



NATIONAL SOCIETY OF
PROFESSIONAL ENGINEERS

BOARD of ETHICAL REVIEW

CASE REVIEW

Future Consulting Offer During QBS Consultant Selection

Case No. 25-4

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Facts

A metropolitan transit authority has solicited and is now evaluating consultant Statement of Qualification (SOQ) packages for design of a \$220 million light-rail extension. Engineer X, a senior transportation consultant, sits on the five-member review panel and accepted this paid position after signing a disclosure form from the transit authority that covers only current employment, ownership interests, or contracts with consultants who submitted SOQs. Multiple SOQs were received for the project. Engineer X's former employer, Principal Engineer M with Firm Z, phones Engineer X one week into the two-week SOQ review period and makes a lucrative verbal

offer of \$1,000,000 for a one-year consulting position for Engineer X to begin once "the procurement dust settles."

Engineer X votes for Firm Z, resulting in a 3-2 vote in favor of Firm Z as the most highly qualified firm for the light-rail extension design project. Engineer X signed the consulting contract with Firm Z two days after the city council approval. The municipal ethics ordinance prohibits using a city position for personal gain but is silent on anticipated future employment.

Questions

1. Was it ethical for Principal Engineer M to verbally offer the consulting position to Engineer X?
2. Was Engineer X required to disclose the prospective consulting offer once it was received?
3. Was it ethical for Engineer X to accept the consulting contract with Firm Z?

Code of Ethics References:

- I.1** Hold paramount the safety, health, and welfare of the public.
- I.4** Act for each employer or client as faithful agents or trustees.
- I.6** Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.
- II.4.a** Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.
- II.4.c** Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.
- II.5.b** Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.
- III.1** Engineers shall be guided in all their relations by the highest standards of honesty and integrity.
- III.1.e** Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.
- III.3** Engineers shall avoid all conduct or practices that deceives the public.
- III.4** Act for each employer or client as faithful agents or trustees.
- III.4.a** Engineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge.
- III.5** Engineers shall not be influenced in their professional duties by conflicting interests.
- III.5.b** Engineers shall not accept commissions or allowances, directly or indirectly, from contractors or other parties dealing with clients or employers of the engineer in connection with work for which the engineer is responsible.
- III.6** Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.

BER CASE REFERENCES:

[BER Case 69-13](#), [BER Case 94-5](#), [BER Case 05-6](#), [BER Case 07-1](#), [BER Case 08-8](#), [BER Case 15-8](#);
[BER Case 19-5](#); [BER Case 23-3](#)

Discussion

The ethical issues of this case center around a professional conflict of interest initiated by Principal Engineer M of Firm Z when they covertly offered a lucrative future employment contract to Engineer X while Engineer X was evaluating SOQ packages associated with a major light rail extension project for which Firm Z was actively competing. Conflicts of interest are one of the most examined issues in professional engineering ethics.

Conflicts of interest are known (actual), potential (indirect), or perceived (apparent) situations in which the judgments and actions of individuals, institutions or other entities could be affected because of multiple or competing secondary interests that make it difficult for the engineer to perform their primary duties fully and impartially. Conflicts of interest frequently manifest as an engineer's failure to act as faithful agent to their client or employer – a direct violation of Section 1.4 of the NSPE Code of Ethics (the Code). Conflicts of interest do not always arise by intentional acts, but can emerge unexpectedly out of complex relationships and financial arrangements common to engineering work.

Over many years of reviewing ethical matters, the Board of Ethical Review (the BER) has considered a variety of situations involving this most fundamental ethical issue. [BER Case 69-13](#) is a classic example, and introduced three fact patterns to illustrate some of the nuances of

conflicts of interest and how different responses are necessary to address conflicts of interest in professional work, depending on the fact situation.

[BER Case 07-1](#) summarizes 50 years of the BER's history of conflict of interest decisions, including variations in how the BER interpreted and applied the associated code provisions. Briefly, [BER Case 07-1](#) introduced Engineer A, a licensed professional engineer who was employed by the State Department of Transportation (DOT) as a district engineer and who also served as chairman of the state engineering licensure board. Engineer A owned a parcel of land in the state, and the value of Engineer A's parcel would directly benefit from the building of a new road that would connect to the village where the property was located.

The 2007 BER found it unethical for Engineer A to unilaterally use their authority as district engineer to approve funding to build the new road to the village. The conflict was both actual and apparent: Engineer A in their primary role as district engineer was influenced by a secondary interest (the parcel of land), the increased value of which corrupted Engineer A's ability to render impartial judgments in the performance of their professional responsibilities.

