

**Conflict of Interest—  
Participating in Multiple DOT Proposals for Different Contractors**

**Case No. 17-8**

**Facts:**

A state department of transportation is seeking a design-build contractor to prequalify for a specialized engineered construction project. Engineer A possesses unique expertise in this type of specialized engineered construction and has been contacted by three competing design-build contractors for the project, Contractor X, Contractor Y and Contractor Z, each of which will prepare a proposal for consideration by the DOT.

**Question:**

Would it be ethical for Engineer A to participate with multiple design-build contractors in response to the DOT's RFP?

**NSPE Code of Ethics References:**

- Section II.2.a. - Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.*
- Section 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.*
- Section II.4.b. - Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*
- 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*
- Section 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.*

**NSPE BER Case References:** 95-1, 02-12, 05-10,

**Discussion:**

A review of past NSPE Board of Ethical Review opinions indicates that conflicts of interest are the most examined area of engineering ethics. This is not unique, as the question of conflicts of interests is at the heart of many ethical dilemmas faced by engineers. The BER has had an opportunity to address this important issue on multiple occasions in recent years.

In BER Case 95-1, the Board was asked to consider a case involving a professional engineer who was concerned that certain contingencies in a design-build project he was asked to become involved in as a partner could raise potential conflicts of interest. The BER decided that the facts in the case did not indicate that the professional engineer's judgment would be compromised and found the professional engineer could pursue the design-build partnership.

In BER Case 02-12, the BER considered a scenario involving a professional engineer who was serving two clients at the same time. The assignment involved a structural failure suffered by one client that was caused by the other client. The client that caused the failure sought to hire the engineer to perform the remedial work. The Board determined that the professional engineer could ethically perform the work, reasoning that there was full disclosure and transparency between the parties and that the relationship between the client suffering the harm and the engineer had concluded.

In BER Case 05-10, another design-build case involving a conflict of interest, Engineer A performed design services on a design-build/joint venture project with Contractor M for Private Client X. Later, Private Client X retained Engineer A on another unrelated design-bid-build project to review the submissions and construction work performed by Contractor M. In this case, the Board decided that it would be ethical for Engineer A to review the submissions and construction work performed by Contractor M after having participated in a joint venture with Contractor M for the same client. The BER noted that while the professional engineer may wish to advise the client that there may be a better procedure to follow in order to ensure proper "checks and balances," the Board could not say, as a matter of ethics, that the facts presented an unacceptable situation.

Turning to the facts in the present case, the BER believes that the facts are similar but not the same as the earlier cases in which a professional engineer was involved in a design-build project and represented multiple parties. In this case, the three contracting parties are in a direct and ongoing competition with one another for an assignment. Engineer A's participation with more than one contractor could raise a conflict of interest if Engineer A would be privy to proprietary information that could influence or appear to influence Engineer A and potentially compromise Engineer A's judgment in the decisions Engineer A may be called upon to make as well as in the rendering of Engineer A's engineering services. Engineer A should disclose to each contractor that he is participating in other RFPs and protect all confidential information shared with him during the qualifications process.

If the facts support, only one contractor will be awarded the DOT work, then Engineer A can submit his proposal to each contractor. As the DOT is going to prequalify the design-build firm(s) on a qualifications basis, and on the merits of their technical proposal, the requested work of Engineer A may vary or be similar in each RFP. Engineer A may need to prepare three different proposals to cover the varying scope of work. If the scope of work is the same for each RFP, the engineer will only work for the design-build contractor that wins the award. The DOT will clearly

see that Engineer A was included in each proposal response and will be involved with the project no matter which design-build contractor is selected.

**Conclusion:**

It would be ethical for Engineer A to participate with multiple design-build contractors in response to the DOT's prequalifying RFP because the award will go to only one of the three contractors. Engineer A will perform work only for the contractor that wins the award.

**Board of Ethical Review:**

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