Conflict of Interest – Establishing an Environmental Services Company that Provides Services to Employer

Case No. 04-10

Facts:

Engineer A is a licensed environmental engineer with 25 years of engineering experience. Engineer A's spouse has an environmental science degree, but is not an engineer. Recently Engineer A and spouse obtained a business license (a partnership with Engineer A as president and spouse as vice president) to perform environmental consulting work, although they have not yet actively offered or performed environmental services to the public. Engineer A is also employed as a principal engineer with a large defense contracting firm. Engineer A's defense contracting employer is in the process of preparing a proposal to compete for a current defense agency contract.

Engineer A has suggested that he and his wife would be interested in working as a subcontractor to his employer on the new defense agency contract through their new environmental consulting company. Engineer A's defense contracting employer supervisor, however, does not want Engineer A to leave the company. The supervisor proposes that Engineer A stay in his current position with the defense contractor employer while Engineer A's spouse subcontracts to the company as a woman-owned business. The defense contractor employer would then benefit both from that rate at which they can bill for Engineer A's senior position and from subcontracting to a woman-owned business.

Question:

Would it be ethical for Engineer A to have his environmental services firm serve as a subcontractor to the company and continue to serve in his capacity as principal engineer for the company?

References:

Section II.4.	-	*NSPE Code of Ethics:*	*Engineers shall act for each employer or client as faithful agents or trustees.*
Section II.4.a.	-	*NSPE Code of Ethics:*	*Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
Section II.4.b.	-	*NSPE Code of Ethics:*	*Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*

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Discussion:

Engineering services are frequently offered through a variety of entities depending upon several factors. Regardless of the manner in which engineering services are provided, it is clear that the provisions of the NSPE Code of Ethics would apply. As clearly noted in "Postscript" to the NSPE Code of Ethics, "In regard to the question of application of the Code to corporations vis-à-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and items incumbent on members of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code."

The NSPE Board of Ethical Review has had occasion to review ethics cases relating to the manner in which engineering services are provided. For example, in Case 89-6, Engineer A was elected as the non-salaried chairman of the board of directors of an owners' association of a 5000-acre subdivision in which he resided. The subdivision contained acre lots for the development of single condominium residences. The owners' association employed a full time manager and a number of employees who maintained the common areas and roads, provided security and performed other administrative tasks associated with the association. The board of directors was elected annually by the owners and were responsible for the operation of the subdivision. The manager and employees worked under the direction of the board of directors and in accordance with the policies approved by the board. There is also a design review committee selected by the chairman of the board which was responsible for review and approval of all design and construction on all parcels and common areas. Prior to serving as chairman, Engineer A was employed by the developer of the subdivision to design roads, water resources, flood control, etc. Engineer A now worked for a related company which provided land development services to the owners' association. Engineer A also provided design services to lot owners building residences on the parcels, and has indicated that he would continue to do so. In ruling that it was unethical for Engineer A to serve as the chairman of the owners' association and provide the land development and design services in the manner described, the Board noted that to rule otherwise in that case would permit engineers employed in the private sector to serve on quasi-governmental bodies and act in a manner which undermines the integrity of those bodies. For example, under the facts present in Case 89-6, as chairman of the board of directors of the owners' association, Engineer A had the authority to select the members of the design review committee responsible for the review and approval of all design and construction on all parcels and common areas. At the same time, Engineer A worked for a firm which provides land development services to the owners' association and design services to owners of individual parcels of land. Engineer A's activities as chairman of the board of directors would involve him directly with matters relating to determinations made by the design review committee concerning the designs developed by him and his firm. Therefore, Engineer A, as a member (chairman) of a

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governing body (board of directors) was participating in decisions with respect to professional services provided by his firm in private engineering practice.

Although the facts in Case 89-6 are somewhat different than the facts in the present case, the Board is of the view that there are clear parallels between Case 89-6 and the instant case. As with Case 89-6, in the present case, Engineer A's role as principal engineer for the defense contracting company and an owner with his spouse of the environmental consulting firm raises serious conflict of interest issues. Under the facts, it would appear that Engineer A's role as principal engineer for his employer will require that he review and approve at least some of the work provided through the environmental consulting firm of which he along with his spouse is an owner. While one may argue that Engineer A has fulfilled his ethical obligations by disclosing his conflict to his employer or client, under the circumstances, that is not sufficient. The Board cannot see how Engineer A, in his role as an employee of the defense contracting company, could ethically serve the interests of his client (and more importantly his employer's ultimate client, the Department of Defense) while at the same time continuing to own a company that is subcontracting with his employer, the defense contracting company. In the Board's view, this type of conduct is not within the bounds of proper ethical conduct. In passing, the Board would note that the fact that the work of the environmental consulting firm is being performed, not by Engineer A, but through Engineer A's spouse, would not in any way change the Board's position concerning the ethical propriety of Engineer A's actions. In particular, the Board is also troubled by Engineer A's supervisor's flippant and cavalier attitude concerning both Engineer A's billing rate and the company's adherence to meeting women-owned business requirements. While no technical or other legal requirements may have been violated, the supervisor's comments give one pause concerning the defense contracting company's commitment to its client and to following the spirit and intent of applicable procurement and related procedures.

Conclusion:

It would be unethical for Engineer A to have his environmental services firm serve as a subcontractor to the company and for Engineer A to continue to serve in his capacity as principal engineer for the company with responsibilities for the same project.

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Each opinion is intended as guidance to individual practicing engineers, students and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole-proprietorships, government agencies, university engineering departments, etc.), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services—which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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