

**STATE OF ALABAMA
BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND
LAND SURVEYORS**

IN RE THE MATTER OF:

**DOWNEY ENGINEERING CORPORATION
EDWARD J. DOWNEY**

Case No. 2011-18-B

CONSENT ORDER

Downey Engineering Corporation, a certificated company (hereinafter referred to as "Respondent") by and through its representative and president, Mr. Edward J. Downey, (professional engineer Alabama license # 28477) hereby stipulates and agrees, subject to approval of the State of Alabama Board of Licensure for Professional Engineers and Land Surveyors (hereinafter referred to as the "Board") as follows:

STIPULATED FACTS

Respondent stipulates it received a Certificate of Authorization (CA-4235-E) for engineering issued by the Board on April 22, 2011 and has held that certificate continuously since that date. Mr. Edward J. Downey received professional engineer license # 28477 from the Board on April 6, 2007 and has held that license continuously from that date to the present.

Respondent stipulates on February 7, 2011 the Board, by and through its Executive Director Ms. Regina A. Dinger, initiated a complaint alleging Respondent may be maintaining an office in Mobile, Alabama where it offers engineering services prior to obtaining a certificate of authorization for engineering from the Board and without employing a resident Alabama licensed professional engineer.

Respondent stipulates it prepared and submitted a proposal which included engineering services dated September 28, 2006 to Mr. Kirk Burgamy, Manager of Bender Shipbuilding & Repair Co. located in Mobile, Alabama without obtaining a Certificate of Authorization for engineering from the Board and employing an Alabama licensed professional engineer. The

proposal was prepared upon firm's letterhead which contains the wording "Downey Engineering Corporation, Navel Architecture/ Structural Engineering/Project Management" and was signed by Mr. Edward J. Downey, P.E.

Respondent stipulates it prepared and submitted a proposal which included engineering services dated October 2, 2006 to Bender Shipbuilding & Repair Co. located in Mobile, Alabama without obtaining a Certificate of Authorization for engineering from the Board and employing an Alabama licensed professional engineer. The proposal was prepared upon firm's letterhead which contains the wording "Downey Engineering Corporation, Naval Architecture/Structural Engineering/ Project Management" and signed by Mr. Edward J. Downey, P.E.

Respondent stipulates it prepared and submitted a proposal which included engineering services dated November 30, 2010 to Mr. David A Nicolson of NWE, LLC located in Fairhope, Alabama without obtaining a Certificate of Authorization for engineering from the Board or employing an Alabama licensed professional engineer. The proposal was prepared upon firm's letterhead which contains the wording "Downey Engineering Corporation, Naval Architecture/Structural Engineering/ Project Management" and signed by Mr. Edward J. Downey, P.E.

Respondent stipulates it prepared and submitted a proposal which included engineering services dated October 7, 2010 to Mr. Mike Guarisco of SPI/Mobile Pulley Work located in Mobile, Alabama without obtaining a Certificate of Authorization for engineering from the Board or employing an Alabama licensed professional engineer. The proposal was prepared upon firm's letterhead which contains the wording "Downey Engineering Corporation, Naval Architecture/Structural Engineering/ Project Management" and signed by Mr. Edward J. Downey, P.E.

Respondent stipulates it prepared and submitted a proposal which included engineering services dated October 7, 2010 to Mr. David A. Nicolson of NEW, LLC located in Fairhope, Alabama without obtaining a Certificate of Authorization for engineering from the Board. The

proposal was prepared upon firm's letterhead which contains the wording "Downey Engineering Corporation, Naval Architecture/Structural Engineering/ Project Management" and signed by Mr. Edward J. Downey, P.E.

Respondent stipulates it prepared and submitted a "complete design and construction engineering package proposal" dated March of 2010 to BAE Systems Southeast Shipyards located in Mobile, Alabama without obtaining a Certificate of Authorization for engineering from the Board. The proposal was prepared upon firm's letterhead which contains the wording "Downey Engineering Corporation" and signed by Mr. Edward J. Downey, P.E.

