

## **Engineer's Duty to Report Government Contract Violations**

### **Case No. 09-4**

#### **Facts:**

Engineer A worked for the U.S. Government in a defense agency for many years as an engineer, rising to a fairly high managerial position in the government. Upon retirement, Engineer A accepts an executive position with SuperCom, a company producing electronic equipment for the military.

Shortly after coming on board with SuperCom, Engineer A is informed by a manager in another SuperCom division that, under an existing contract with the Department of Defense, a key test on an important product was not being performed in the manner specified by the contract. According to the employee, this practice had been going on for several years and the subordinate felt very uncomfortable about it. Engineer A, who had considerable expertise with the testing technology involved, looked into the matter carefully. Engineer A found that, the shorter and significantly less costly test had indeed been substituted by the company for one under the contract. But, after some review and study, Engineer A concludes that SuperCom's test was actually as effective as the specified test. Nevertheless, Engineer A takes his findings to SuperCom's upper executive management team and recommends that the company apply to the contracting agency for a contract change authorizing the simpler test. Following a meeting, SuperCom executives decide to continue with its current course of action. Since there were no safety or quality issues involved, and wanting to start out on the right foot with SuperCom, Engineer A decided not to pursue the matter further.

#### **Question:**

Was it ethical for Engineer A to not pursue the matter further?

#### **References:**

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| Section I.5.    | - | NSPE Code of Ethics: | <i>Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.</i>   |
| Section II.1.c. | - | NSPE Code of Ethics: | <i>Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.</i>  |
| Section II.1.e. | - | NSPE Code of Ethics: | <i>Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.</i>   |
| Section II.1.f. | - | NSPE Code of Ethics: | <i>Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.</i> |

- Section II.3. - NSPE Code of Ethics: *Engineers shall issue public statements only in an objective and truthful manner.*
- Section II.3.b. - NSPE Code of Ethics: *Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.*
- Section II.4. - NSPE Code of Ethics: *Engineers shall act for each employer or client as faithful agents or trustees.*
- Section III.4. - NSPE Code of Ethics: *Engineers shall not disclose, without consent, confidential information concerning the business affairs or technical processes of any present or former client or employer, or public body on which they serve.*

**Discussion:**

Over the years, the work that engineers perform for federal agencies, including the U.S. Department of Defense, has grown substantially. The work performed by engineering companies, including local, state, and the federal government, has risen to ever increasing heights. Today, many engineering companies depend upon work performed for civilian and military agencies for their survival.

There are distinct differences between the work performed by engineers for clients in the private sector and the public sector. Government contract laws, regulations, and practices are highly technical and engineers performing services in this field must become familiar with these sometime strict and rigid rules. Failure to follow the letter as well as the spirit of these rules can put engineers and their companies at significant risk of suspension, debarment, or civil and even criminal liability.

One example of a situation involving government services and ethical duties is BER Case 88-6. In that case, an engineer was employed as the City Engineer/Director of Public Works for a medium-sized city and is the only licensed professional engineer in a position of responsibility in the city government. The city had several large food processing plants that discharge very large amounts of vegetable waste into the city's sanitary system during the canning season. Part of the canning season coincided with the rainy season.

The City Engineer had responsibility for the disposal plant and beds and was directly responsible to City Administrator C. Technician B answers to the City Engineer. During the course of her employment, the engineer notified Administrator C of the inadequate capacity of the plant and beds to handle the potential overflow during the rainy season and offered possible solutions. She had also discussed the problem privately with certain members of the city council, without the permission of City Administrator C. City Administrator C had told the engineer that "we will face the problem when it comes." City Administrator C ordered her to discuss the problems only with him and warned her that her job was in danger if she disobeyed.

The City Engineer again privately brought the problem up to other city officials. City Administrator C removed the engineer from responsibility of the entire sanitary system and the chain of command by instructing Technician B that he was to take responsible charge of the sanitary system and report directly to City Administrator C. Technician B asked for a clarification and was again instructed via memo by City Administrator C that Technician B was completely responsible and was to report any interference by a third party to City Administrator C. The engineer received a copy of the memo. In addition, she was placed on probation, ordered not to discuss this matter further and that if she did, she would be terminated.

