the 2012 RFP were excessive, (2) that Rochester’s attorney was biased, and (3) that FT had an organizational conflict of interest. *Id.* at 662-64.

But the supreme court reversed the grant of summary judgment and remanded to the district court for trial on the claim that “numerous irregularities in the bidding process suggest that [Rochester’s] decision to award the bus-service contract to [F.T.] was

² To clarify the five appellate-court decisions in this matter, we note that this court’s *RCL* (A13-1477), the supreme court’s *RCL I* (A13-1477), and this opinion, *RCL IV* (A17-1944), pertain to the 2012 RFP process, while this court’s *RCL II* (A16-1515) and the supreme court’s *RCL III* (A16-1515) pertain to the 2016 RFP.

arbitrary, capricious, or unreasonable under *Griswold*.” *Id.* at 664. The supreme court concluded:

For at least two reasons, RCL has presented sufficient evidence to create a genuine issue of material fact on the question of whether [Rochester] awarded the contract to [FT] based on an unfair and biased process.

First, the record contains evidence that the interview process involved inconsistencies that might demonstrate favoritism toward [FT]. . . .

Second, RCL produced evidence that two employees of [Rochester] who had initially agreed to serve as references for RCL later refused to do so based on advice from [Rochester]. . . .

Evidence of these two procedural irregularities raises the specter of pervasive bias against RCL . . . RCL is entitled to a trial on whether [Rochester] made the award arbitrarily, capriciously, or unreasonably.

. . . .

. . . . For the foregoing reasons, we affirm the judgment of the court of appeals in part, reverse in part, and remand to the district court for further proceedings consistent with this opinion.

Id. at 664-65. During the remand process, RCL moved three times to amend its complaint, primarily by adding claims for money damages. The motions were denied, by successive judges, in December 2015, in June 2016, and in January 2017.

By January 2017, a number of things had occurred: (1) the 2012-2016 contract had expired; (2) the 2016 RFP (including a process for bidders to file pre-bid protests that would be decided by the moderator) had been issued; (3) RCL had filed a pre-bid protest challenging several provisions of the 2016 RFP, including the fact that five members of the 2016 evaluation committee were “holdover members” from the 2012 evaluation committee; (4) the moderator had denied RCL’s protest; (5) the contract for bus service

from 2017 to 2021 had been awarded to FT; and (6) RCL had sought certiorari review of the moderator's decision from this court.

On May 15, 2017, this court issued *Rochester City Lines Co. v. City of Rochester*, 897 N.W.2d 792, 799, 801 (Minn. App. 2017) (“hold[ing] that a best-value competitive bidding process and any contract awarded through that process are rendered unreasonable, arbitrary, or capricious by an RFP provision that creates an appearance of bias”; invalidating the 2016 RFP process and the 2016 contract “[b]ecause an appearance of bias results from [Rochester’s] inclusion of the holdover members on the 2016 evaluation committee”; and declining to address whether the moderator erred in denying RCL’s other pre-bid protest claims) (*RCL II*), *rev’d*, *Rochester City Lines Co. v. City of Rochester*, 913 N.W.2d 443, 448 (Minn. 2018) (reversing the holding that an appearance of bias invalidates a competitive bidding process and the resulting contract because Rochester forfeited the appearance-of-bias claim by not alleging appearance of bias in either its pre-bid protest or its opening brief to this court and remanding for this court to consider whether the moderator erred by denying any of RCL’s other pre-bid protest claims) (*RCL III*).

A week after this court issued *RCL II*, the remand trial ordered by *RCL I* was held to determine whether the 2012 contract had been awarded based on an unfair and biased process, specifically on whether the interview process and the use of references were arbitrary, capricious, or unreasonable in violation of *Griswold*. The district court concluded that Rochester “did not award the bus-service contract to [FT] in an arbitrary, capricious, or unreasonable manner” and that “[n]either . . . Rochester nor [FT] violated the *Griswold* standard” and awarded judgment for them.

