



NATIONAL SOCIETY OF  
PROFESSIONAL ENGINEERS

## BOARD *of* ETHICAL REVIEW



CASE REVIEW:

## Providing Incomplete, Self-serving Advice

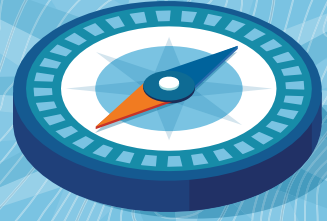
CASE NO. 22-9  
APPROVED NOVEMBER, 2022

NSPE.ORG



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## PROVIDING INCOMPLETE, SELF-SERVING ADVICE

CASE NO. 22-9

APPROVED 11/22

### FACTS:

Engineer A provides construction services in the community of City B and is a licensed professional engineer in State C where City B is located. City B is a large metropolitan area and all forms of contracting are available. Engineer A currently has no contractual relationship with City B. City B's City Administrator asked Engineer A for a recommendation on project delivery methods for their upcoming wastewater system improvements project using a specific funding source. City Administrator is not a licensed professional engineer.

Under the proposed funding source, there are four approved project delivery methods: Design-Bid-Build, Construction-Management-at-Risk, Fixed-Price-Design-Build, and Progressive-Design-Build. Additionally, if Construction Manager at Risk is selected by the owner, City B, the funding agency requires the Construction Manager at Risk firm and the Engineer of Record be two distinct entities.

Engineer A is qualified to provide construction services under Progressive-Design-Build and Construction-Manager-at-Risk delivery methods.

Engineer A prepared a summary memo to City B Administrator and only identified Design-Bid-Build and Progressive-Design-Build as viable project delivery options. Engineer A recommended Progressive Design Build. Accompanying the recommendation, Engineer A provided a summary of the firm's experience with Progressive-Design-Build projects and references from past projects.

### QUESTIONS:

1. Was it ethical for Engineer A to provide a recommendation on project delivery methods that only included two of the possible methods, without providing the complete analysis and the reasoning behind recommending the two selected methods over others?
2. Was it ethical for Engineer A to recommend the method for which they could provide services?
3. Was it ethical for Engineer A to include project summaries and references to encourage selection of their firm for the recommended method for project delivery?

## NSPE CODE OF ETHICS

### REFERENCES:

- Rule II.3. Engineers shall issue public statements only in an objective and truthful manner.
- Rule II.3.a. Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
- Rule 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.

### NSPE BER CASE REFERENCES:

[95-5](#), [99-8](#)

### DISCUSSION:

By their very words, the cited sections of the NSPE Code of Ethics provide appropriate guidance: “objective and truthful,” “include all relevant and pertinent information,” “not offer any gift or other valuable consideration in order to secure work.”

[BER Case 95-5](#) addressed integrity and completeness in preparing reports. The engineer in question rendered an opinion that, based upon test pile, the project’s installed piles did not meet the design safety factor. However, the engineer failed to include in the report that the initial log indicated that several of the piles were driven to essential refusal (intentional disregard of other information); that the test equipment had failed (selective use of information); that the test piles were not driven to the same depth as the installed piles, that a different installation technique was used, that following cure, the test hammer was dropped several times before the count began (all failure to investigate), or that the predicted increase in strength after cure was confirmed. (In that case, the engineer in question also engaged in misrepresentation and potential perjury, but that’s not at issue in the present case.)

[BER Case 99-8](#) was relatively analogous. Engineer A bid and won a design contract to provide a complete set of plans and specifications. However, Engineer A submitted plans that were lacking much of the design detail in both drawings and specifications. Not only did Engineer A acknowledge that fact, but even acknowledged that certain parts of the project were arguably unbuildable. Furthermore, Engineer A did not inform anyone as to the incompleteness at the time of submission. Engineer A had a clear obligation to provide a complete set of design drawings and specifications on the project in which Engineer A was engaged, and the incomplete submission was clearly unethical. (In that case, the engineer in question also expressed an intent to defraud, but that’s not at issue in the present case.)

In the present case, City Administrator solicited services from Engineer A. It is not clear whether City Ad-

administrator knowingly solicited a donation of services. Engineer A had several options. Engineer A could have referred City Administrator to resources (whether library, free, or subscription) that provided complete analyses of the various methodologies. That would be a completely ethical informal response to an informal solicitation, involving no provision of engineering services. Alternatively, Engineer A could have provided a complete analysis of the four methodologies, with all the pros and cons by compiling properly referenced resources from others, involving no provision of engineering services and thus not unethical. However, by providing only a partial, comparative engineering evaluation with no analysis and a recommendation to Engineer A's benefit, the conduct constituted both incomplete and self-serving information (as in [95-5](#) and [99-8](#)) and the extension of free services. Both aspects of the conduct were unethical in the view of the BER.

## CONCLUSIONS:

1. It was unethical for Engineer A to leave out relevant and pertinent information from the analysis/recommendation. Engineer A should have included evaluation of all available delivery methods rather than including only two, including one that A's firm could provide. Engineer A could also have referred City Administrator to 3rd-party resources.
2. It was ethical for Engineer A to recommend progressive design build is the best choice, as long as reasons are objective, described, valid, and compared against all available and appropriate delivery methods. Unfortunately, Engineer A did not provide objective support for the recommendation. Consequently, Engineer A's conduct was unethical.
3. It was not unethical to include marketing materials that display Engineer A's firm's qualifications.

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