

When in Rome..... (Case 1021)

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The Case:

Your firm, Choice Engineering, Inc., is a multi-disciplinary engineering firm operating in the Rocky Mountain area for the past 35 years. The types of projects it has designed over the years range from high-rise office buildings to hydroelectric dams to petroleum refineries. One of the features of the firm is that all of the required engineering disciplines (such as electrical, mechanical, industrial, chemical, process, environmental, civil and others) are housed within the one company. This has historically enabled Choice Engineering to compete for projects effectively, since all the necessary disciplines for a project are managed in-house, and there is close control over project costs. As a result, the company has gained a reputation for completing project designs on time and well within budget, which has brought clients to the door with very little marketing effort.

In recent years, however, Choice has felt the impact of several smaller firms who tend to band together on a project-by-project basis, depending on the expertise required. Most of these firms are quite small, their overhead expenses are minimal (many work out of their attics or garages), and only have three or four highly trained people in the firm. These coalitions have been successful in being awarded design contracts which Choice traditionally handled. As a result, the company is faced with either divesting themselves of several areas of engineering expertise involving more than 200 employees, or taking their existing structure and project approach to new geographic markets.

The company is not willing to hire an outside marketing expert. They tend to be expensive, and there is a lot of time, effort and money involved in getting them to the point where they understand what your company does before being able to identify new markets, let alone obtain new clients. As it turns out, you are the only person in the company's engineering management that has both a degree in engineering and a degree in economics and business administration. You are therefore assigned a new position in the company to develop one or more new client areas. If you are successful, you will save the jobs of more than a couple hundred people in the company. If you are unsuccessful.....!

After reading Time and Newsweek, you find that there has been a recent discovery of an previously unknown productive oil field in a little-known country, Utopia. You go there to see if you can sell the directors of the petroleum combine, Obigee Oil Unlimited, on hiring Choice Engineering to design a new

petrochemical facility for them, so they can keep some of the oil production in Utopia, and realize greater income and profit from the products to be manufactured by the proposed petrochemical plant. You made several presentations to the Obigee directors and have just received word that Obigee is now going to develop a very large petrochemical manufacturing plant in the Utopian Hills.

Elated that you had done such an outstanding job selling them the idea, you contact one of the directors of Obigee, only to find that he and the rest of the board are convinced the idea came from their Board of Directors chairman's brother-in-law. When you suggest that Choice Engineering would like to design the project (preferably on a sole source, non-competitive basis), you are told that there are rules about how business is done in Utopia, and that you must follow those rules.

After spending some time researching the issues, you find that in order to do business as a foreign company in Utopia, it is necessary to have a local presence in the country to represent your interests. This seems to be a reasonable approach, so you contact a firm recommended to you by your secretary's uncle, Hugh Rodman, who is from Utopia, called International Affiliates Ltd. Uncle Hugh says they do good engineering work there. Mr. Owatadeel, president of International Affiliates, tells you that he graduated from MIT several years ago and will be pleased to act as Choice Engineering's associate firm in Utopia. As such, they will make all of the necessary contacts with Obigee's directors and project management, as well as important government regulatory officials. They will make the proper introductions, assist in preparing the budget for the petrochemical plant design, and secure the necessary permits when the project is awarded to Choice, as is certain to happen if International Affiliates is part of the team. When asked how many people are in International Affiliates, he tells you there are four, including a brother, nephew and his wife who runs a variety of errands from time to time.

Owatadeel has now sent you an email indicating that his fee for setting up the project on his books is US\$50,000 as a retainer to start. Thereafter, he will charge US\$300 per hour while he and his associates work to obtain the design contract from Obigee, and an additional allowance should be made for up to US\$250,000 for presentations, trips and other marketing gifts for two or three key Obigee directors. When you add all this up, it amounts to about 28% of your anticipated profit for the entire plant design, should you be awarded the project. Owatadeel also tells you that several other international design companies have now contacted him to act as their local associate for this project, and he knows of at least four other companies similar to his in the same city who have also been approached by several design companies. He says that this is the way business is done in his country, and all of these other firms have done work in Utopia previously. He concludes by suggesting that you contact him within the next 24

hours and authorize his exclusive involvement with Choice for obtaining this project.

After reading his email for the fourth time, you realize that you have a decision to make, and quickly.

What do you decide to do?