RCL challenges that judgment, arguing that the district court did not apply the correct legal standard, that RCL would have prevailed on the remanded issues if the correct legal standard had been applied, and that the district court abused its discretion by denying RCL's request to amend its complaint.

D E C I S I O N

I. The Correct Legal Standard

This court reviews a district court's application of the law de novo. *Harlow v. State Dep't. of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

RCL argues that the correct legal standard for evaluating whether the 2012 bidding process was arbitrary, capricious, or unreasonable, i.e., whether it violated *Griswold*, is whether it resulted in actual bias or in an "appearance of bias." The supreme court did not mention "appearance of bias" in *RCL I*; the district court did not mention "appearance of bias" in its 37-page opinion that is the subject of this appeal; and RCL did not mention "appearance of bias" in the documents it submitted before and during trial, at trial, or in the proposed findings of fact and conclusions of law it submitted two months after trial.

RCL's posttrial brief relied extensively on *RCL II* to argue that "in this case the correct standard is whether [the district court] finds either actual bias or any fact that even appears to show bias" because "a best-value competitive bidding process and any contract awarded through that process are rendered unreasonable, arbitrary or capricious, in violation of the rule stated in *Griswold* . . . , if the process used or provisions of the [2016] RFP create an appearance of bias." On appeal, RCL again relies on *RCL II*, which it claims

was “the law of this state . . . binding upon the district court when it rendered its decision and remains the law today.”

However, a decision of the court of appeals does not become final until the deadline for petitioning for review has expired. *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 176 (Minn. 1988). Rochester and FT sought review and the supreme court granted review of *RCL II* two months before the district court issued its decision: *RCL II* was not then and would not become state law unless and until it was affirmed on review. *See State v. Collins*, 580 N.W.2d 36, 43 (Minn. App. 1998) (this court’s opinion is not binding precedent if the supreme court grants review and does not affirm), *review denied* (Minn. July 16, 1998). *RCL III* did not affirm *RCL II*: the holding “that a best-value competitive bidding process and any contract awarded through that process are rendered unreasonable, arbitrary, or capricious by an RFP provision that creates an appearance of bias,” *RCL II*, 897 N.W.2d at 799, did not become state law.

The law of Minnesota at the time the district court made its decision was stated in *Griswold* and quoted in *RCL I*:

“[I]rrespective of what lawful method is adopted or used in the letting of public contracts, it is for the courts to determine whether officials in the exercise of their discretion have applied the method used in an arbitrary, capricious, or unreasonable manner.” *Griswold v. Ramsey Cty.*, 242 Minn. 529, 535, 65 N.W.2d 647, 651-52 (1954).

....

. . . [W]e hold that the unreasonable, arbitrary, or capricious standard adopted in *Griswold* is the appropriate standard for reviewing a city’s or county’s decision to award a government contract after a “best-value” bidding process.

RCL I, 868 N.W.2d at 659, 661. The district court did not err in applying the *Griswold* standard identified as appropriate in *RCL I* rather than the appearance-of-bias standard set out in *RCL II* but not affirmed in *RCL III*.

Moreover, the supreme court has twice concluded that RCL forfeited claims by failing to raise them appropriately.

In *RCL I*, RCL claimed that the terms of the 2012 RFP were excessive and unreasonable. 868 N.W.2d at 661-62. We held that RCL had forfeited this claim “by failing to raise it in accordance with the pre-bid protest procedures outlined in the [2012] RFP.” *Id.* at 662. Specifically, we deemed the argument forfeited because “[n]owhere in the documents submitted to [Rochester] prior to the bidding did RCL object to any of the contractor qualifications as unreasonable or excessive.” *Id.* Similarly, [Rochester] argues in this case that RCL’s pre-bid protest did not raise an appearance-of-bias argument, and that RCL therefore forfeited this claim. We agree.

