

- Section II.5.b.                    - Code of Ethics  
Section III.2.a.                - Code of Ethics

**ATTEMPT TO INFLUENCE PROSPECTIVE CITY/CLIENT  
DURING RELOCATION NEGOTIATIONS**

**FACTS:**

Engineer A is the principal of a large engineering firm that provides civil engineering services to state, county and local governments and agencies. The firm is planning to relocate one of its regional offices to a medium-sized city. Part of the relocation involves the construction of a large office building. The relocation will greatly benefit the city, by among other things, creating needed first class office space, enhancing the city's tax base and providing needed addition employment in construction as well as in other areas. Having the city employ the engineering services offered by the firm would be an added incentive to the firm's selection of the city. Engineer A verbally suggests to city officials during the relocation negotiations with the city that he "hoped the city would consider employing the services of his firm in the future for part of the engineering services requirements." City officials at the meeting do not respond specifically to Engineer A's verbal suggestion. Ultimately, Engineer A's firm agrees to relocate to the city.

**QUESTION:**

Would it be unethical for Engineer A to verbally suggest to city officials during the relocation negotiations that they consider employing the services of his firm?

**REFERENCES:**

- Section II.5.b.                -Engineers shall not offer, give, solicit or receive, either directly or indirectly, any political contribution in an amount intended to influence the award of a contract by public authority, or which may be reasonably construed by the public of having the effect or intent to influence the award 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.

Section III.2.a. -Engineers shall seek opportunities to be of constructive service in civic affairs and work for the advancement of the safety, health and well-being of their community.

### DISCUSSION:

The practice of engineering has become increasingly competitive in recent years. Firms have been forced to become far more aggressive in marketing their services. Some firms have used innovative methods to accelerate their marketing techniques in order to secure work. While such methods are frequently appropriate and ethical, at times such practices may go beyond the bounds of the Code of Ethics.

The NSPE Code of Ethics makes clear that engineers shall not "offer any gift or valuable consideration in order to secure work." (Code Section II.5.b.) This section of the Code has been interpreted on numerous occasions by the Board of Ethical Review, but mostly in the context of political contributions. A review of some of the more recent political contributions and similar ethics cases may be helpful in evaluating the facts in the present case.

BER Case 76-6 involved gifts to foreign officials. There an engineer whose firm did overseas work in a foreign county was advised by a high ranking official of that country that it was established practice to make personal gifts to government officials awarding contracts. The engineer's failure to adhere to the practice would result in the engineer's firm receiving no future contracts. In finding it was unethical for the engineer to accept the contract and make the gifts as described, the Board noted that such practices are not dissimilar to the arguments advanced by those who had at that time been revealed as offering financial payments to public officials to influence the award of contracts for architectural-engineering services. The Board noted that engineers should decline being drawn into such seamy procedures for self-gain.

Later in BER Case 78-4, a local group of business and community leaders banded together and organized a fund raising committee to support a bond issue to finance public works. Many extensive engineering and architectural projects were to be financed by the bond issue. In ruling it would be ethical for engineering firms to contribute to the promotional fund in the expectation or possibility that those firms might later seek design commissions arising from the public works programs, the Board noted that Section III.2.a. is one of many provisions that is not susceptible to precise construction or enforcement. However, the Board concluded in the context of the case, that the proposed public works program for the community would be constructive and would advance the well-being of the citizenry. Applying its views to the facts of the case, the Board noted that as with many situations, the question of "motivation" may be a mixed one, but that even if there is some degree of self-interest motivation, the Board concluded that it was sufficiently remote and removed from undue influence to eliminate any substantial concern that the Code is offended.

Turning to the facts of the immediate case, it is our view that it can easily be distinguished from the earlier-cited cases. Unlike those earlier cases, this case neither involves the requesting, offering or acceptance of a gift or a political contribution. Instead, this case involves an engineering firm that is in the process of selecting a site for the relocation of one of its regional offices. There does not appear to be any "quid pro quo" involved under which an understanding or agreement to provide something of value in exchange for some other thing of value. Here, Engineer A is merely suggesting to city officials that at the appropriate point in time and under the proper circumstance, the city consider retaining Engineer A's firm to provide engineering services to the city. While we are not entirely comfortable with the context in which the suggestion is made, we do not believe that the suggestion during the relocation negotiations rises to a level of impropriety or Code violation. We would note that the fact that the city officials present during the meeting did not respond specifically to Engineer A's verbal suggestion indicates to us that the city officials were in no way being coerced to make any promises of future work to Engineer A's firm.

In closing, we would merely note that in view of the fact that many if not most state, county and local governments employ qualifications-based selection procedures for the procurement of architectural and engineering services, Engineer A's comments should be viewed in that context. If one was to assume that the city here had a QBS procedure in place, Engineer A's comments could easily be understood as an expression of interest in submitting proposals to city and a request that such proposals be given due consideration.

#### CONCLUSION:

It would not be unethical for Engineer A to verbally suggest to city officials during the relocation negotiations with the city that they consider employing the services of his firm.

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**Note:**In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures.

The Code is clearly written to apply to the Engineer and it is incumbent on a member of