Conflict of Interest – Spouse as Employee of Vendor

Case No. 06-10

Facts:

Engineer A, a quality assurance manager at Company C, learns that the purchasing manager for Company C has contracted with a new supplier of precision plastic components. It turns out that the production manager at the new supplier is the quality assurance manager's spouse—a fact unknown to everyone at Company C. The quality assurance manager did not create this situation, and there is no effort to put pressure on any party in connection with the dealings between the parties.

Question:

What are Engineer A's ethical obligations under these facts?

References:

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 III.1.e.	-	*NSPE Code of Ethics:*	*Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
Section III.5.	-	*NSPE Code of Ethics:*	*Engineers shall not be influenced in their professional duties by conflicting interests.*

Discussion:

Over the years, conflicts of interest and potential conflicts of interest situations have been presented to this board in a variety of factual situations. The facts presented in this case raise the potential for at least the appearance of a conflict of interest if not an actual conflict of interest.

Appearances of a conflict of interest have been considered by the NSPE Board of Ethical Review on a number of occasions. The board considered at least one case with similar facts in recent years. In BER Case No. 98-11, Engineer A was asked by a firm to prepare specifications for an air compression system. Engineer A made the firm aware that she was the president (and major shareholder) of a company that manufactures and sells air compression systems and that she had no problem with preparing a set of generic specifications. Engineer A also provided the firm with four other manufacturers that prepare air compression systems for bidding purposes, and Engineer A did not include her company as one of the four specified manufacturers. The board ruled that, although Engineer A was the president and major shareholder in a company that manufactured and sold air compression systems, clearly Engineer A took all necessary and reasonable steps to disclose all potential conflicts of interest to avoid any appearance of a conflict. By immediately disclosing the fact that she had a major interest in an air compression manufacturing company, by suggesting the name of four

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other alternative manufacturers, and by raising the issue before it surfaces as a result of possible appearances, Engineer A has acted consistently with the NSPE Code of Ethics. The board also noted that unlike the previous versions of the Code that required the engineer to "avoid" conflicts of interest, the current Code acknowledges that conflicts do arise and impose upon the engineer the responsibility to take all reasonable steps to notify and advise the client—leaving it up to the client whether to proceed with the services of the engineer. It was the board's view that Engineer A's conduct was in keeping with Code provision that engineers must disclose all known conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

More recently, in BER Case No. 99-9, Engineer A was requested by Client Z to prepare specifications for a curtain wall system. Engineer A immediately made Client Z aware that he was a minority shareholder in a curtain wall manufacturing company and that if Client Z agreed, Engineer A would be pleased to prepare a set of generic specifications for a curtain wall system. Client Z agreed but silent on the point of having Engineer A's firm submit a proposal. Later, Engineer A provided Client Z with the names of three manufacturers that prepared curtain wall systems for bidding purposes. Engineer A included the name of his firm among the three manufacturers, but did not include the full specifications and other supporting material about Engineer A's curtain wall manufacturing firm with the bidding material provided to the client. Engineer A's reasoning was that he could answer any questions that Client Z might have about the curtain wall manufacturing system in his company. After evaluating the proposals solicited through documentation prepared by Engineer A, and upon Engineer A's recommendation, Client Z selected Engineer A's company. In finding that it was not ethical for Engineer A to prepare bidding criteria, bid, evaluate bids, and recommend his company for owner selection, the NSPE Board of Ethical Review noted that it was not entirely clear why and on what basis Client Z selected Engineer A to provide the curtain wall specifications on behalf of Client Z. It could be that in the rendering of consulting services, Engineer A performed professional services to the satisfaction of Client Z and this fact may have persuaded Client Z to select Engineer A's curtain wall company to manufacture the required equipment. At the same time, the board believed the early and complete disclosure by Engineer A needed to be balanced against Engineer A's later inclusion of his firm on the list of potential curtain wall manufacturers without the client's prior affirmative approval. The board believed this point was instructive because it demonstrated Engineer A's recognition of the potential for a conflict of interest in connection with the services provided to Client Z and the actions Engineer A took in regard to that potential conflict. In this connection, the board was troubled by Engineer A's conduct and lack of initial full disclosure in the face of Client Z's failure to expressly approve Engineer A's actions.

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Turning to the current case, the board remains convinced that the best approach continues to be full, candid, and clear disclosure of all facts and circumstances that could influence or appear to influence the engineer's judgment or the quality of the engineer's services. The board cannot emphasize enough how much this method of disclosure will encourage a process whereby all parties involved in the relationship or transaction will follow appropriate procedures and protocols that will lessen the likelihood of improper conduct. While there are never any guarantees, the board believes that adherence to the highest principles of conduct will have a ripple effect in the relationship and set an example to be followed.

That being said, the board believes that Engineer A's recognition of at least the potential of a conflict of interest would require Engineer A to provide full disclosure to appropriate managers within his company that he is the spouse of a key employee of a vendor and that should circumstances arise, Engineer A may be required to recuse himself from specific dealings with the vendor. The board can easily foresee circumstances where as quality assurance manager, Engineer A will be in a position to evaluate the quality of the vendor's product and that should any questions arise concerning the vendor's product, Engineer A may find himself in a personally conflicted situation—between the interests of his employer and the interests of his spouse and her employer.

Conclusion:

Engineer A should provide full disclosure to appropriate managers within his company that he is the spouse of a key employee of a vendor. Further, Engineer A would be required to recuse himself from specific dealings with the vendor.

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