

Arthur E. Schwartz's Commentary on "Minority Contracts in Engineering"

Commentary On
Minority Contracts in Engineering

Regardless of one's view on minority set asides, there are certainly well-established and recognized public policy reasons for set-asides and so the fact that a company participates in such programs is not an ethics issue per se. Generally a government contractor may not hire a minority business enterprise unless the enterprise meets certain threshold requirements and standards in order to qualify under government contracting regulations.

Having said that, under the facts, an outright conflict of interest seems to have developed. While Myrna was apparently not an original employee or owner of MBE, her recent purchase of the company stock with a loan from her father Bill, combined with Bill's recent strong encouragement to heavily rely on the services of MBE suggests that Bill is motivated at least partially to assist his daughter's company. In addition to nepotism, Bill also helped to finance his daughter's stake in MBE, and so Bill also has a direct financial interest in seeing that MBE is successful – to benefit his daughter and also to assure that the loan he made to his daughter is repaid. His actions may undermine his client's (the federal government) interests in obtaining the most qualified engineering services at a fair and reasonable price and could also ultimately undermine the long-term interests of Lesak, a company in which he serves as an officer. So Bill has a conflict of interest as an officer of Lesak and his interest as the father and creditor of Myrna, an officer of MBE, a firm with which Lesak is engaged in ongoing business. These issues could also easily raise legal questions under federal contracting rules and procedures. Therefore, the lead engineer should have a candid discussion with Bill and explain his concerns – ethics, reputation, legal liability, etc. - and the potential impact and consequences these issues could have on Bill, the company, Myrna and MBE.

Regarding Howard's passing and being replaced by his widow Eileen, while it is not unusual today for engineering companies to be headed by non-engineers under

corporate practice rules, these non-engineers generally have extensive experience in the business of engineering or in business generally. Eileen's ascension certainly raises a red flag and the lead engineer has an obligation to carefully investigate this issue. The lead engineer should recommend that key Lesak employees meet with Eileen and others at MBE as soon as possible to better understand MBE's plans going forward (e.g., is Eileen a temporary replacement, will Eileen have knowledgeable engineering, business, financial, legal, risk management, etc., advisors to guide her immediately and in the future, etc?). If the lead engineer is not convinced that MBE has plans to put into place a knowledgeable and experienced person or a team of individuals to lead MBE, the lead engineer should immediately advise Bill. Lead engineer should explain to Bill that Lesak's failure to use the services of a firm that does not have a qualified and experienced management team could easily expose Lesak to contractual liability, damage its reputation and its ability to serve as a prime government contractor.

In the event that lead engineer's concerns are not adequately addressed, lead engineer may need to consider exploring alternative employment options or risk damage to his professional reputation.