

Report on a Case by the Board of Ethical Review

Case No. 64-4

Subject: Payment of Fee for Work Performed by Others

Section 2(a)-Code of Ethics; Section 4-Code of Ethics; Section 9-Code of Ethics;
Section 11-Code of Ethics.

Facts:

An engineering firm offers and provides professional services to municipalities under a contract form in which it is agreed by the parties that the engineering firm will perform certain preliminary planning and feasibility studies in connection with various public works, such as water supply, airports, drainage, storm sewers, sanitary sewers, water distribution, sewage treatment, etc. The contract provides that the engineering firm will be paid an appropriate fee for these preliminary professional services whether the project is built, or not. The contract further provides that if the project is built and if the same engineering firm is retained for the full professional services it will be paid the regular professional fee for such work, based on the usual type of negotiation. The municipality retains the right to select another firm for the design and construction phases, but in that case the engineering firm which performed the preliminary services will be paid an additional fee of one-and one-half (1-1/2) per cent of the estimated construction cost. If the project is not built, the engineering firm which performed the preliminary services is not entitled to any additional fee.

Question:

Is it unethical for an engineer to contract for an additional fee based on professional work performed by others under these circumstances?

References:

Code of Ethics-Section 2 (a) -"He will regard his duty to the public welfare as paramount."

Section 4-"The Engineer will endeavor to extend public knowledge and appreciation of engineering and its achievements and to protect the engineering profession from misrepresentation and misunderstanding."

Section 9-"The Engineer will uphold the principle of appropriate and adequate compensation for those engaged in engineering work."

Section 11-"The Engineer will not compete unfairly with another engineer by attempting to obtain employment or advancement or professional engagements by competitive bidding, by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

Discussion:

The effect of the contract arrangement is virtually to foreclose the municipality from engaging any other engineering firm for the design and construction phases for the project. In order for the municipality to engage any other firm it would be required to pay a "penalty" of one-and-one-half (1-1/2) per cent. Regardless of legal implications, public officials would be put into a most difficult position to justify the additional cost in the absence of unusual circumstances.

Section 9 of the Code of Ethics refers to "adequate" compensation for professional services and we may assume from the stated facts that the engineering firm was paid an appropriate fee for its preliminary services; therefore, it was "adequately" paid for the work it performed.

Section 11 of the Code of Ethics pertains to unfair competition for engineering services, and the question which arises from that language is whether the contract arrangement constitutes unfair competition, in general, even though other firms are not directly involved at the time the contract is executed. The language of Section 11 forbids "improper or questionable methods," which, in context, contemplates competition with others.

We cannot find under the literal language of the Code any specific or direct prohibition of the arrangement, but we think it is ethically improper by taking an unfair advantage of the municipality to the possible detriment of the reputation and honor of the profession. Such practice does not enhance public appreciation of the engineering profession because it borders on "sharp" practices at the possible expense of the public. Further, by limiting the choice of the municipality to a predetermined firm, except at the public expense through the payment of extra fees, the firm is in an untenable position under the dictates of Section 4 and also of Section 2 (a) which places the public welfare paramount to the interest of the engineer.

Conclusion:

It is unethical for an engineer to contract for an additional fee based on professional work performed by others under these circumstances.

Board of Ethical Review: T. C. COOKE, P.E. L. R. DURKEE, P.E. A. C. KIRKWOOD, P.E. WALDEMAR S. NELSON, P.E. N. O. SAULTER, P.E. KURT F. WENDT, P.E. PHIL T. ELLIOTT, P.E., Chairman