Report on a Case by the Board of Ethical Review

Case No. 77-3

Appropriate Compensation for Engineering Services

Facts:
An Architect-engineering firm, A, was retained by an educational institution to design a sports arena. An important part of the criteria for the new facility was to design it from an energy conservation standpoint. To meet this requirement, Firm A retained Firm B, an out-of-state engineering firm which had extensive experience in the design of sports arenas and expertise in designing mechanical systems reflecting energy conservation objectives but requested that Firm B associate with Firm C, a local engineering firm which Firm A normally used for mechanical design. A principal of Firm B met with a principal of Firm C and promptly entered into discussions on the technical design concepts and procedures to be followed. During these meetings the mechanical and electrical portions of the schematic phase submission were completed.

Following the initial technical reviews between B and C the respective principals agreed on a fee arrangement under which the two firms would jointly receive a fee based on four percent of the construction cost for the mechanical, electrical and HVAC portions of the project cost which was, for the portion of the project, 2/3 of the prime A/E's fee of six percent. Firm B would receive 80 percent of that portion of the fee, attributable to the HVAC design, and Firm C would receive 100 percent of the fee for the electrical and plumbing portion and would receive 20 percent of the HVAC portion of the fee for local coordination with the prime professional A/E firm, the field inspection, and providing the input data for the energy analysis computer program required by the client.

The prime A/E firm disagreed with this arrangement and insisted upon a three percent fee for the mechanical, electrical, and HVAC design, less deductions which would have reduced the four percent to approximately 2.5 percent. This arrangement was not acceptable to Firm B and the involvement of Firm B in the project was terminated.

Question:
Was it unethical for the engineering principals of the prime A/E firm to insist upon paying a fee to Firm B which was unacceptable to Firm B for its services under the circumstances?

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

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Discussion:
We accepted this case with some reluctance because it deals with one of the more general and undefined portions of the Code of Ethics and because of the difficulty in relating fee arrangements between engineers to ethical standards. Nevertheless, the code does speak to the subject, even if in broad terms which require some degree of definition or guidance.

The most obvious first comment to be made is that it is unfortunate that the parties did not first agree to the terms and conditions of the professional relationship, including agreement on the fee arrangement, before undertaking any performance of the services. That is certainly the normal and proper procedure when engineers deal with each other and one which should always be followed to the extent possible. At the same time, however, we recognize that as a practical matter there are situations in which time is of the essence and that in such cases the engineer may have both a practical and even an ethical need to expedite the start of services to meet the time requirements of the client.

Over the years there has not been formulated any standard interpretation or means to define "appropriate" and "adequate" in terms of compensation for engineering services. There are, of course, recognized fee guides and manuals published by various national or state engineering groups, but these are most often only descriptive of usual or normal fees for various types of services by type of project as percentages of estimated construction cost or on a per diem basis. In any event, these kinds of fee guidelines are only general references and are not mandatory or capable of being mandatory in any ethical sense.

It is not within our purview to offer a definitive judgment on the adequacy of the fee offered by the prime A/E firm to Firm B, except to note that the guiding ethical principle should be that when one engineer contracts with another for professional services the fee should be adequate to permit the level of quality of services which will best insure that the final result for the ultimate client will meet the test imposed by the code to place the interests of the client above all other considerations. If the prime A/E firm had undertaken a fee arrangement with the client at a fee too low to permit it to pay Firm B an adequate fee for its services, it is nevertheless ethically required to pay its consultants an adequate fee, even if that diminishes the profit of the prime fir.

We cannot and do not say what an exact figure should be to accomplish the stated ethical principle. The only available guideline is to determine the historical or prevailing pattern of compensation in the particular area for the type of skills required. If the parties cannot determine the issue by that standard, one recourse is to submit the matter by agreement to an impartial arbitrator or mediator with the pertinent professional experience and expertise in the subject matter. Another approach is to engage in legal proceedings, a procedure which is costly to all and to be avoided in professional relationships to the extent possible. But in the absence of an agreement of the parties on compensation for professional services the code provision can only be read as a guideline not admitting of a basis for ethical control in specific fact situations.

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Conclusion:*
It was not unethical for the engineering principals of the prime A/E firm to insist upon paying a fee to Firm B which was unacceptable to Firm B for its services under the circumstances.

**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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