

**Selection of Firm—
Promise of Future Engineering Work on a Public Project**

Case No. 08-8**Facts:**

Engineer A is a principal in a medium-sized engineering firm with expertise in mechanical and electrical engineering. Engineer A's firm is retained on a speculative basis by Engineer B, a local civil engineer, to assist City X in applying for a federal grant for certain wastewater treatment equipment upgrades for the city's wastewater treatment facility. The application is successful, City X obtains the grant, and Engineer B is retained to design the waste water equipment upgrades. In recognition of Engineer A's work in securing the grant, Engineer C, the chief city engineer, verbally promises to select Engineer A's firm on a future engineering project for City X.

Question:

Was it ethical for Engineer C to offer to select Engineer A's firm on a future engineering project for City X?

References:

- Section I.6. - NSPE Code of Ethics: *Engineers, in the fulfillment of their professional duties, shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.4.b. - NSPE Code of Ethics: *Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*
- Section III.1. - NSPE Code of Ethics: *Engineers shall be guided in all their relations by the highest standards of honesty and integrity.*

Discussion:

The manner in which engineers and engineering firms are selected and compensated has, in the past, been the subject of various provisions of the NSPE Code of Ethics as well as NSPE Board of Ethical Review opinions. However, over the past 40 years, as a result of a series of actions undertaken by the U.S. Justice Department, antitrust, and First Amendment rulings by the U.S. Supreme Court, NSPE and other engineering organizations (as well as medical, legal, dental, and accounting professional societies) have been required to remove or modify Code of Ethics provisions. These provisions relate to professional selection, compensation, restrictions on competitive bidding, free engineering, supplanting, advertising, and other practices. Therefore, these professional groups, including NSPE, are prohibited from issuing ethical or other policy guidance in these and other areas. At the same time, among one of the most fundamental outcomes

of these antitrust actions and rules was the basic principle that federal, state, and local laws governing procedures to procure engineering services are not affected and remain in full force and effect. The Board believes that this case should be viewed in light of that basic principle.

For purposes of this case, this Board is assuming that public procurement laws and regulations were in place that outlined the policies and the procedures for selecting an engineering firm. Assuming that was the case under the present facts, it is the Board's view that Engineer C's action in verbally agreeing to select Engineer A's firm on a future engineering project for City X would constitute a subversion or a misuse of the existing procurement policies and procedures in place in City X. Regardless of the method of professional selection utilized in City X, one must assume that the method would, at a minimum, involve public announcement along with free and open opportunity for all qualified and eligible engineers and engineering firms to be considered for the contract. By promising Engineer A in advance that Engineer A would be selected for a future contract without considering the qualifications, experience, and other factors is not consistent with either the spirit or the intent of the NSPE Code of Ethics.

Conclusion:

It was not ethical for Engineer C to promise to select Engineer A's firm on a future engineering project for City X.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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