Alternate Approaches and Survey Results for “When in Rome...” (Case 1021)

1. Quickly check with some other US and foreign companies doing business in Utopia to see if the arrangement proposed by Owatadeel is typical of the way business is conducted there. If so, enter into an agreement with Owatadeel to be your firm’s representative, with the specific goal of obtaining the contract for the design of the proposed petrochemical plant. Your company needs the work, and you need the success!
Percentage of votes agreeing: 7%
2. Immediately tell the president of Choice Engineering what you’ve learned about business practices in Utopia and about Owatadeel’s proposal. Let him decide if the firm will invest in this new venture. If so, he should also decide the amount of money to be spent using International Affiliates Ltd. to procure the contract.
Percentage of votes agreeing: 22%
3. Get back to Owatadeel and try to negotiate a smaller fee with him for his proposed services.
Percentage of votes agreeing: 8%
4. Try to find another Utopian company to work with for a smaller fee for the same scope of services outlined by Owatadeel.
Percentage of votes agreeing: 5%
5. The potential fees and profit for this contract are too large to be ignored. Decline Owatadeel’s offer and instead set up and fund a branch office of your company in the capital of Utopia near the Obigee headquarters. You can send one of your subordinates to act as point person, with the initial objective of obtaining the contract for the design of the proposed petrochemical plant. Once the design contract is secured, you can use that office as the local project design headquarters. While the cost of an office is not overly expensive, you do recognize that a good portion of the amount Owatadeel indicated was needed for presentations, trips and marketing gifts will have to be distributed in the process, in accordance with the customs of Utopia.
Percentage of votes agreeing: 16%

6. Recognizing that there is a US government regulation which may prohibit proffering money or items of value in exchange for obtaining contracts and work from foreign countries, you decide to comply by setting your secretary's Uncle Hugh up in business as a totally separate company in Utopia through an arm's length arrangement in which you and several of the principals in your firm fund the cost of Hugh's office from your personal bank accounts. Once Hugh obtains the petrochemical plant design contract, he can then turn around and hire your company as a subconsultant to him to do the design work.

Percentage of votes agreeing: 3%
7. One of your company's competitors, ArsenalChem, has its headquarters in the same city as Choice Engineers, and provides the same sort of consulting and design services as your firm. Instead of accepting Owatadeel's proposal, you decide to have dinner with a friend who is marketing director for ArsenalChem and tell her about the Utopia chemical plant opportunity. You are even willing to put her in touch with Owatadeel. If ArsenalChem decides to go after the Utopia project, you will be in an excellent position to pick up opportunities for the domestic projects ArsenalChem won't have time to chase.

Percentage of votes agreeing: 5%
8. You find in a copy of the National Society of Professional Engineers (NSPE) Code of Ethics for Engineers (Section II.5.b at www.nspe.org/ethics) that professional engineers shall not offer any gift or other valuable consideration in order to secure work, and 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. While you believe this only applies to professional engineers (those with registered professional engineering licenses) in the United States, you decide not to take a chance with Owatadeel in Utopia, and recommend to the president of Choice Engineering that the company 'downsize' by laying off the projected 200 or so employees as the work dries up in the near future.

Percentage of votes agreeing: 10%
9. Because of the clause in the NSPE Code of Ethics for Engineers indicated in the alternate solution above, you recommend to the Choice Engineering Board of Directors that they do not pursue the Utopian contract, but rather set up a branch office in Alaska, in anticipation of new drilling in the Arctic National Wildlife Preserve which will require the services your firm can provide for ecologically sensitive plant development designs, even though it may take 12 to 18 months of stiff competition to develop that work with the large domestic petrochemical companies.

Percentage of votes agreeing: 19%

10. You do not believe the NSPE Code is applicable to engineers operating in other countries since ethics standards are relative to specific countries and change from country to country. The profit to be made on the Utopia plant design is very large once the contract is obtained. This is a once-in-a-lifetime opportunity for the right person, and you have personally been instrumental in making the right contacts in Utopia and convincing Obigee to build an expanded petrochemical plant. As a result, you decide to resign from Choice Engineering and move to Utopia to promote the plant design on your own, as an engineering broker. You plan to take two of Choice's engineers and estimators with you to do the detailed cost estimating. Once you have obtained the contract from the Obigee directors, you will be in a position to subcontract with Choice Engineering, ArsenalChem or others to do the actual engineering design, depending on the deal they are willing to work out with you for obtaining the work.

Percentage of votes agreeing: 1%

11. You understand the limits of your marketing capabilities, as well as the awesome responsibility of providing sufficient on-going new work to feed the 200 employees who might be fired. You resign from the company and recommend to the president of Choice Engineering that they use your salary to hire a true marketer (marketeer) to obtain new work. This then allows you to open the antique auto shop you have always wanted to, realizing that you may have to have your wife go to work to support the rest of the family.

Percentage of votes agreeing: 3%

Forum Comments from Respondents

Student responses:

1. If I couldn't negotiate a lower fee for Obigee, I would research means of setting up a branch office in Utopia, including a cost analysis, time to set up and any other factors that may come into play. With this information in hand I would present however much of it I can obtain in 12 hours to the president of the company. By only using a couple of hours, this will leave time for a decision to be made by the president as to how the situation should be approached.
2. You were assigned a new position in the company to develop one or more new client areas, therefore Approach #2 is the only possible/plausible approach. You "developed" a new client for the principals of the parent company to follow-up on.
3. After searching for other firms in Utopia that operate without charging large fees, I would set up a branch office in an effort to secure the contract and save the 200 employee jobs. I would also write up a proposal to Choice Engineering management on the benefits of hiring a professional marketer for securing future work.

