

*Approved
December 7, 1995*

Section II.4.a. - Code of Ethics
Section II.4.c. - Code of Ethics
Section II.5.b. - Code of Ethics
Section III.5.b. - Code of Ethics

**PROMOTIONAL EFFORTS -- PROVIDING REFERRAL FEES TO A
CONTRACTOR**

FACTS:

Engineer A receives the following letter from a contractor:

Dear Engineer A:

*If you have not already heard of us, please allow me to introduce myself.
I am Contractor X, owner of X Construction Company.*

We are a medium-sized general contractor firm with twenty years experience. One of my company's strengths is our ability to interpret a blueprint or drawing and properly execute the construction of the project as it was conceived.

This year I would like to associate my company with an engineering firm that we can refer clients to and receive clients from. I understand that there is a necessary ethical distance that must be maintained between an engineer and a contractor. I also know that it is not unethical for an engineer to provide their clients with a list of a few qualified contractors.

As an incentive to include my company on such list or as a referral to your clients, I am prepared to offer you a flat \$500 plus 3% of the total contract price, as a finders fee/commission for every contract I sign as a result of your referral.

Once a client has called for an estimate of proposal, we work directly with them. I will in no way use your good name or any association with your firm as a sales tool.

All I ask is for is the opportunity for my firm's proposal to be included in the client's decision-making process.

We both work from different ends of the same field. It is possible for our firms to establish an arm's length relationship, it can be very beneficial to both of us.

We are fully licensed, insured, registered with the Better Business Bureau and can provide a long list of satisfied clients.

Please call or write if you would like to discuss this further and take full advantage of this new season which is just underway.

Sincerely yours,

Contractor X

QUESTION:

Is it ethical for Engineer A to associate with Contractor X and the X Construction Company under the circumstances being proposed in this situation?

DISCUSSION:

It is essential that an engineer maintain an “arms length” relationship with contractors, vendors, etc. having, or potentially having, contractual arrangements with the engineer’s employer or client. The Board considered this

relationship in Case 81-4. In this situation, three principals or employees of a consulting firm provided a list of recommended contractors to their developer clients. From time-to-time, at holidays or on birthdays, these contractors and vendors with whom the engineers dealt would give the engineers personal gifts or substantial value. Citing previous cases and language of the Code (Sections II.4.c., II.5.b. and III.5.b.), the Board concluded there was a reasonable suspicion to others, and particularly to other contractors and suppliers, that acceptance of gifts by the engineers would imply favoritism. The Board determined that acceptances of gifts under these circumstances was unethical.

Case 83-5 addresses a somewhat similar situation. In this case a landscape architect proposed to refer prospective clients to an engineer. The potential projects would have a limited amount of landscape architecture involvement and the engineer would compensate the landscape architect a fee over and above the fee the architect would normally receive for his services. The Board cited Sections II.4., II.5. and II.5.b. In the cited sections of the Code and in previous cases, we determined that an engineering firm may not ethically enter into a marketing agreement with an individual on a commission basis. While the case before the Board at this time is the reverse of 83-5, that is, the engineer is the marketer or referral agent, the same ethical concerns should apply.

Two primary issues are involved in the case before the Board: (1) Engineer A making referrals to his clients and (2) receiving a commission for making referrals to his clients and others. Engineer A’s referral to his clients is a definite conflict of interest due to receiving a commission for doing so. Contractor X makes no suggestion that Engineer A disclose to his client his conflict of interest as required by Section II.4.a. of the Code. In addition, Section II.4.c. prohibits the receiving of commission or other valuables from a contractor. Contractor X’s proposal will be a violation of this Section. While Section II.5.b. addresses political contributions, a broad interpretation of the Section would indicate that an engineer receiving contributions (commissions) or other valuable considerations would also be a violation of the Code.

BER Case 95-3

CONCLUSION:

It would not be ethical for Engineer A to associate with Contractor X and the X Construction Company under the circumstances being proposed in this situation.

BOARD OF ETHICAL REVIEW

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