Report on a Case by the Board of Ethical Review

Case No. 69-7

Competitive Bidding - Submission of Project Cost

Facts:
Consulting engineers "A" and "B" were contacted individually, and without the knowledge of each other by a city manager, concerning the expansion of a sewerage system.

Engineer "A" prepared a scope of services and a proposal which he submitted with a lump sum fee for his compensation based on his understanding that he had been selected. Engineer "A" did not have an office in the city. In a subsequent conversation with Engineer "B," who did have an office in the city, he casually inquired why Engineer "B" had not been selected, knowing that Engineer "B" was qualified in the particular field of practice involved. Engineer "B" told Engineer "A" that he had submitted a proposal on the technical aspects of the work, together with the applicable state society fee schedule to indicate the general range of compensation.

Shortly after the conversation between Engineers "A" and "B", the city manager requested Engineer "B" to provide a dollar value of the potential construction cost for the expanded system in order that the city might relate the fee schedule to the engineering cost. Engineer "B" requested the city to follow the established practice of selecting the engineer on the basis of qualification only before attempting to evaluate the potential engineering fee. The city declined to follow this procedure, and Engineer "B" withdrew his name from further consideration.

Engineer "A" upon being advised of the facts by Engineer "B" declined to withdraw his earlier proposal on the ground that he had made his proposal in good faith and without knowledge that the city had contacted another engineer in connection with this project.

Questions:
Q.1. Would it have been unethical for Engineer "B" to submit an estimated dollar value of the potential construction cost for the expanded system?

Q.2. Was Engineer "A" unethical in not withdrawing his proposal upon learning that the city had also contacted Engineer "B" for the same service?

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

Copyright © 1969 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

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. These principles shall be applied by the engineer in obtaining the services of other professionals."

Discussion:
The Code specifically permits the submission of a society-recommended fee schedule prior to selection of an engineer for negotiation. This is general information which is designed to give the client some idea of the range of fees for particular types of engineering services, and by itself does not constitute an offer by an engineer for a particular assignment. When coupled with an estimated construction cost, however, the engineer submitting such estimated construction cost has taken individual action to permit the client to derive an actual fee by comparing the estimated construction cost with the fee table or chart in the schedule.

This is exactly what Section 11 (c) of the Code prohibits. Reduced to its simplest form, Section 11(c) holds that an engineer may not submit any fee data which will permit the client to compare engineering services on a price basis prior to the time that the client has selected one engineer or one engineering organization for negotiation of a mutually acceptable contract, including the compensation to the engineer. For the benefit of nonengineers who may read this opinion, it is worth repeating and emphasizing that the Code does not hold the price of engineering services to be unimportant or improper. The crucial point is when price or fee is discussed and agreed upon. The right time for that discussion and decision is after the client has selected the engineer deemed by him to be best qualified for the project under consideration.

Engineer "B" acted in full accord with the Code when he withdrew from further consideration upon learning that the city had requested proposals from two engineers, including fee information.

Engineer "A," on the other hand, even though he acted innocently in submitting his proposal, including fee, violated the specific requirements of the Code when he declined to withdraw his proposal upon learning the facts, until the city agreed to follow the proper procedure for selection of the engineer. He had a sound ethical defense for his action to that point, but it is no defense for him to allow his proposal to stand when it became clear that the client was attempting to weigh the relative merits of Engineers "A" and "B" on a price basis. Even though the city may have been sincere in wanting the information only so it could better understand the relationship of the state society fee schedule to the potential construction value, the language of Section 11 (c) is clear in ruling out any procedure whereby a prospective client "may" compare engineering

Copyright © 1969 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

services on a price basis prior to the selection of the engineer. The sincerity or good intent of the city may not excuse Engineer "A" from his duty under the Code.

Conclusion:

Q. 1. It would have been unethical for Engineer "B" to submit an estimated dollar value of the potential cost for the expanded system under the conditions stated.

Q. 2. Engineer "A" was unethical in not withdrawing his proposal upon learning that the city had also contacted Engineer "B" for the same service.

*__Note__-This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

BOARD OF ETHICAL REVIEW CASE REPORTS: The Board of Ethical Review was established to provide service to the membership of the NSPE by rendering impartial opinions pertaining to the interpretation of the NSPE code of ethics.

BOARD OF ETHICAL REVIEW: Frank H. Bridgers, P.E., James Hallett, P.E., C.C. Hallvik, P.E., N.O. Saulter, P.E., Sherman Smith, P.E., Kurt F. Wendt, P.E., T.C. Cooke, P.E., Chairman.

Copyright © 1969 National Society of Professional Engineer (NSPE) www.nspe.org . All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).