Report on a Case by the Board of Ethical Review

Case No. 65-5

Subject: Competitive Bidding-Professional Services Integrated with Construction
Section 11(c)-Code of Ethics

Facts:
Example A - A company offering engineering design and construction services to clients submits a combined bid for both phases of a project. The bid price does not identify the portion which is for engineering design and the portion which is for construction.

Example B - A company offering engineering design and construction services to clients submits separate bid price proposals for the engineering design and for the construction of a project.

Question:
Does the submission of price proposals for engineering services violate the ethical prohibition against competitive bidding (A) when the engineering and construction prices are combined, (B) when the engineering and construction prices are separated?

Reference:
*Code of Ethics-Section 11(c)- "He shall not solicit or submit engineering proposals on the basis of competitive bidding. Competitive bidding for professional engineering services is defined as the formal or informal submission, or receipt, of verbal or written estimates of cost or proposals in terms of dollars, man days of work required, percentage of construction cost, or any other measure of compensation whereby the prospective client may compare engineering services on a price basis prior to the time that one engineer, or one engineering organization, has been selected for negotiations. The disclosure of recommended fee schedules prepared by various engineering societies is not considered to constitute competitive bidding. An engineer requested to submit a fee proposal or bid prior to the selection of an engineer or firm subject to the negotiation of a satisfactory contract, shall attempt to have the procedure changed to conform to ethical practices, but if not successful he shall withdraw from consideration for the proposed work."

Discussion:
The rationale of Section 11(c) of the Code is that competitive bidding for professional services is not in the best interests of the client because it tends to place emphasis on price rather than quality. The definition of competitive bidding spells out the various methods whereby a client might be able to compare engineering services on a price basis as between two or more engineers or firms. This is the evil sought to be corrected. The procedure should be such that the client cannot compare engineering services on a price basis. Rather, the thrust of the Code is that engineers should offer their services to the client on the basis of competence and quality, and that any system by which those

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services may be compared on a price basis may lead to competition on the primary basis of cost rather than quality of 'services.

In Example A, the combined price offer for engineering design and construction does not permit a price comparison for engineering services alone because the price for that portion of the work is combined with the construction services.

In Example B, however, the client receives separate proposals for the engineering services and is in a position to make a price comparison for the engineering portion of the work.

Conclusion:
Example A - It is ethical for a company offering engineering design and construction services to submit a combined bid for both phases of a project.

Example B - It is unethical for a company offering engineering design and construction services to submit a separate price proposal for engineering services before selection of the firm for the work.

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