

Neil R. Luebke's Commentary on "The Information Due to the Customer"

Commentary On
The Information Due to the Customer

The main focus of this case is a deceptive business practice and an engineer's responsibilities with respect to it. ABC has just signed a contract worth at least \$375,000 with XYZ. We do not know the basis of the contract, but it was probably a bid on specifications developed by XYZ. Again, we do not know whether the materials to be used in the parts manufactured by ABC were detailed in the contract. It is conceivable the contract could have merely called for dimensions, strength requirements, and the like, without dictating the particular alloys that should be employed. If ABC did not make any contractual agreements regarding specific alloys and the newly discovered alloy meets all of the specifications, then there does not seem to be a problem in this case, and the company deserves some credit for its inventiveness. In particular, Christine Carsten might deserve a bonus for helping the company make an additional 24 percent profit.

Let us assume, however, as seems more reasonable in the case, that a particular metal was specified. While the less-expensive alloy has generally the same properties, it is demonstrably inferior in certain respects, and without question it is a different metal than was originally agreed to in the contract. By failing to inform XYZ of the alternative alloy and possibly renegotiating the contract, Christine's firm is, from a moral point of view, engaged in deception motivated by the prospect of selfish gain. From a legal point of view, ABC is probably involved in fraud and deceptive nondisclosure. Deceptive nondisclosure here involves the failure to tell the client about some important fact regarding composition of the product. Fraud, of course, is a misrepresentation of material fact that leads another to take some action to that party's detriment, in this case, XYZ paying more money for a part than is justified. We should not assume that ABC would lose in a business sense by disclosing to XYZ the possibility of the new alloy with a lessened production cost. XYZ may be favorable toward the lower production cost and less concerned about the long-term durability of the part. Having already won the contract on the basis of

a different alloy, it is probably the case that ABC's production cost might be less than its competitors' no matter what alloy is used. Renegotiating the contract with XYZ may lead to even more profit than ABC expected originally. Furthermore, in XYZ's eyes, ABC comes off as an inventive, progressive group that might be looked upon with favor in future contract negotiations.

By contrast, if ABC does not inform its client of the alloy change and the misrepresentation is discovered, ABC might find itself sued for the total cost of this contract. There is also the possibility of lost contracts and lessened reputation in the future. If one of the slightly inferior parts is related to some kind of product liability case, ABC could be responsible for still more damages. Even if no court actions occur, the possible discovery of the use of the alloy will certainly not rest well in future relationships between ABC and XYZ. Christine's suggestion that XYZ will not discover the change of alloy is not likely to be true. While XYZ would probably not undertake expensive unprompted testing of the material, it is not unreasonable to suppose that something could prompt them to do the testing. Even if ABC kept the alternative alloy secret for a year or two, XYZ might eventually learn the information through, say, a disgruntled employee of ABC or through one of ABC's competitors. Looked at in terms of consequences, ABC's nondisclosure is exceedingly risky behavior, whereas disclosure and possible renegotiation of the contract would bring favorable results. Aside from consequences, ABC has both a legal and a moral duty not to engage in deception in contracts. Vernon Waller's opinion that failing to disclose the new alloy to XYZ is "good business" is simply wrong.

What should Christine Carsten do? It is likely that there are many more people at ABC involved with this parts order than Vernon Waller and Christine Carsten. Another engineer, John Richards, is mentioned later. While Vernon Waller authorized the sales agreement with XYZ, it is not clear from the story that he has final authority regarding any changes in that agreement. At the very least, Christine should insist on a meeting of all engineering and management people at ABC who have key roles regarding this project. It is unlikely that the others attending such a meeting will unanimously concur with Vernon Waller. If they do, Christine would be well-advised to look for employment elsewhere, because her ethical and professional standards will likely be tested again in the future.

If Christine has had any experience in projects such as this, she knows that at the end of the project she is required to sign off on the report verifying the contractual compliance in the production process. Should her falsification of the report or

falsification by any other registered engineer become known to the appropriate officials, registration might be revoked, at least for a period of time. While disciplinary practices differ among the states and in Canada, revocation is certainly a possibility. The widely used educational film *The Truesteel Affair*, a film made in Canada but circulated through the National Society of Professional Engineers in this country, details the consequences of a professional engineer falsifying a report on the fabrication of some construction steel. One of the messages in that film is that the engineer involved should have sought advice from his fellow engineers, especially from the officers of his local professional society. If the events in our case move to the point that Christine is asked to sign an inaccurate report, she would be well-advised to follow that same advice. This warning also applies to Christine's fellow engineer John Richards. John's signing the verification report, however, does not let Christine off the hook. She still knows of and has been party to the deception, and, furthermore, she knows that a fellow engineer signed a deceptive report. She may have a professional obligation to report John Richards' actions. She should at least do what she can to inform John Richards of the seriousness of the situation and to bring home to him her reservations about the type of action he has been asked to do.

Is the price really right? Morally and legally, the price seems far too high for Christine Carsten. It is also likely to be too high for John Richards and others at the ABC company.