....
Moreover, RCL failed to properly raise an appearance-of-bias argument before the court of appeals [in *RCL II*]. In its initial brief, . . . [its] arguments . . . assert only *actual* bias. RCL did raise the appearance of bias in its reply brief, but litigants cannot raise new arguments in reply briefs. See Minn. R. Civ. App. P. 128.02, subd. 4 (limiting reply brief to new matter raised in respondent’s brief). . . . Thus, RCL also failed to properly raise this argument before the court of appeals. RCL therefore forfeited any appearance-of-bias argument.

RCL III, 913 N.W.2d at 447-48. We adhere to that conclusion.

RCL’s failure on remand to raise appearance of bias—in the documents it submitted before and during trial, at trial, or in the proposed findings of fact and conclusions of law it submitted two months after trial—operates as a forfeiture of the right to raise that argument on appeal. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“[A] party

[may not] obtain review by raising the same general issue litigated below but under a different theory.”) The fact that RCL did mention appearance of bias in its post-trial written argument, when Rochester and FT had no opportunity to respond to it, is further analogous to RCL’s mention of appearance of bias in a reply brief, to which Rochester and FT also had no opportunity to respond.³

II. The Remanded Issues

“On remand, a district court must execute an appellate court’s mandate strictly according to its terms and lacks power to alter, amend, or modify that mandate.” *Johnson v. Princeton Pub. Utils. Comm’n*, 899 N.W.2d 860, 868 (Minn. App. 2017) (quotation omitted).

RCL concedes that “[t]he district court’s factual findings are not in dispute here [i.e., on this appeal]; the error is one of law.” Thus, the question before us is whether the district court executed the supreme court’s mandate to conduct a trial and determine “[b]ased on *Griswold*, . . . whether [Rochester’s] decision to award the contract to [FT] was arbitrary, capricious, or unreasonable.” *RCL I*, 868 N.W.2d at 664.

³ We note that, at trial, RCL’s attorney answered, “No, Sir” when the district court asked if it should be “at all concerned” with *RCL II*. Thus, RCL’s complaint in its brief that “the district court failed even to consider the effect on the [bidding] process of an appearance of bias, an effect which itself can render the process arbitrary, capricious, or unreasonable under *RCL II*,” appears disingenuous. Nor are we persuaded by RCL’s argument that the district court’s question referred only to *RCL II*’s factual issues, not to its holding. If that were the case, RCL’s attorney would seem to be guilty of *suppressio veri* in not explaining to the district court that it did need to be concerned about *RCL II*’s “appearance of bias” holding, on which RCL intended to rely, even if it did not need to be concerned about *RCL II*’s facts. It would be similar to a court asking someone, “Did you kill her?” and the person responding, “I wasn’t there,” when that person had in fact hired someone else to kill her.

RCL I identified two categories of genuine issues of material fact as to whether the bidding process was unfair and biased: first, inconsistencies in the ways bidders were treated during the interview process, and second, whether two RCL employees whom FT said it intended to hire would be able to serve as references for RCL.⁴

A. The Interview Process

Two documents governed this process: the 2012 RFP itself and the interview instructions. The 2012 RFP provided that interviews of each vendor’s “Proposed Key Management Staff” included, but were not limited to, the “responses to scenario questions” from the general manager, the maintenance manager, and the transportation manager, and the “qualifications and experience” of the general manager, the maintenance manager, and the operations manager. (The district court noted that “the terms transportation manager and operations manager appear to have been used interchangeably.”) The 2012 RFP also provided that bidders should “make a good faith effort to hire employees from [Rochester’s] incumbent Contractor [i.e., RCL].” FT’s bid listed two RCL managers (the managers), “among the personnel who would manage the bus system if [FT] received the contract from [Rochester] . . . consistent with [Rochester’s] requirement that each of the bidders make a good-faith effort to hire RCL employees if selected.” *RCL I*, 868 N.W.2d at 664.

