Daryl E. Chubin's Commentary on "Minority Contracts in Engineering"

Commentary On
Minority Contracts in Engineering

For pedagogical purposes I would consider this case *two* cases, separating it after question 3 (perhaps into a and b). While one builds on the other, the second introduces new issues that complicate understanding. I would also make clear at the outset that this is about ethics, not law. While the whiff of nepotism permeates the case, human judgment is at issue. Law and propriety don't always coincide. Others will have to decide whether laws have been violated.

Based on what appears in the opening two paragraphs, I would say that:

1. there is a conflict of interest between Lesak and the subcontracted company;
2. in this case, it is unethical not to open the job for competitive bid; and
3. the lead engineer at Lesak should admit his error and recommend to the owner (his boss) that a competitive bidding process should have been used to award this subcontract.

In all, this does not pass the smell test — while it may be legal.

The information in the paragraph preceding the other question is more damning, especially if one reads the newspaper article on which it is based. An overarching point to make in the paragraph is that minority set-asides require evidence of company capability, i.e., that low bid alone should not carry the day. My response to the questions, then, are:

4. to whom should questions about the new appointment be directed?
5. Eileen's appointment reinforces the perception (and reality?) that Lesak and MBE are not independent companies. The latter is functioning like a protected subsidiary of the former (e.g., family tie, shared employees).
6. If 85% of MBE's contracts come from a single source, then withdrawal of that source would test the ability of MBE to survive. Would 40% dependence on a single source make a difference? Hard to tell.

7. The relationship does not seem to satisfy “appropriate standards of professional or business ethics,” but the state context matters here. Some states, I suspect, are more vigilant about interpreting and enforcing the federal standard (the difference between theory and practice). One would think there would be a trial period for the minority-owned company to demonstrate capability and viability, i.e., independence to perform as a subcontractor for a variety of contracting companies.

This is a provocative case, and therefore, well-suited for teaching and learning.