# CONFLICT OF INTEREST
# SPECIFYING EQUIPMENT OF COMPANY OWNED BY ENGINEER

***Case No. 98-11***

**Facts:**
Engineer A is asked by a firm to prepare specifications for an air compression system. Engineer A made the firm aware that she is the President (and major shareholder) of a company that manufactures and sells air compression systems and that she has no problem with preparing a set of generic specifications. Engineer A also provides the firm with four other manufacturers that prepare air compression systems for bidding purposes, and Engineer A did not include her company as one of the four specified manufacturers.

The firm now wants to meet with Engineer A and a salesman from her company. Engineer A indicated to the firm that it might be a conflict-of-interest.

**Question:**
Would it be a conflict of interest for Engineer A to prepare a set of specifications for an air compression system and then have her company manufacture the air compression system under the facts?

**Reference:**

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| *II.4.* | - | *Code of Ethics:* | *Engineers shall act for each employer or client as faithful agents or trustees.* |
| *II.4.a.* | - | *Code of Ethics:* | *Engineers shall disclose all known or potential conflicts of interest which could influence or appear to influence their judgment or the quality of their services.* |

**Discussion:**
The facts in the present case raise a fundamental issue concerning the manner in which engineers may properly provide professional services and specify products from companies which they control, in light of the language contained in the NSPE Code of Ethics Section II.4.a., which requires engineers to disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.

BER Case 75-10 involved a set of facts similar to the present case. There, Engineer A was employed on a full-time basis by a radio broadcast manufacturer as a sales

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representative. In addition, Engineer A performed consulting engineering services to organizations in the radio broadcast field, including analysis of their technical problems and, when required, recommendation of certain radio broadcast equipment as may be needed. Engineer A's engineering reports to his client were prepared in form for filing with the appropriate governmental body having jurisdiction over radio broadcast facilities. In some cases, Engineer A's engineering reports recommended the use of broadcast equipment manufactured by his employer. After reviewing previous Board of Ethical Review cases relating to conflicts of interest (see BER Cases 72-9 and 74-4), the Board concluded that Engineer A may ethically provide consulting services as described only if there is full disclosure of all the facts and circumstances to his client. In reaching its conclusion, the Board noted that it would have been preferable if the client could rely on the technical judgment and recommendations of an engineer without any financial interests in the equipment of any manufacturer, but it is understood that under some circumstances, the client may wish to retain the services of an engineer with an apparent conflict of interest. In the later instance, the client must have full knowledge of all the circumstances; otherwise the client has been defrauded.

Turning to the facts of the present case, although Engineer A was the President and major shareholder in a company that manufactured and sold air compression systems, clearly Engineer took all necessary and reasonable steps to disclose all potential conflicts of interest in order to avoid any appearance of a conflict. By immediately disclosing the fact that she had a major interest in an air compression manufacturing company, by suggesting the name of four other alternative manufacturers, and by raising the issue before it surfaces as a result of possible appearances, Engineer A has acted consistently with the Code. Unlike the previous provisions of the Code that required the engineer to "avoid" conflicts of interest, the current code acknowledge that conflicts do arise and imposes upon the engineer the responsibility to take all reasonable steps to notify and advise the client – leaving it up to the client whether to proceed with the services of the engineer. It is the Board's view that Engineer A's conduct was in keeping with Code provision that engineers must disclose all known conflicts of interest which could influence or appear to influence their judgment or the quality of their services.

**Conclusion:**

It would not be a conflict of interest, and therefore ethical, for Engineer A to prepare a set of specifications for an air compression system and then have her company manufacture the air compression system under the facts.

**BOARD OF ETHICAL REVIEW**

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