Report on a Case by the Board of Ethical Review

Case No. 60-8

Subject:
Competitive Bidding - -Reduction of Fee-Section 19, Canons of Ethics; Section 26, Canons of Ethics; Rule 48, Rules of Professional Conduct; Rule 49, Rules of Professional Conduct; Rule 50, (Second Paragraph) Rules of Professional Conduct; Rule 51, Rules of Professional Conduct.

Facts:
A municipality selected three engineering firms for interview on the design of a certain water and sewage plant. Each firm proposed virtually the same fee, based on the recommended fee schedule of the state society of professional engineers. The city officials asked each firm to state a figure of the amount of reduction from the fee which it would grant, based on the fact that the city would furnish the preliminary engineering report, partial estimates during construction, all inspectors and resident engineers and other data of value to the engineers in performing their work.

The three firms discussed the request jointly and agreed on a uniform credit of $10,000 for the data and services to be furnished by the city. The engineering firms considered that an agreement among them was necessary in order to prevent the procedure from being converted from one of negotiation to one of competitive bidding, it appearing that the city would grant the contract to the firm offering the highest credit.

Questions:
1. Would it have constituted competitive bidding for the several engineers to independently offer the city a reduction in the fee?

2. Was it unethical for the firms involved to confer and agree on a standard credit figure to be offered to the city?

References:
Canons of Ethics-Section 19- "The engineer will endeavor to protect the engineering profession collectively and individually from misrepresentation and misunderstanding."

Section 26-"He will not compete with another engineer on the basis of charges for work by underbidding, through reducing his normal fees after having been informed of the charges named by the other."

Rules of Professional Conduct-Rule 48-"The practice of engineering is a learned profession, requiring of its members sound technical training, broad experience, personal ability, honesty and integrity. The selection of engineering services by an evaluation of these qualities should be the basis of comparison rather than competitive bids."

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Rule 49-"Competition between engineers for employment on the basis of professional fees or charges is considered unethical practice by all professional engineering groups. Hence, the announced intent of an owner or governmental body to request such competitive bids removes from consideration many engineers who may be the best qualified to be entrusted with the proposed work."

Rule 50- (second paragraph) - "Should the engineer be asked for a proposal to perform engineering services for a specific project, he should set forth in detail the work he proposed to accomplish and an indication of the calendar days required for its accomplishment. The engineer's qualifications may be included if appropriate. A statement of monetary remuneration expected should be avoided if possible. Should such a statement be deemed necessary, the proposed fee shall be equal to or more than the fees recommended as minimum for the particular type of service required, as established by fee schedules or practice in the geographical area where the work is to be done. Where a fee cannot be established in this manner, the ethical fee shall be equal to actual cost plus overhead plus a reasonable profit."

Rule 51-"He will take a professional attitude in negotiations for his services and shall avoid all practices which have a tendency to affect adversely the amount, quality, or disinterested nature of professional services; such as charging inadequate fees for preliminary work or full services, competing for an engineering assignment on price basis, spending large amounts of money in securing business or consenting to furnish monetary guarantees of cost estimates."

Discussion:
Rule 50 contemplates that an engineer may base his suggested fee on the state society schedule of recommended minimum fees. which is presumed known to the general public and city officials. On this basis, where the suggested fee from various firms is substantially identical, the client (city) should select that firm which it feels will provide the most satisfactory professional service. To this point there is no violation of the rule against competitive bidding.

When the city declined to follow this procedure and requested fee reductions from all the firms the procedure became one of competitive bidding because the client (city) was then in a position to select the firm on the sole or primary basis of the lowest net fee. The engineering firms were in a sound position in declining to be placed in the position.

Although neither the Canons nor Rules seem to cover specifically the question of a joint agreement on the fee reduction, we believe that it was not prudent for the firms to determine a set figure to be used by all in offering the city a credit. This smacks of collusion and thereby may tend to raise suspicion and doubts in the mind of the public as to whether there is a "conspiracy" to serve the interests of the engineering firms over the taxpayers. We further believe that it would have been better procedure for all concerned for the engineering firms to jointly agree among themselves and notify the

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city officials that they could not engage in a procedure which amounted to competitive bidding and request that the city make a selection of the firm deemed most suited for the work, following which that firm would independently negotiate with the city on an appropriate reduction of the fee.

Conclusion:
Q.1.-The offer of a definite reduction in fee by each of the several firms would have constituted competitive bidding and the firms were correct in refusing this requested course of action.

Q.2.-While the Canons of Ethics and Rules of Professional Conduct do not specifically cover a joint agreement among several firms on a reduction of fee, public confidence and understanding of the professional nature of engineering services will be enhanced by adherence to the more desirable position of having the client select one engineering firm for further negotiation on a fee credit for services and data furnished by the client. Extra care should be taken to avoid any implication of collusion among engineering firms in establishing fees, but recommended state society schedules of minimum fees may be followed in establishing the fee. The engineers, by conferring and agreeing on an amount of reduction in the fee, acted unethically under Section 19 by exposing the engineering profession to public criticism and misunderstanding.

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