Retrospectively, [BER Case 07-1](#) also outlined alternatives by which Engineer A might have ethically approached the situation. Per Code

Section II.4.a, disclosure is the first course of action in response to a conflict of interest; however, disclosure alone may not be sufficient to resolve or “cure” the conflict. Other courses available would include recusal from the matter (with a substitute engineer making the judgment in question), or in extreme circumstances, resignation, if the conflict of interest was of such a nature that continued participation by Engineer A substantially jeopardized the interests of the client or employer.

The instant case is a straightforward conflict of interest situation, much like [BER Case 07-1](#). Engineer X holds a paid consulting position with the metropolitan transit authority, but their judgment relative to their professional duty (offer an impartial, unbiased review and ranking of SOQ packages) becomes corrupted by a secondary interest (the lucrative \$1,000,000 contract). This is a violation of Code Section I.4 (act for each employer or client as faithful agents or trustees) and Code Section III.5 (engineers shall not be influenced in their professional duties by conflicting interests).

As has been mentioned, per Code Section II.4.a, the engineer is required to “disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.” Here, disclosure means revealing or making known all relevant facts or information that could influence a decision, a transaction, or a relationship. Disclosure is foundational to ensuring transparency, fostering trust, preventing fraud, and adhering to legal and ethical standards.

For the case at hand, *multiple* disclosures are warranted. First, as a condition for being retained by the metropolitan transit authority, Engineer X would have been ethically obligated to disclose their past employment relationship with Firm Z.

Even though the facts appear to exempt A’s past association with Z strictly on policy grounds (only X’s current employment, contracts, and interests are specifically mentioned), Code Section II.4.a clearly identifies disclosure for “potential conflicts of interest that could . . . appear to *influence* the [engineer’s] judgment” The BER views Engineer X’s prior employment with Firm Z as reasonably constituting such an interest, and per the Code, disclosure is necessary.

The facts do not say Engineer X disclosed their prior employment with Firm Z, but if it is assumed that Engineer X had done so, such disclosure would likely have “cured” the potential conflict, a situation similar to that of [BER Case 19-5](#), where the BER considered the ethical obligations of Engineer A (19-5) when they were appointed to a public utility board selection committee responsible for the hiring of an engineer for a sewer project. In that case, Engineer A (19-5) and Engineer B operated their own engineering firms in the same geographic area as the proposed project but only Engineer B submitted an SOQ for the project. Engineer A (19-5) assigned Engineer B a low score and Engineer B was not selected for the project. The BER concluded that Engineer A (19-5) had an obligation to fulfill all required conflict of interest disclosure requirements under the public utility laws and regulations but then it would be up to the public utility selection board to determine whether or not Engineer A (19-5) needed to recuse themselves from the selection.

In the instant case, Engineer X’s employment by Firm Z was (ostensibly) in the distant past, Engineer X (presumably) is no longer working for Firm Z, and the metropolitan transit authority (accordingly) would be well-positioned to make a determination whether X’s past employment might create any appearance of impropriety

during the SOQ review. Thus informed, the metropolitan transit authority could direct Engineer X on how to ethically proceed with their responsibilities, possibly with no limitation on their work, or possibly that Engineer X should recuse themselves relative to review of Firm Z's SOQ package. Either way, with disclosure, Engineer X's participation in the SOQ review would be transparent and above board.

But a second disclosure is also necessary for the instant case, that is, Engineer X was ethically obligated to disclose Firm Z's offer of the lucrative employment contract. Granted, both by procedural loopholes and by Principal Engineer M's artful solicitation of Engineer X, disclosure of the future employment interest does not appear to have been procedurally (legally) required. But *ethically*, per Code Section II.4.a, such an interest must be disclosed.

One key consideration is the value of the employment contract, which at \$1,000,000 is characterized as "lucrative." Granted, Principal Engineer M offered an employment contract and not a gift, but size does matter. [BER Case 05-6](#) carefully evaluated the ethicality of a wide range of gifts offered and received by state transportation engineers in different contexts and unsurprisingly concluded that major gifts are never ethical.

Further, it is important to consider whether disclosure of the lucrative offer would, by itself, have been efficacious to cure the conflict. [BER Case 94-5](#) is a case in point. There and here, the BER's answer is "no" because the conflicts are actual, not potential. In [BER Case 94-5](#), the engineer could not simultaneously serve as city engineer and also provide review and inspection services for private developers in such a way as to represent both clients' best interests. Likewise, in the present case, no amount of informing the

metropolitan transit authority about the lucrative offer could make the offer's influence, or perception of influence on Engineer X, go away.

The instant case engages other ethical concerns beyond conflicts of interest. Principal Engineer M's tendering and Engineer X's acceptance of the lucrative employment contract expose a veritable quagmire of professional service procurement and employment issues. Multiple ethics code provisions are violated including Code Sections I.6, II.4.c, II.5.b, III.1, III.1.e, III.3, III.5.b, and III.6.

