Report on a Case by the Board of Ethical Review

Case No. 66-2

Subject: Fee Credit for Preliminary Design
Section 9-Code of Ethics; Section 9(a)-Code of Ethics; Section 9(b)-Code of Ethics; Section 11-Code of Ethics.

Facts:
John Smith, P.E., a consulting engineer, was retained to perform a preliminary study of a proposed project for a lump sum fee of $10,000. The contract provided that the owner reserved the right to employ a different engineer for the design phase of the project, if he so desired. However, it further provided that if Smith was retained for the design he would credit fifty (50) percent of his fee for the preliminary study against the design fee.

Question:
Is it ethical for an engineer to credit a portion of his fee for a preliminary study against the design fee if the design phase of the project is awarded to him?

References: Code of Ethics-Section 9-"The Engineer will uphold the principle of appropriate and adequate compensation for those engaged in engineering work."

Section 9 (a) -"He will not undertake or agree to perform any engineering service on a free basis, except for civic, charitable, religious, or eleemosynary nonprofit organizations when the professional services are advisory in nature."

Section 9 (b) -"He will not undertake work at a fee or salary below the accepted standards of the profession in the area."

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."

Discussion:
Whether under these circumstances the engineer is acting in accord with the principles of appropriate and adequate compensation (Sec. 9) and in conformity with a fee generally adhering to the accepted standards of the profession in the area (Sec. 9 (b)), is to be determined by an examination of the basic premise that the engineer should be properly compensated for the work he has performed. For this purpose, we assume that the $10,000 for the preliminary study was a fair and reasonable fee for the work involved.

In the situation before us we believe that the arrangement amounts to nothing more than a recognition that if Smith is retained for the design phase it will not be necessary

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for him to repeat that portion of the work which was covered in the preliminary phase, therefore a credit is to be allowed in order that the client not be required to pay twice for the same work. This is a proper and fair relationship in the interests of the client.

Whether the credit should be fifty percent, more or less, depends upon the extent to which the work in the preliminary phase is applicable to the design phase. Under some circumstances it may be appropriate to give a higher credit, and in other circumstances it may be proper not to allow any credit for the preliminary work if the scope and nature of the project should change to such an extent that the findings from the preliminary study are no longer pertinent. In any event, the amount of the credit is a matter for negotiation between the client and the engineer under all applicable conditions.

We also find no problem in this arrangement with regard to the restrictions of Section 11 on unfair competition with other engineers. Here Smith was not attempting to foreclose the client from choosing another engineer for the design phase by providing for the fee credit. Under normal circumstances it is usually to the advantage of the client to retain the same engineer for the entire project, but the contract merely provides that should the client wish to make a change he may do so. Should the client so decide it would be expected that the second engineer would likewise determine the extent of credit to be allowed for the design phase based on the work performed by Smith, and this, in turn, would depend upon the extent to which that work was still applicable and usable for the project as it may then stand.

Conclusion:
It is ethical for an engineer to credit a portion of his fee for a preliminary study against the design fee if the design phase of the project is awarded to him.

Board of Ethical Review for these cases: T. C. COOKE, P.E., JAMES HALLETT, 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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