

Report on a Case by the Board of Ethical Review

Case No. 69-2

Contingent Contract Value Engineering

Facts:

An engineering firm with extensive experience in the design of industrial equipment and processes proposes to establish a Value Engineering Division under which it would offer to clients a value engineering service. The plan of operation contemplates offering to clients in the industrial field a review of their designs, equipment, products, processes, etc. Following such review the firm would suggest to the client revisions in the design or production mechanisms which would produce the same result at less cost to the client without sacrifice of quality or safety. If such savings are realized the client would pay the firm a percentage of the savings, determined by negotiation prior to the rendition of the service in accordance with the extent of work involved. If the client determines that the proposed changes are not feasible or desirable for any reason and does not utilize the suggested changes it is not obligated to pay the firm any compensation.

Question:

Is the proposed method of operation ethical?

References:

Code of Ethics-Section 11(d) -"An Engineer shall not request, propose, or accept a professional commission on a contingent basis under circumstances in which his professional judgment may be compromised, or when a contingency provision is used as a device for promoting or securing a professional commission."

Discussion:

The proposed method of operation is clearly a contingent contract. Section 11(d) of the Code, as recently revised by the NSPE Board of Directors, in effect permits contingent contracts with two limitations as indicated in its text. Taking these limitations, in order: We do not believe that the proposed method of operation would tend to necessarily compromise the professional judgment of the engineers preparing the proposed changes. The incentive, in fact, would be to search out even more diligently areas of potential saving to the client, otherwise the firm will not receive any compensation for its work. The only possible danger might be if in its zeal to find areas of saving to the client and thereby earn its fee the engineers of the firm might be tempted to suggest changes inimical to quality or safety. In the absence of any indication to this effect, however, we assume that the ethical duty of the engineers to serve the interests of the public and client would be honored. In addition, the client is entitled to and presumably would check carefully the proposed changes to insure maintenance of quality and safety for which he would be responsible. The second limitation raises the question of whether the proposed method is one which is used as a device for promoting or securing a professional commission. We believe that this limitation is intended to safeguard the

public and clients from projects which are unsound from a technical or economic standpoint. There is no basis in the facts to assume that these safeguards would be jeopardized in this case under these circumstances. The firm is not promoting a particular project about which the client is uninformed and would not be retained for the service unless the client on his own initiative determines that the value engineering review might produce economies.

Conclusion:

The proposed method of operation is ethical.

BOARD OF ETHICAL REVIEW CASE REPORTS: The Board of Ethical Review was established to provide service to the membership of the NSPE by rendering impartial opinions pertaining to the interpretation of the NSPE code of ethics.

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