[BER Case 08-8](#) discussed a similar, albeit comparatively tepid, example of an engineer's unethical promise to award future work on a public project as a reward for services rendered.

Two other ethical considerations must be addressed in the instant case. The first is whether Firm Z may ethically hire Engineer X for the light rail project, once Firm Z receives the contract. Code Section III.4.a states that "[e]ngineers shall not, without the consent of all interested parties, promote or arrange for new employment or practice in connection with a specific project for which the engineer has gained particular and specialized knowledge." By way of context, [BER Case 23-3](#) dealt with what are commonly called "revolving door" constraints governing the ethics of high-level government employees (federal, state, municipal) who leave public employment to enter the private sector. Such persons are—or can be—viewed as being in a position to unfairly profit from or otherwise trade upon the contacts, associations, influence, and special knowledge they acquired during their tenure as public servants.

In [BER Case 23-3](#), Engineer D worked as the City Engineer in a mid-sized municipality that had been experiencing rapid growth along with rapid infrastructure growth. In that role, Engineer D was one of the City's main points of contact for

AE firms and contractors in the area, both with respect to contract negotiation and award (consultant and construction) and senior-level review of major project issues. Engineer D announced their plan to step down as City Engineer and accepted a position at Firm AE&R. This firm had completed many projects for the City during Engineer D's tenure as City Engineer, and the firm plans to continue submitting proposals and performing consulting work for the City.

Somewhat similar to Engineer D in [BER Case 23-3](#), Engineer X in the instant case would have gained personal and intimate knowledge of the light rail extension project from their review of all the SOQ packages and also the acquaintance they made with the representatives of the metropolitan transit authority and other competing firms. The facts of the instant case do not mention that Engineer X's employment contract with the metropolitan transit authority included a follow-on work prohibition; nevertheless, because of the particular and specialized knowledge gained during their service for the metropolitan authority, per Code Section III.4.a, Engineer X cannot ethically accept new employment or practice with Firm Z on the light rail extension project without the consent of all interested parties. This would certainly include the metropolitan transit authority.

In evaluating the propriety of Engineer X's follow on employment with Firm Z, one significant consideration is the confidential information Engineer X may have gained during their time with the metropolitan transit authority. Per Code Section III.4, "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."

[BER Case 15-8](#) considered the implications of Engineer A (15-8) obtaining and reviewing confidential and proprietary information via submittals from Company X during her employ with a government agency. Engineer A (15-8) then ended her employment with the government agency and accepted an engineering position with Company Y, a competitor of Company X. The BER concluded that Engineer A (15-8) was free to pursue employment with Company Y so long as Engineer A (15-8) did not disclose any of Company X's confidential information that she obtained during employment with the government agency. Likewise in the instant case, assuming the metropolitan transit authority approved Engineer X joining Firm Z, per Code Section III.4 such approval would be ethically conditional on Engineer X not disclosing confidential information they obtained while working for the metropolitan transit authority. These transitional employment practices, in the spirit of the Code, are intended to help Engineer X engage only in conduct that is honorable, responsible, ethical, and lawful so as to enhance the honor, reputation, and usefulness of the engineering profession (per Code Section I.6).

In summary, based on a review of the facts, the Code, and relevant BER case precedents, the actions by Principal Engineer M and Engineer X raise clear and significant ethical concerns. These include conflict of interest violations, professional service procurement violations, and ethical work practice violations. The BER finds it noteworthy that the actions of both of these engineers were artfully, skillfully, and shrewdly done in such a

¹ The language of the relevant Code Sections is provided under the *Code of Ethics References* section.

way that neither engineer appears to have violated a specific written company hiring rule, policy, or ordinance identified in the facts. Thus, Principal Engineer M and Engineer X might claim, “We did nothing wrong,” and legally that may be true. But engineering practice is not about seeing what we can get away with. As an important and learned profession, engineering is about serving the public, clients, employers and other engineers with honesty, impartiality, fairness, and equity. For the profession to persist, engineers must be dedicated to the protection of the public health, safety, and welfare (Code Section I.1). Here, Principal Engineer M and Engineer X fell far short of the ethical standard.

Conclusions:

1. It was not ethical for Principal Engineer M to verbally offer the lucrative consulting position to Engineer X during the SOQ evaluation process. This offer violated multiple ethics provisions pertaining to professional service procurement and employment practices.
2. Engineer X was ethically required to disclose the prospective lucrative consulting offer once it was received, however, disclosure by itself would not likely have cured X's conflict of interest. Further, Engineer X was required to disclose their prior employment with Firm Z when they initially applied to serve on the metropolitan transit authority review panel.
3. Under the facts it was unethical for Engineer X to accept the consulting contract with Firm Z.



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