⁴ The supreme court noted that, by mentioning two factual disputes, it was not stating that there were no others. *RCL I*, 868 N.W.2d at 665, n.4. The district court interpreted this note to mean that “RCL was free at trial to raise other factual issues” but “did not entitle RCL to other legal avenues of relief” and “[o]nly the *Griswold* claim [was] properly before the court.” RCL does not challenge this on appeal.

The interview instructions provided that each bidder's panel would have "[m]aximum five members, with mandatory attendance of proposed General Manager, Operations Supervisor, and Maintenance Supervisor" and that 40 minutes of each bidder's 75-minute interview with the evaluation committee were to be spent in questioning that bidder's "three key Rochester staff (General Manager, Operations Supervisor, Maintenance Supervisor)." The supreme court observed that:

[Rochester] . . . asked bidders to have their key managers attend [the] interview with [its] evaluation committee. [FT] was the only bidder . . . that received permission from [Rochester] to substitute other employees for the managers it listed in its bid to represent it at the interview with the committee. Then, rather than basing its interview scores only on the personnel who actually attended the interview on behalf of each bidder, the committee awarded points to *both* RCL and [FT] based on the performance of the two RCL managers during RCL's interview. [Rochester] never informed the other bidders that it had allowed [FT] to list RCL's managers in its bid, to bring substitute personnel to its interview, or that it had awarded points to FT based on the performance of RCL's managers during RCL's interview.

Id.

Following remand, a trial was held to determine whether, in its handling of the interviews, "[Rochester] made the award [of the contract to FT] arbitrarily, capriciously, or unreasonably." *Id.* at 665. The district court stated in its memorandum⁵ that:

Three of the six scoring criteria for the interviews were responses to scenario questions. FT took a risk by not having

⁵ See *Central Lakes Educ. Assoc. v. Indep. Sch. Dist.* 743, 411 N.W.2d 875, 878 (Minn. App. 1987) (noting that "meaningful appellate review is possible [in part] because . . . the [district] court's memorandum contains findings of fact and conclusions of law (although not labeled as such), and it clearly sets forth the basis of its decision"), *review denied* (Minn. Nov. 13, 1987).

two of its proposed employees [i.e., the managers] present. The evaluation committee was able to evaluate [the managers'] answers to scenario questions in the RCL interview. The terms of the [2012] RFP do not bar this. [The managers'] qualifications could be considered without an interview. Even if the court considers that [their] non-attendance [at the FT interview] was a violation of the established rules, there has not been sufficient evidence showing that FT was unfairly disadvantaged or that any other bidder was unfairly disadvantaged or prejudiced. There is no indication that the interview rules were changed, and RCL has not persuasively pointed to any part of the [2012] RFP that was violated.

....

[FT's regional vice-president] felt that [one manager's] knowledge of the rolling stock, and [the other manager's] commitment to customer service made them good candidates. . . . Having [the managers] in position would undoubtedly make the transition much smoother. There is no meaningful claim that any of the actions by [FT] were inappropriate or improper, and the court finds that they were not. The circumstances surrounding [the managers were] nothing more than a fair business competition for desirable managers.

....

RCL told [the managers] that they were two of the five members of its presentation team. This created a dilemma for [them because they had also been offered jobs with FT if it were awarded the contract]. [One manager] talked to . . . his boss at RCL, [who told him] that his appearance on behalf of [FT at the interview] would be considered unethical. Ultimately, [the managers] presented for RCL [at the interview], and there is no evidence of any attempt or effort by either of them to scuttle RCL's presentation. . . .

[The vice-president] decided that, to avoid putting [the managers] in a bad spot with RCL [then their employer], FT would not bring them to the interview. [The vice-president] testified to his thought process in deciding not to bring [the managers. FT] brought a full five people in order to be able to answer questions about company policy. The evaluation committee knew that [the managers] were listed in [FT's] bid as the proposed general manager and proposed maintenance manager. Additionally, [the vice-president] had a discussion with the committee during [FT's] interview as to why [FT] did not bring [the managers].

