

Preamble	- Code of Ethics
Section I.5.	- Code of Ethics
Section II.1.d.	- Code of Ethics
Section II.2.a.	- Code of Ethics
Section II.4.a.	- Code of Ethics

### **DESIGN/BUILD -- POSSIBLE COMPROMISE OF PROFESSIONAL JUDGMENT**

#### **FACTS:**

A large utility in a large state is looking for a design/build or turnkey approach for its new project. In order for Engineer A to compete on this project, he is required to establish partnerships with manufacturing and construction contracting firms. Each partner is responsible for its own expenses in preparing the proposal.

Engineer A is requested to make a proposal to the utility on behalf of the partnership. The agency requires that preliminary engineering be done at the proposal stage. Engineer A was required to prepare a series of simple layouts so that the contractor could estimate its part of the project. Each of the partners had a significant investment in time which each partner covered with the understanding that if the partnership receives the project each partner will recover its costs.

Engineer A is concerned that this type of partnering arrangement may involve contingencies under which his professional judgment may be compromised.

#### **QUESTION:**

Is it ethical for engineers to engage in partnerships of this type?

**DISCUSSION:**

The facts of this case describe a construction process commonly known as "design/build and/or turnkey." This construction process has been used by industry for many years and is becoming more commonly used in governmental work. This is an accepted approach to construction by both the business community and the profession. Therefore, this approach described by the facts raises no business concerns and the issues turn solely on the ethical considerations.

The Board expressed the opinion in Case 65-5 that it is ethically permissible for an engineering firm to submit a combined bid for design and construction services, provided that the combined bid did not include a separate price proposal for the engineering services alone. Case 76-9 considered participation of an engineer with a contractor either by joint venture or through a contractor-subcontractor relationship. In this case the Board found either approach would be ethically acceptable. Engineer A preparing the proposal does not create an ethical concern.

The Board notes that the NSPE Board of Directors adopted a policy in 1965 which recognizes that design/construct or turnkey is an established and acceptable practice provided that engineering services are performed under the direction of a registered professional engineer.

Since NSPE has adopted a policy acknowledging the acceptability of this type of construction process and this has been confirmed by prior BER cases, Engineer A complies with the Preamble requiring the adherence to the principles of ethical conduct on behalf of the public, clients, employers and the profession. In as much as the utility has solicited proposals for a design/build process, Engineer A has avoided deceptive acts as required in Section I.5. of the Code. The Board assumes, that since Engineer A participated in the selection of the partners to submit a response to the request for a proposal, all the participants are of good reputation and that Engineer A meets the ethical requirements of Section II.1.d. All, if any, conflicts of interest have been disclosed to the utility since it is apparent that Engineer A is working closely with a contractor and a manufacturer per the request for a turnkey proposal thus complying with Sections II.4.a., III.5. and III.7.a.

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The facts of this case notes that Engineer A will be associated with a manufacturer and a contractor, implying that each will limit their activities to their respective fields of expertise. Therefore, Engineer A has complied with the commitment of Section II.2.a.

Finally, Engineer A is accepting compensation solely from the utility and none from the contractor or manufacturer. Each of the participants is preparing the proposal at his own expense. This, in the Board's opinion, complies with the intent of Section II.4.d.

The Board notes in closing that, although the procedures outlined in the facts of the case meet the ethical tests, an engineer should not participate in an endeavor where the engineer has a personal concern that the "arrangements may involve contingencies under which his professional judgment may be compromised."

### **CONCLUSION:**

Engineers may ethically participate in a design/build project as stated in the facts of this case.

### **BOARD OF ETHICAL REVIEW**

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