

# Practice Note: Fiduciary Responsibility - A Matter of Trust

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*Revisions approved by the Investigation Committee, June 15, 2021*

Canon 3 of the Engineers Geoscientists Manitoba (EGM) Code of Ethics states in part that practitioners shall "Act as faithful agents for their clients or employers..." and Canon 5 states in part that practitioners shall "Conduct themselves with integrity, treat clients, colleagues, and others with equity, fairness, courtesy and good faith, give credit where it is due..."

The Investigation Committee reviewed a matter with implications of copyright infringement that concerned the development of a design/build project for a large structure for a commercial enterprise. The owner, the commercial enterprise, engaged a consulting engineer to assist it in the development of the parameters and the documents for a Request for Proposal, and to assist it in assessing the Proposals that were submitted. After reviewing the proposals the owner "short listed" the proposals of two of the design/build teams and invited each of these two teams to submit ideas to the owner as to how the project might be modified to reduce the cost of the project. A revised Request for Proposal was subsequently prepared and sent to the two "short listed" contractors inviting them to submit revised proposals.

The primary concern investigated by the Investigation Committee was whether the owner's consulting engineer had breached its fiduciary responsibility by incorporating the "intellectual property" of one design/build team into the revised Request for Proposal and thereby providing it to the competing team. Based on the evidence provided, the Committee reached the conclusion that there had been no breach. However, the exercise provided some clear insight into the potential for problems.

Practitioners, whether employees or employers, engaged in consulting or industry or government or university, are reminded of their responsibility to act as faithful agents of their clients or employers.

When engaged as a consultant, preparing and administering a design/build Request for Proposal, practitioners must take care to ensure that the "intellectual property" of one respondent is not intentionally or inadvertently "given" to a competing respondent. If such "intellectual property" is shared, it must be done only with the

written permission of the originator of the "intellectual property" and with appropriate reimbursement and/or acknowledgment of the originator. If this regard for "intellectual property" cannot be respected, it is important that it be so stated in the Request for Proposal.

Respondents to requests for design/build proposals are encouraged to clearly identify their "intellectual property" when submitting a proposal and to maintain clear records of all agreements or understandings regarding such "intellectual property" as the bidding process progresses.