The committee considered the impact of [the managers] not appearing for [FT]. The committee also considered the experience and qualifications of both [managers]. The evidence shows [FT] did not unfairly benefit from not bringing [the managers]. If anything, the evidence suggests that [FT]'s interview score suffered. [FT] not bringing [the managers] was a minor informality. The court finds that [FT] not bringing [the managers] was allowable under the terms of the [2012] RFP and that it was fair to all bidders as it did not unfairly prejudice other bidders nor unfairly benefit [FT].

....
[The vice-president] . . . inform[ed] [Rochester] of his plan to not bring [the managers] to the interview. He did not ask permission. [The vice-president] viewed it as making a statement. He knowingly took a risk that [FT] may be penalized, perhaps even disqualified, for not having the proposed general manager and maintenance manager whose appearances were "mandatory" under the interview instructions. The court finds that [the vice-president] was a credible witness. [The vice-president's] decision put the interests of the managers] ahead of his own, and ahead of [FT]'s apparent interest. He willingly and knowingly risked losing the bid, perhaps even being disqualified, if the evaluation committee determined that the absence of mandatory participants was a major defect rather than a minor informality. Once again, there is a lack of evidence showing any secret agreement between [Rochester] and [FT]. [The vice-president] simply informed [Rochester] of what he was going to do. It was the evaluation committee as a whole that decided on the scoring related to [the managers]. . . .

....
The court must determine if [FT] keeping [the managers] off the presentation team, but using their names on the bid [,] was a substantial deviation or a minor informality. . . . The court finds that [the managers] not appearing at the interview was a minor informality that did not adversely affect RCL's bid proposal or unfairly advantage [FT]. As Plaintiff, RCL has the burden of proof. RCL has not met that burden.

. . . [The vice-president] talked informally to [one manager] and suggested that [FT] might be interested in hiring him as general manager if [FT] were to win the bid. Those talks continued and [that manager] was included as the

proposed general manager in [FT]'s proposal. This was a conflict of interest, as [he] was an employee of RCL. [The vice-president] decided to keep [the managers] off the presentation team, but use their names with their consent [in the bid].

The evaluation committee awarded [FT] points for [the managers]. There is no evidence that [FT] and [Rochester] had a secret agreement. The evidence shows that [the vice-president] told [Rochester] that he was not bringing [the managers] to the interviews. [FT] was not afforded more interview time nor did [FT] exceed the allowed number of interview participants. The court finds no basis for adding any time from the RCL interview to the [FT] interview. [FT] brought five people as it was allowed to do. The court does not consider [the managers] to mean that [FT] had seven interview participants.

The Minnesota Supreme Court indicated concern over whether [FT] had access to more interview points than its competitors. [FT] did not have access to more points than its competitors. The scoring broke down by proposed managers' answers to scenario questions and the qualifications and experience of the proposed managers. There is no indication that bringing other people to the interview afforded or provided [FT] more points. It is true that [FT] was awarded points based on the interview participation of [the managers] with RCL. However, RCL overstates this importance. The qualifications and experience of [the managers] could be judged with or without them being present at the interview. Further, [one manager] answered the proposed transportation manager questions rather than the general manager questions. [Rochester] was required to treat all bidders equitably. This does not mean that everything had to be the exact same, minor variations or informalities were acceptable.

As its thoughtful and detailed memorandum indicates, the district court carried out its mandate to conduct a trial on whether the interview procedure made the awarding of the contract unreasonable, arbitrary, or capricious and concluded that it did not. That conclusion is supported by the findings, which are themselves supported by the evidence.

See Johnson, 899 N.W.2d at 868; *Cold Spring Granite*, 802 N.W.2d at 370.

B. The Reference⁶

The supreme court reversed and remanded the grant of summary judgment that no *Griswold* violation occurred in part because a Rochester employee on the evaluation committee, (the employee), who “initially agreed to serve as [a] reference[] for RCL [but] later refused to do so based on advice from [Rochester’s attorney that serving as a reference] . . . would interfere with [his] duties on the evaluation committee . . . [did not] inform[] RCL of the decision to withdraw as a reference, which reduced the total number of points available to RCL on the past-performance criterion.” *RCL I*, 868 N.W.2d at 664-65.

