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Ethics: Voiding a Contract

*This article does not represent a determination by the Ethics Committee of an actual case. One of the responsibilities of the Ethics Committee is to enhance member awareness about the **Code of Professional Ethics** and **Code of Environmental Ethics**, which contain important principles relating to members' duties to clients and to other members. While there may be additional licensing, legal, or legally actionable factors in these hypotheticals, the Ethics Committee's comments address only the implications with regard to the ASLA ethical codes; the discussions of these hypotheticals by the Ethics Committee do not constitute legal advice.*



For years Peter Primo has been retained by the County Park Board to oversee the design and construction of the many parks owned by the county. Even though the board is required to vote at its first meeting of each year on whether it is to retain its current vendors and consultants, including its contract for design and construction services, no one has competed with Primo and the award of the contract to him has been considered only a formality.

Recently, W. E. Tryharder has been talking with various members of the County Park Board about the quality of services that could be provided by Tryharder. He has also sent promotional literature and his fee schedule to the board and has asked to be considered for the design and construction services contract the next

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time the board is required to vote on the contract. One of the board members happens to be a good friend of Primo and mentions to Primo that Tryharder has contacted the board about possibly changing to his firm the next time the contract is up for renewal. Primo becomes irate at this news and writes a letter to Tryharder stating that Tryharder is being unethical by trying to void his contract with the county.

Tryharder replies that he is not trying to void the current contract that Primo has with the county but that he has every right to submit a proposal for any new retainer contract that is to be voted on by the County Park Board for the next year.

Has W. E. Tryharder been unethical in his quest to obtain the new contract with the County Park Board?

Here is the relevant section of the ASLA Code of Professional Ethics:

Rule 1.111 Members shall not seek to void awarded contracts for a specific scope of service held by another member.

W. E. Tryharder is not in violation of the code since each year the County Park Board is required to reconsider the contract for design and construction services and to vote formally on the award of the contract, presumably in accordance with county ordinances with regard to the acquisition of such services.

Local ordinances and practices with regard to such contracts vary across the country from strict RFQ and RFP requirements and review procedures to virtually no open RFP process. Obviously, practitioners need to be aware of the local situation and conduct themselves accordingly.

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