4. I would try to find other ways of securing the project with Owatadeel instead of giving gifts (or bribes). If he was unwilling to cooperate then I would continue searching and competing for other jobs that I could ethically participate in and allow my company to be successful even though it may be more competitive and difficult. A clear conscience is priceless.
5. I think that signing the contract with Owatadeel is beyond your authority and you should consult the president of the company and follow through with his decision. You don't have the experience and knowledge to handle the matter.

Practicing engineer responses:

6. This modus operandi is not uncommon in foreign countries and is considered a cost of doing business. If you can get a delay in dealing with Owatadeel, you can explore the possibility of another partner. It sounds like you may not have done your homework thoroughly.
7. Your company has been resting on its laurels and has gotten caught by market conditions. The senior managers are probably not known for their foresightedness or they would have seen the change in the marketplace. As a result, they may not have researched doing business in a foreign country and the risks involved, e.g., foreign currency conversion, taxes, understanding the culture, labor situation, receipt of payment for services rendered, etc. The US State Department should have been contacted to gain insight on doing business in Utopia.
8. You have been stiffed once by the directors of Obigee Oil regarding the building of the petrochemical complex. Owatadeel is probably expecting you to negotiate because it is a custom of doing business there. You must be careful because these people may not be trusted at their word.
9. You should ask Owatadeel for the names of two European or US client references and offer to meet with him if he will arrange and participate in an introductory meeting with the "key" officials at Obigee Oil within the next week. Tell Owatadeel that based on your assessment of the value of the meeting, you will decide whether to consider further to engage his firm (International Associates - IA) for the project. If your decision is favorable, you will enter into negotiations with IA to identify a mutually acceptable scope of work and pricing/payment arrangement for their services. Upon reaching and signing the agreement, you will arrange for an electronic transfer of a project initiation fee of US\$30k. Failing to agree to engage the services of IA, you will pay IA a fee of US\$10k for Owatadeel's assistance in meeting with at least two members of the Board of Directors and the Project Manager at Obigee Oil.

10. If award of this contract would keep 200 people busy and the company is feeling paternal towards them, take the deal with Owatadeel. It could be viewed as “social engineering” by keeping the people employed or it could be a means of learning how to do business in a foreign country. The expectation would be that of a learning experience with little profit realized, but a large gain in experience.
11. Choice Engineering is faced with a serious problem. Most engineering codes of ethics address this issue very clearly. For example, the NSPE code states, “Engineers shall not permit the use of their name or associate in business ventures with any person or firm which they believe is engaged in fraudulent or dishonest enterprise” (II.1.d). Also, “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 reasonably be construed by the public as having the effect or intent of influencing the award of a contract” (II.5.b). While one might take the position that the project is for a private company and not a public agency, and therefore the code does not apply in this situation, this is not a reasonable conclusion. Therefore, since Choice Engineering is operating under the code of ethics in the United States, it must decline being involved.
12. The arrangement proposed by International Associates is widely accepted in many foreign countries. These countries have a different culture and code of ethics. The question is should Choice Engineering abide by the code of ethics in the country where they are headquartered (USA) or by the code and operating procedures where the project is located. A strict interpretation would say Choice has no choice but to conform to the United States code and decline to associate with International Associates. On the other hand, it could be argued that Choice should follow the customs and procedures of the country where the project is located, probably the only rationale to be taken if they wish to secure work in many foreign countries. In that case, if Choice is satisfied they will receive equitable services for the fees being charged by IA, then the arrangement is acceptable.
13. Don’t walk away from the deal offered by International Associates...run away from it! With the most lenient interpretation of the case, the US\$250,000 is a gratuity and Canon 5a of the ASCE Code of Ethics prohibits giving gratuities to get work. While IA is going to do the actual giving of these “marketing gifts”, they will be acting as your agent. You are responsible for the actions of your agent and you know this arrangement with IA is wrong.
14. Don’t feel like you have to “save the firm” on your own. This feeling is the only thing urging you to do something you know isn’t ethical or good business. Due to the shortsightedness of the principals in Choice Engineering, you were placed in a marketing position for which you had no

experience. Cut your losses and recommend to the Choice principals that they cut theirs. Either obtain experienced marketing help and try other ventures or downsize.

15. You should suggest to the president of Choice Engineering that he urge NSPE to start a well-publicized internet web site devoted to such regional problems as these which are increasingly important in a world market. This would allow individuals and firms in the United States and abroad to contribute their varied experiences, share concepts and educate the rest of the profession.