Report on a Case by the Board of Ethical Review

Case No. 80-4

Participation of Engineer with Competing Firms for Same Contract

Facts:
Engineer Able, on behalf of the firm of which he is a principal, submitted a statement of qualifications to a governmental agency for a project. In due course he was notified that his firm was on the "short list" for consideration along with several other firms, but it was indicated to him that his firm did not appear to have qualifications in some specialized aspects of the requirements, and that it might be advisable for the firm to consider a joint venture with another firm with such capabilities. Engineer Able thereupon contacted Engineer Baker, a principal of a firm with the background required for the specialized requirements, and inquired if the Baker firm would be interested in a joint venture if Able was awarded the job. The Baker firm responded in the affirmative.

Thereafter, Engineer Carlson, a principal in a firm which was also on the "short list," contacted Engineer Baker and indicated the same requirement for a joint venture for specialized services, and also asked if the Baker firm would be willing to engage in a joint venture if the Carlson firm was selected for the assignment. Baker also responded in the affirmative to Carlson but did not notify Able of his response to Carlson.

Question:
Is it ethical for Engineer Baker to agree to participate in a joint venture arrangement with more than one of the several since he did not make a full disclosure to all of the firms?

References:
Code of Ethics - Section 1 - "The Engineer will be guided in all his professional relations by the highest standards of integrity, and will act in professional matters for each client or employer as a faithful agent or trustee."

Section 8 - "The Engineer shall disclose all known or potential conflicts of interest to his employer or client by promptly informing them of any business connections, interests, or other circumstances which could influence his judgment or the quality of his services, or which might reasonably be construed by others as constituting a conflict of interest."

Discussion:
As is often the case in a particularized set of facts, the code does not specifically address the question, but we have the latitude to read related sections of the code to apply within reasonable limits. On that basis, we believe that 8 on conflicts of interest and 1 on professional integrity are stated broadly enough to provide a basis for an opinion.

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The thrust of 8 is to require full and complete disclosure of known or potential conflicts of interest, but it does not necessarily rule out such conflicts if they exist. If there was objection by any party, the ethical question would have to be determined under the pertinent facts of that case.

We do not have to reach that question in this case, however, because there is not a conflict of interest under the facts before us. The code does not define "conflict of interest," nor do our previous cases provide a definitive statement of its intent or meaning. At the very least, however, as stated in Case 67-1, it means that "a professional person may not take action or make decisions which would divide his loyalties or interests from those of his employer or client."

In this case there is no potential or actual division of loyalty as to either the Able or Carlson firm on the part of Baker. Assuming that Baker is willing to work out a joint venture agreement with either firm which might secure the contract his loyalty would be centered only with the one selected firm. As a joint venturer, in fact, he would be a party to a single legal entity (the joint venture) for the one contract.

Technically, the disclosure requirement of 8 would not mandate that Baker advise Able of the contact from Carlson or advise Carlson that he had talked to Able because at this point Baker does not have a "client," as such. However, the requirement of 1 for highest standards of integrity makes it ethically necessary for Baker to contact both of the firms and advise each that he had indicated his willingness to participate in a joint venture with either. In this connection we consider the agreement of Baker to work with Able constitutes a relationship of trust which should not be diluted by establishing a similar and possibly competitive relationship with Carlson unless disclosure is made to all concerned.

Conclusion:
*It is unethical for Engineer Baker to agree to participate in a joint venture agreement with more than one of several firms being considered for an engineering engagement since he did not make a disclosure to all of the firms.

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