After the trial, the district court found:

99. [The Rochester attorney] gave [the employee] the go ahead to serve as a reference for RCL.

100. After receiving a question from [the employee] about filling out the questionnaire, [the Rochester attorney] told [the employee] that he could not complete the questionnaire and be on the evaluation committee.

101. [The employee] was listed as a reference on RCL’s proposal, but did not fill out the questionnaire.

102. While [the employee] did not provide a reference, he did not provide a negative reference or provide negative information about RCL to the evaluation committee.

103. There is no evidence that [the employee] ever denied agreeing to serve as a reference for RCL.

104. There is no claim or evidence that [the employee] ever said anything negative about RCL to the evaluation committee.

105. [The employee’s] decision to not provide a reference was based on his communications with [the Rochester

⁶ The supreme court remanded the issue of whether two Rochester employees committed a *Griswold* violation by agreeing to serve as references for RCL and then withdrawing as references. The district court concluded that neither employee committed a *Griswold* violation. RCL challenges that conclusion only with regard to one of the employees, whom we designate as “the employee.”

attorney] and not because of bias towards RCL or favoritism towards [FT].

....

108. It was a prudent decision for [Rochester] to include . . . [the employee] on the evaluation committee. [He was] intimately familiar with the transit needs of [Rochester].

109. [Rochester] never provided the names of the members of the evaluation committee to RCL, and RCL never sought this information.

110. The 2012 RFP requested references from five fixed route recent contracts.

111. RCL had only one recent fixed route contract, [Rochester]. RCL also listed other references for which it provided charter work.

112. By the terms of the [2012] RFP, RCL was limited to past performance points for its contract with [Rochester]. Each reference would be scored on a maximum of ten points per reference.

113. Despite this, two evaluators scored RCL in excess of ten points by awarding points for the charter contracts.

114. The evidence shows that RCL received the full ten points for its contract with [Rochester], despite no questionnaire being filled out, from every evaluator except one.

115. RCL actually received more points under past performance than it strictly should have under the terms of the [2012] RFP.

116. RCL was not placed at a disadvantage in the past performance section.

117. [FT] was not given any advantage over its fellow proposers in the past performance section.

....

119. As . . . [the employee] had worked closely with RCL, [he] had no need of a questionnaire to evaluate RCL's past performance.

120. RCL was unable to show that the lack of a completed questionnaire from . . . [the employee] harmed it in scoring under past performance.

121. RCL's scoring in past performance was based on its lack of fixed route references, not the lack of a completed questionnaire.

....

123. [The employee] gave the highest scores to RCL out of the evaluators.

124. The evidence does not show that [the employee] had a favoritism for [FT]. For example, [the employee] scored [bidder] MV Transportation the highest.

....

Memorandum

....

One of the circumstances specifically referred to by the Minnesota Supreme Court [in *RCL I*] is the refusal of [the employee] to complete [a] reference questionnaire[] for RCL. [The employee] had been asked and agreed to be a reference on behalf of RCL. . . . During the reference check, [the employee] was asked to complete a questionnaire on behalf of RCL. [The employee] declined to complete a questionnaire on the advice of the Rochester City Attorney. The [Rochester] attorney told [the employee] that since he was serving on the evaluation committee, completing such a questionnaire would be a conflict of interest. . . . [The employee] did not complete the questionnaire[], but there is no indication that the absence of [his] answered questionnaire[] had any impact on the scoring or proposals.

The evaluation committee members knew that [the employee] had been listed as [a] reference[] by RCL. RCL received credit from every evaluator for its past work as the city of Rochester's fixed route transit provider. Four of the evaluators awarded RCL ten points, one evaluator awarded eight points, one evaluator awarded twenty-five points, and one evaluator awarded twenty points. RCL lost points for not having any other fixed route transit service experience outside of Rochester. In fact, by the strict scoring requirements, RCL should have only received at most ten points because the company only had one fixed route contract reference.

