

Report on a Case by the Board of Ethical Review

Case No. 60-2

Subject:

Competitive Bidding-Professional Services—Canon 26, Canons of Ethics; Rule 48, Rules of Professional Conduct; Rule 49, Rules of Professional Conduct; Rule 50, Rules of Professional Conduct; Rule 51, Rules of Professional Conduct.

Facts:

Engineering firms "A", "B" and "C" are separately invited by a client to appear at an interview to discuss various aspects of an engineering design project which the client has under consideration. Each invitation makes it clear that the interview will be of a preliminary nature, following which the firm may be selected for the project. At the separate interviews, unknown to each other, each firm is asked to submit in writing a detailed proposal of the scope of the services to be furnished, including a statement of the estimated charges for engineering services, expressed in terms of money, man hours or other work units. Prior to submitting such a proposal, each firm learns that the others have also been asked to furnish similar information.

Questions:

1. Would it be proper for the firms, acting independently, to provide the client with a statement of the estimated charges for engineering services expressed in terms of money, man hours or other work unit information?
2. On learning of the full facts, were the engineering firms obligated to decline to participate further?

References:

Canons of Ethics-Canon 20- "He will not compete with another engineer on the basis of charges for work by underbidding, through reducing his normal fees after having been informed of the charges named by the other."

Rules of Professional Conduct Rule 48-"The practice of engineering is a learned profession, requiring of its members sound technical training, broad experience, personal ability, honesty and integrity. The selection of engineering services by an evaluation of these qualities should be the basis of comparison rather than competitive bids."

Rule 49-"Competition between engineers for employment on the basis of professional fees or charges is considered unethical practice by all professional engineering groups. Any engineer who is requested to submit a competitive bid to an owner or a governmental body should remove himself from consideration for the proposed work."

Rule 50-"Should the engineer be asked for a proposal to perform engineering services for a specific project, he should set forth in detail the work he proposes to accomplish and an indication of the calendar days required for its accomplishment. The engineer's qualifications may be included if appropriate. A statement of monetary remuneration expected shall be avoided until he has been selected for the proposed work.

"Should the owner insist upon a statement regarding remuneration prior to selection of the engineer, the engineer may designate the recognized professional society minimum fee schedule for the particular type of service required in the geographical area where the work is to be done."

Rule 51- "He will take a professional altitude in negotiations or his services and shall avoid all practices which have a tendency to affect adversely the amount, quality, or disinterested nature of professional services; such as charging inadequate fees for preliminary work or full services, competing for an engineering assignment on a price basis, spending large amounts of money in securing business or consenting to furnish monetary guarantees of cost estimates."

NSPE Policies - "Competitive bidding for Professional Services." The practice of engineering is a learned profession requiring of its members sound technical training, broad experience, personal ability, honesty and integrity. The selection of engineering services by an evaluation of these qualities should be the basis of comparison rather than competitive bids.

Competitive bidding by engineers for employment on the basis of professional fees or charges is considered unethical practice by all professional engineering groups, and makes it necessary for the engineer to remove himself from consideration.

Since the securing of competitive bids for professional engineering services is not in the best public interest and as such procedure frequently results in the awarding of the work to other than the best qualified engineer, the National Society of Professional Engineers does now and herein express itself as opposed to competitive bidding for professional engineering services and recommends the practice of negotiating contracts in all cases where it may be necessary or desirable to consider the service of more than one engineering consultant or organization.

Definition of Competitive Bidding-Competitive bidding for professional engineering services is defined as the formal or informal submission, or receipt, of verbal or written estimates of cost or proposals in terms of dollars, man days of work required, percentage of construction cost, or any other measure of compensation whereby the prospective client may compare services on a price basis prior to the time that one engineer, or one engineering organization, has been selected for negotiations. The disclosure of recommended minimum or median fee schedules prepared by various engineering societies is not considered to constitute competitive bidding.

Suggested Procedures for Negotiating-It is the policy of the Society that:

- (1) Any governmental unit, individual or corporation desiring to procure the services of an engineering consultant or organization which is unacquainted with the practitioners in the branch of engineering covering the contemplated work, should secure from the best available sources the names of several practitioners, and
- (2) The client should discuss the proposed project with a practitioner or practitioners, considering background, experience, staff qualifications, present work load, and other factors deemed relevant for the successful handling of the project assignment.
- (3) After taking into consideration all of the pertinent factors, except fee, the client should select a firm for the work, subject to negotiation of a satisfactory contract.
- (4) In the event the client and selected firm are unable to negotiate a satisfactory contract, including fee, the selected firm should be notified, in writing, that it is no longer being considered, and the client should proceed with similar discussions with another firm in the same manner, and thereafter if the second negotiations are unsuccessful until satisfactory arrangements have been concluded with a qualified firm.

Discussion:

Rule 48 is a clear prohibition of competitive bidding for professional engineering services, and Rule 49 reinforces the injunction against competitive bidding by declaring it specifically to be an unethical practice. The only question to be resolved on the basic point is whether compliance with the client's request would constitute competitive bidding.

NSPE policy defining competitive bidding, stipulates that the professional engineer should not provide information at the preliminary interview which may form the basis for price comparison. Likewise, the policy makes it clear that the initial interview should be solely to determine the qualifications and availability of the consultant for the project and that the fee should not be discussed until a firm has been selected for the work. The only exception is that the consultant may submit a recommended minimum or median fee schedule prepared by an engineering society for the general information of the prospective client. The rules and policy, read together, therefore, state that the consultant should not provide the prospective client with a statement of probable charge prior to his selection for the work.

Rule 49 is mandatory in requiring a professional engineer who is requested to submit a competitive bid to remove himself from further consideration for the work. We would read into this language, however, the opportunity for the professional engineers in this circumstance to advise the owner of the appropriate rules of ethical conduct and to suggest that the owner withdraw his request for competitive bids. The consultants may proceed with the discussion of qualifications and availability. Each firm is obligated to withdraw from consideration if required to submit estimates of charges for the work

(except general reference to a suggested minimum or median fee schedule of an engineering society) prior to being selected for the work.

Conclusions:

Q.1. - The firms may not ethically provide the client with a statement of the estimated charges for engineering services prior to selection for the work, as to do so would constitute competitive bidding.

Q.2. - Each engineering firm is obligated to withdraw from further consideration if required to submit information which would enable the client to make price comparisons prior to selection of a firm for the work.

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