Report on a Case by the Board of Ethical Review

Case No. 65-15

Subject: Conflict of Interest-R&D Services for University and Private Company
Section 8-Code of Ethics; Section 8(a)-Code of Ethics; Section 11-Code of Ethics; Section 11(f)-Code of Ethics; Section 14(d)-Code of Ethics.

Facts:
A professor of engineering shares his time at the university between teaching and research projects under contract between the university and a Government agency. He also owns an interest in a private research and development company in the community and devotes evening and weekend time to the interests of the company. The private R&D company and the university as well as others are invited by a Federal agency to submit proposals for a project, the technical content of which is based in large part upon the research performed by the university for a different Federal agency and in which the professor participated. The professor's background, experience, and work on the technical subject matter will give the private R&D company and the university an advantage if he is to be actively involved in the project, either directly or as a consultant.

Questions:
1. Is it ethical for the professor to participate in the preparation of a proposal for the university?

2. Is it ethical for the professor to participate in the preparation of a proposal for the private R&D company under these circumstances?

3. Is it ethical for the professor to participate in the project for the university if its proposal is accepted by the Government?

4. Is it ethical for the professor to participate to any degree in the project for the private R&D company if its proposal is accepted by the Government?

5. If the professor may not participate actively in the project if awarded to the private R&D company, may he ethically retain his interest in and connection with the private R&D company?

References:
Code of Ethics-Section 8-"The Engineer will endeavor to avoid a conflict of interest with his employer or client, but when unavoidable, the Engineer shall fully disclose the circumstances to his employer or clients."

Section 8(a)-"The Engineer will inform his client or employer of any business connections, interests, or circumstances which may be deemed as influencing his judgment or the quality of his services to his client or employer."

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Section 11-"The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding, by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

Section 11(f)-"An Engineer will not use equipment, supplies, laboratory or office facilities of his employer to carry on outside private practice without consent."

Section 14(d)-"Designs, data, records, and notes made by an Engineer and referring exclusively to his employer's work are his employer's property."

Discussion:
The situation described involves several possibilities of conflict of interest. The professor is first an employee of the university and, as such, has a primary responsibility to the university. His interest in and work for the private R&D company, while neither necessarily inappropriate nor unethical, must be treated as secondary to his responsibilities to the university. Under the circumstances described it is obligatory for the professor to advise both the university and the R&D company of his interest and previous work in connection with the project in behalf of the university and insist that these facts be made known to the Government agency requesting the proposals (Section 8(a)).

Because of the professor's previous work on a similar project for the university it would be extremely difficult not to use knowledge so obtained in the preparation of the requested proposal. To do so, after disclosure as above noted, on behalf of the university would be entirely proper. On the other hand, to use such knowledge to assist in the preparation of a proposal on behalf of the private R&D company in competition with the university would be a direct conflict of interest (Section 14(d), 11, 11(f)). While Section 8 does not categorically prohibit a conflict of interest, in this case the conflict is avoidable. The appropriate solutions open to the professor in this situation are first, to urge that the private R&D company in which he has a financial interest decline to submit a proposal to avoid a conflict of interest and second, if unsuccessful in this endeavor, to decline to participate in any way in the preparation of a proposal on behalf of the R&D company, and further to advise and make it clear to both the company and the Government agency that he would not be available in any capacity for work on the project should the R&D company proposal be accepted, even if this action might force him to divest himself of his financial interest in the company.

The only possibility for the professor to act on behalf of the company would develop if the university decided not to submit a proposal, in which case he would be a free agent (Section 11(f), H(d)) and could properly act on behalf of the company both in proposal preparation and in later work if the proposal is accepted.

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Question 5 arises only in the situation where both the university and the R&D company have submitted proposals and the company has been successful. Assuming that the professor has acted ethically throughout-refused to participate in proposal preparation on behalf of the company and fully disclosed his interest in the R&D company to both the university and to the Government agency-he may ethically retain his interest in and connection with the company.

Conclusions:

1. It is ethical for the professor to participate in the preparation of a proposal for the university under these circumstances.

2. It is not ethical for the professor to participate in the preparation of a proposal for the private R&D company unless the university will not submit a proposal and so advises the professor.

3. It is ethical for the professor to participate in the project for the university if its proposal is accepted by the Government.

4. It is not ethical for the professor to participate in any degree in the project for the private R&D company in which he holds an interest unless the university did not submit a proposal and so advised the professor.

5. It is ethical for the professor to retain his interest in the private R&D company under the circumstances stated provided there was full disclosure of his financial interest in the company to the Government agency prior to the contract award.

BOARD OF ETHICAL REVIEW FOR THESE CASES: T. C. Cooke, P.E., James Hallett. P.E., C.C. Hallvik. P.E., W. S. Nelson, P.E., N.O. Saulter. P.E., K. F. Wendt, P.E., A. C. Kirkwood, P.E., Chairman

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