. . . There is no evidence that [the employee] . . . said or did anything to favor [FT] or disfavor RCL. There is no evidence that [the employee] . . . graded RCL's proposals in any way other than fairly, and perhaps generously.

The district court's very specific findings as to the employee and as to the way in which evaluators awarded points indicates that, again, the findings are supported by the evidence and support the conclusion.

RCL relies on *Rochon Corp. v. City of St. Paul*, 814 N.W.2d 365 (Minn. App. 2012) to argue “that a *Griswold* violation [can] occur[] even when an irregularity in the procurement process [does] not affect the outcome of the contract award.” But *Rochon* is distinguishable. In that case, after the bids had been opened, the lowest bidder was allowed to change its bid to correct an error and to add another \$89,211, resulting in the lowest bidder receiving a contract for the increased amount. *Rochon*, 814 N.W.2d at 367. The second- and third-lowest bidders were not allowed to remove disqualifying elements from their bids after the opening, and the \$89,211 added to the lowest bidder was unexplained. This court found that, even though no other bid was displaced as a result, “[the] bid modification was a material change” and the lowest bidder’s contract was declared void. *Id.* at 369.

Here, both having the committee’s interview of FT not include an individual who was then an RCL manager and having a Rochester employee on the committee not complete a questionnaire are irregularities; neither equates or is even comparable to the material change of modifying an opened bid that occurred in *Rochon*. As the district court noted:

[A municipality] has to some extent the “right to waive irregularities when it is clearly for its benefit to do so and when no damages will be inflicted upon it, or wrong done to others nearby.” [*Nielsen v. City of St. Paul*, 252 Minn. 12, 12, 88 N.W.2d 853, 855 (1958).] Waiving minor irregularities was for [Rochester’s] benefit and no damages were to be inflicted on [Rochester]. Perhaps more importantly, no wrong was done to any bidders. None of the irregularities in the bidding process resulted in wrong done to RCL. . . .

RCL has not shown any defects in the process that affected or destroyed competitive bidding. [Rochester’s]

waiving of defects or irregularities did not prejudice public rights and did not prejudice the rights of any of the bidders. . . . [M]inor defects in the procurement process are not sufficient to void a contract which the parties have already entered. . . . Any of the defects claimed by RCL were minor at most and so are not sufficient to void the contract.

“If the guidelines are substantially followed, minor defects in the procurement process will not be sufficient to void a contract into which the parties have already entered.” *Transit Team, Inc. v. Metro Council*, 679 N.W.2d 390, 396 (Minn. App. 2004). The district court did not err in concluding that minor procedural defects did not void Rochester’s contract with FT.

III. Motion to Amend

The appropriate standard of review for denial of a motion to amend a complaint is abuse of discretion. *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003).

RCL originally brought claims for: (1) a declaratory judgment that it owned the transit system and had the sole right to operate it and that the 2012 RFP was unlawful; (2) an injunction ordering Rochester to cancel the 2012 RFP and renew RCL’s franchise for five years; and (3) a writ of mandamus ordering Rochester to commence condemnation. Its complaint was first amended to add: (4) a contract-award bid-protest appeal; (5) a defamation claim against a Rochester Common Council member; (7) civil-rights violations; and (8) substantive and procedural-due-process claims, as well as a third-party defamation claim against the council member. *RCL*, 846 N.W.2d at 450. The district court granted summary judgment to respondents on the condemnation claim and the third-party defamation claim, then granted respondents summary judgment on all remaining claims.

Id. RCL affirmed the district court; *RCL I* affirmed RCL except for the *Griswold* claim, which it remanded to the district court for trial. *RCL I*, 868 N.W.2d at 665. Thus, only the *Griswold* claim remained for trial on remand.

