Report on a Case by the Board of Ethical Review

Case No. 71-9

Competitive Bidding - Rental of Aircraft

Facts:
A consulting engineering firm offers photogrammetric services to the public. and the firm owns an aircraft which is specially equipped for this purpose. The state purchasing agent has issued an invitation to bid to the firm (and others in similar situations) to rent the aircraft. State employees would man the aircraft, take the pictures, and interpret the data. The firm invited to bid would not supply any professional or other services to the state.

Question:
Would it be ethical for the firm to submit a bid for the rental of its aircraft?

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

Discussion:
Section 11 (c) first refers to "engineering proposals" in stating the basic principle regarding competitive bidding, but this reference is immediately followed by reference to competitive bidding for professional engineering services. It is doubtful that the submission of a bid by a professional engineering firm for the rental of an aircraft is the submission of an "engineering proposal," but we do not need to labor that semantic question because it is clear that in context Section 11 (c) only forbids the submission of bids for "services." The rental of an aircraft by itself, whether by a professional engineering consulting firm or by any other organization which may own an aircraft suitable for the purpose, is not "services" within the meaning and intent of Section 11 (c) of the code.

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The purpose of Section 11 (c) is to prevent the furnishing of professional services on a basis which will or could lead to inferior performance in an area which involves the public health or safety by placing reliance upon a low bid as distinguished from qualification for and quality of services furnished. This danger, which is real in the case of professional design services related to physical structures, is nonexistent or minimized to a point of no consequence when related to the furnishing of equipment or material. Thus, if an engineering firm for some special reason should be willing to rent surveying equipment or a truck it owns, or permit others to use its facilities to reproduce blueprints or to sell computer time. Section 11 (c) is not applicable and there is no ethical basis for the firm in those cases to be compelled to avoid bidding for such business transactions.

We would be confronted with quite a different question if the firm in this case were also to furnish interpretations and professional documents based on the pictures taken by the use of its aircraft. In that event we would have to consider whether the bid for the combined rental of the aircraft and the professional services was in a form which would permit the client to compare engineering services on a price basis (See Case 65-5.)

Conclusion*:
It would be ethical for a firm to submit a bid for the rental of its aircraft.

*** 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

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Note-Although not binding on BER, which decides cases solely on the Code of Ethics, we note that NSPE Professional Policy 10-F is in conflict with Section 11(c) in that the NSPE Professional Policy adds, "This policy applies to all services provided by a professional engineering firm." This point has been referred to the Ethical Practices Committee by the NSPE Board of Directors for revision or possible deletion of the entire policy as being redundant.

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