The engineer continued in her capacity as City Engineer/Director of Public Works, assumed no responsibility for the disposal plant and beds, but continued to advise Technician B without the knowledge of City Administrator C.

That winter during the canning season, particularly heavy storms occurred in the city. It became obvious to those involved that if waste water from the ponds containing the domestic waste was not released to the local river, the ponds would overflow the levees and dump all waste into the river. Under state law, this condition was required to be reported to the state water pollution control authority, the agency responsible for monitoring and overseeing water quality in state streams and rivers.

In deciding that the engineer did not fulfill her ethical obligations by informing the City Administrator and certain members of the city council of her concerns, the Board noted that it was clear under the facts that she was aware of a pattern of ongoing disregard for the law by her immediate superior as well as members of the city council. After several attempts to modify the views of her superiors, it was the view of the Board at that time that the engineer knew or should have known that the "proper authorities" were not the city officials, but more probably state officials (i.e., state water pollution control authority). The Board did not find it credible that a City Engineer/Director of Public Works for a medium-sized town would not be aware of this basic obligation.

The City Engineer's inaction permitted a serious violation of the law to continue and appeared to make her an "accessory" to the actions of City Administrator C and the others. The Board also went on to state that it would be difficult to say exactly at what point the engineer should have reported her concerns to the appropriate authorities. However, the Board suggested that such reporting should have occurred at such time as the City Engineer was reasonably certain that no action would be taken concerning her recommendations either by City Administrator C or the members of the city council and, that in her professional judgment, a probable danger to the public safety and health then existed. At the same time, the Board also acknowledged a basic reality that must confront all engineers faced with similar decisions.

Citing BER Case Nos. 65-12 and 82-5, an engineer who makes the decision to "blow the whistle" will, in many instances, be faced with the loss of employment. While the Board recognized that sobering fact, the Board continued that it would be ignoring its obligation to the NSPE Code and hence to the engineering profession if, in matters of public health and safety, it were to decide otherwise. For an engineer to permit her professional obligations and duties to be compromised to the point of endangering the public safety and health, said the Board, does grave damage to the image and interests of all engineers.

Turning to the present case, there are similarities but also obvious differences between the facts in Case 88-6 and the present case. Among the similarities is the fact that both cases involve engineers who are faced with apparent breaches of public laws by their employers and, following their reporting of the breaches, are faced with the unappealing prospects of having to decide whether to take further action by reporting the issue to an appropriate public authority. However, the two significant differences between Case 88-6 and the present case are: (1) Case 88-6 involves a danger to the public health and safety while the facts in the present case do not; and (2) Case 88-6 involves a public employee who is professionally responsible for overseeing the area that is the subject of the breach while under the facts in the present case, Engineer A is working for a private government contractor and is not directly responsible for overseeing the area that is the subject of the breach.

This present case raises a proverbial "can of worms," but based upon a review of recent newspaper headlines, the facts are probably not that unusual in the world of government contracts. While it is true that the case does not specifically involve public health and safety issues and the engineer is not directly involved with overseeing the area in question, we are of the view that the facts and the context of this case could raise serious risks for Engineer A's employer, SuperCom, as well as for Engineer A.

Under the facts, it appears that SuperCom may be engaging in government contract fraud. By knowingly employing an unauthorized substitution resulting in what appears to be a financial windfall for SuperCom, SuperCom appears to be violating its contract with the U.S. Department of Defense. This exposes SuperCom and its employees, including Engineer A, to civil and possibly criminal prosecution. Engineer A's technical understanding of the testing process, general familiarity with the government contracting process, and recommendation to seek a contract change authorizing the simpler test indicates Engineer A's general knowledge of the serious government contract issues at stake for SuperCom. By failing to take immediate action, a subsequent criminal investigation could possibly implicate Engineer A as an accessory to what might be viewed as ongoing fraudulent activities by SuperCom.

**Conclusion:**

Engineer A has an ethical obligation to advise SuperCom's higher level executive team that they are compelled to contact the appropriate federal contracting officials and seek a contract change authorizing the simpler test; failure on the part of SuperCom to take this action will require Engineer A to report their actions to the appropriate governmental authorities.

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