Two months after the release of *RCL I*, RCL made an attempt to amend the complaint by adding other claims. The motion did not refer to the relief previously sought: an injunction against FT and a voiding of the 2012 contract. Instead, the motion sought damages in excess of \$50,000 for each of its new claims: violation of law and pervasive bias in the contract award; civil conspiracy; civil fraud; unreasonable restraint of trade; and civil rights.

RCL's motion to amend was denied in December 2015; in June 2016, a different district court judge orally denied a renewed motion to amend; in January 2017, a third district court judge denied a renewed motion to amend and again denied such a motion presented at the close of RCL's case. RCL's notice of appeal references the 2015 and 2017 orders and asks this court to reverse and remand them with instructions to enter judgment in favor of RCL and determine the amount of damages under the causes of action in the second amended complaint.

"[P]arties seeking to amend a pleading must move with reasonable diligence." *Willmar Gas Co. v. Duininck*, 239 Minn. 173, 176, 58 N.W.2d 197, 199 (1953). In 2015, a district court judge cited *Willmar Gas* and concluded that RCL had not moved with reasonable diligence in waiting until after *RCL I* amended the complaint. RCL argues on appeal that "the [2015] district court erroneously ignored intervening appeals in

considering the timing of the motion to amend.” But the district court did not ignore the fact that some of the delay was caused by appeals. It found that

RCL did not “move with reasonable diligence” in seeking this amendment. RCL acknowledges that the basic facts on which its new liability theories are based were known to it by the summer of 2012. In 2012 and 2013 RCL . . . made no motion . . . to raise conspiracy, fraud, and restraint-of-trade claims; to seek money damages on all counts; and to make substantive claims for relief against [FT]. *The appellate process took two years and RCL is not responsible for that.* But this case was far along before it ever went up on appeal. . . . Because this motion to amend was not made in 2012 or 2013, there was no opportunity for the actionability of these new liability and damages claims to be included in the briefing and rulings made in this court in 2013—something that may have reshaped the course of this case in this court and in the appellate courts.

(Emphasis added.)

Thus, the 2015 district court acknowledged that some of the delay was caused by the appellate process, but concluded that RCL contributed significantly to that delay and that the delay prejudiced Rochester and First Transit. The 2017 district court also relied on *Willmar Gas* and concluded that:⁷

Even setting aside the time the case was before the appellate courts, RCI has not moved with reasonable diligence. The motion to amend seems to be driven by the decisions of the appellate courts, which limited RCL’s potential recovery. From the [2017] court’s review of the record, RCL was aware of the new theories of relief raised in the second amended complaint well before the current procedural posture of this case. [The 2015] order also provided discussion of theories of relief that could not survive summary judgment and claims not supported by law. [This] court has not found and has not been provided a reason to find that such conclusions were incorrect.

⁷ We reject RCL’s assertion that the 2015 order was “the only substantive order on the motion for leave to file the second amended complaint.”

RCL goes on to argue that, at a minimum, the district court should have denied the motion to amend only with respect to FT, not with respect to Rochester. “But leave to amend should not be granted when doing so would result in prejudice to the other party.” *Schober v. Comm’r of Revenue*, 853 N.W.2d 102, 112-13 (Minn. 2013) (quotation omitted). RCL offers no refutation of the 2015 district court’s statements that “[t]he further discovery necessary to give [Rochester] fair opportunity to investigate and meet RCL’s new proposed damages claims . . . would require trial to be substantially delayed,” and “this delay would constitute real and significant prejudice to [Rochester] . . . prejudice which more than counterbalances Minnesota’s policy favoring liberal leave to amend.”

The district courts’ denials of RCL’s repeated motions to amend were not an abuse of discretion, and the 2017 district court’s conclusions that the *Griswold* “unreasonable, arbitrary or capricious” standard is the appropriate standard for evaluating a best-value bidding process and that neither Rochester nor FT committed acts resulting in a *Griswold* violation were not erroneous.

Affirmed.