Report on a Case by the Board of Ethical Review

Competitive Bidding-Speculative Designs Case No. 63-2

Subject: Competitive Bidding-Speculative Designs
Rule 11- Rules of Professional Conduct; Rule 48-Rules of Professional Conduct; Rule 49- Rules of Professional Conduct; Rule 50-Rules of Professional Conduct; Rule 51-Rules of Professional Conduct.

Facts:
A city has need for an enlarged football stadium. The city engineer, a registered professional engineer, requested local consulting engineers to:

1. Make studies of the existing stadium and prepare preliminary plans, outline specifications, and cost estimates, for recommended enlargement and remodeling. It was intimated that the engineer presenting the best solution in the opinion of the city officials would be awarded the design commission.

2. Include a fee proposal to apply, if selected.

Questions:
1. Is it unethical for a professional engineer to prepare and submit the information requested without having first been awarded the design contract or a separate contract for the preliminary plans?

2. Is it unethical to submit fee proposals in advance of selection as the engineer for the project?

3. Is the city engineer unethical in requesting fee proposals before selection of an engineer for the project?

References:
Rules of Professional Conduct Rule 11-"He will not undertake or agree to perform engineering services on a free basis, except for civic, charitable, religious or eleemosynary nonprofit organizations when the professional services are advisory in nature."

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."

Rule 49- "Competition between engineers for employment on the basis of professional fees or charges is considered unethical practice by all professional engineering groups.

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Any engineer who is requested to submit a competitive bid to an owner or a governmental body should remove himself from consideration for the proposed work."

Rule 50-"It shall be considered ethical for an engineer to solicit an engineering assignment, either verbally or written. Such solicitation may be in the form of a letter or a brochure setting forth factual information concerning the engineer's qualifications by training and experience and reference to past accomplishments and clients. 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 proposes to accomplish and an indication of the calendar clays required for its accomplishment. The engineer's qualifications may be included if appropriate. A statement of monetary remuneration expected shall be avoided until he has been selected for the proposed work. Should the owner insist upon a statement regarding remuneration prior to selection of the engineer, the engineer may designate the recognized professional society maximum fee schedule for the particular type of service required in the state geographical area where the work is to be done."

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 a price basis, spending large amounts of money in securing business or consenting to furnish monetary guarantees of cost estimates."

Discussion:
The procedure followed by the city engineer is unusual and raises question of intent on the part of the city. The engineers in submitting preliminary plans, outline specifications and cost estimates, would be required to perform substantial engineering work without any definite guidelines as to the way their work would be used. Nor is their a clear commitment that one design would be used and the others returned to the designing engineers. Before any design competition is used, it will be necessary for the profession to establish an acceptable procedure.

In any event, the city's request is improper because the engineers were also requested to submit fee proposals with their preliminary plans, outline specifications and cost estimates. This is a clear violation of Rules 48, 49, 50 and 51 (see BER Case 60-2). Even if it was intended that only one submission would be used, this would not excuse or condone a competitive bidding procedure. We are inclined to the view that the solicitation of speculative designs, is, or might be construed to be, a cloak for competitive bidding. The city would be in a position of selecting the engineer submitting the lower fee proposal on the pretext that his was the best design.

There is further the question of relationship of the procedure to Rule 11 regulating free engineering. It is not certain that the sub mission of the speculative designs would constitute free engineering in the absence of facts to indicate the use which might be

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made of the various plans. However, the procedure verges on free engineering, or at least raises that distinct possibility.

The cited Rules are written primarily to prohibit the offering of engineering services under a competitive bidding procedure, but we believe that they are equally applicable to a professional engineer who instigates a procedure calling for competitive bids. Rule 49, while directed toward the engineer who offers services, speaks broadly in denouncing competition between engineers for employment on the basis of professional fees or charges. It is the duty of all professional engineers to uphold the principle involved, and we believe that an engineer representing an employer is equally bound.

Conclusions:
Q 1-It is unethical for a professional engineer to submit preliminary plans, outline specifications and cost estimates prior to being awarded the design contract or a contract for preliminary plans.

Q 2-It is unethical to submit fee proposals in advance of selection of the engineer for a project.

Q 3- The city engineer was unethical in requesting fee proposals prior to selection of an engineer for the project.

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