Respondent stipulates it provided services relative to Job Order 09-038 for FMS Engineering located in Mobile, Alabama regarding the project "FMS Module Tie Down Plans" dated December 22, 2009 and submitted an invoice to FMS Engineering in the amount of \$5,500.00 for "engineering services" on firm letterhead containing the wording "Downey Engineering Corporation, Naval Architecture/ Structural Engineering/ Project Management." Respondent further stipulates it performed these services without obtaining a Certificate of Authorization for engineering from the Board.

Respondent stipulates it provided services relative to Job Order 10-022 for SPI/Mobile Pulley Work located in Mobile, Alabama regarding the project "30 inch Suction Cutter Dredge" dated May 7, 2010 and submitted a proposal, design drawings and an invoice to SPI in the amount of \$3,295.43 for "engineering services" on firm letterhead containing the wording "Downey Engineering Corporation, Naval Architecture/ Structural Engineering/ Project Management". Respondent further stipulates it performed these services without obtaining a Certificate of Authorization for engineering from the Board.

Respondent stipulates it provided services relative to Job Order 10-038 for FMS Engineering, LLC located in Mobile, Alabama regarding the project "Cal Dive International" dated February 2010 and submitted a proposal, design drawings and an invoices to FMS in the amount of \$1,405.00 for "engineering services" on firm letterhead containing the wording

“Downey Engineering Corporation, Naval Architecture/ Structural Engineering/ Project Management”. Respondent further stipulates it performed these services without obtaining a Certificate of Authorization for engineering from the Board.

Respondent stipulates it provided services relative to Job Order 10-042 for Mr. Mike Guarisco of SPI/Mobile Pulley Work located in Mobile, Alabama relative to the project “SPI Finite Element Analysis” dated September 27, 2010 and submitted a proposal for engineering and drafting, and an invoice to SPI in the amount of \$13,000.00 for “engineering services” on firm letterhead containing the wording “Downey Engineering Corporation, Naval Architecture/ Structural Engineering/ Project Management”. Respondent further stipulates it performed these services without obtaining a Certificate of Authorization for engineering from the Board.

STIPULATED CONCLUSIONS OF LAW

Respondent admits it is subject to the provisions of Title 34, Chapter 11, Code of Alabama 1975, § 34-11-11 and the jurisdiction of the Board.

Respondent stipulates its conduct as set forth in the foregoing “Stipulated Facts” constitutes violations of Title 34, Chapter 11, Code of Alabama 1975, § 34-11-11(a) (2), § 34-11-9(a) (1) & (5) and violations of the Rules of Professional Conduct of the *Administrative Code* § 330-X-14-.06(a) (1) & (5).

Respondent stipulates its conduct as set forth in the “Stipulated Facts” is a violation of those statues set forth above, and it is subject to disciplinary action under Title 34, Chapter 11, Code of Alabama 1975, § 34-11-11.

STIPULATED DISPOSITION

1. Respondent shall not in the future violate the provisions of Title 34, Chapter 11, Code of Alabama 1975, or the Rules and Regulations of the Administrative Code and the Rules of Professional Conduct promulgated together.

2. Respondent understands this Consent Order and subsequent Final Order will become a matter of public record.

3. Respondent understands it shall pay to the Board a fine of two thousand five hundred dollars (\$2,500.00) within thirty (30) days of date of Final Order.

4. Respondent understands its certificate of authorization for engineering in the State of Alabama and the Alabama professional engineer license of Edward J. Downey shall be subject to two (2) years **probation** commencing immediately upon the date of the Final Order.

5. Respondent understands this Consent Order is subject to the approval of the Board and has no force and effect until a Final Order based upon it is rendered by the Board.

6. Respondent agrees any violation of the terms of this Consent Order, may result in the Board filing additional charges in accordance with the Title 34, Chapter 11, Code of Alabama 1975, § 34-11-11.

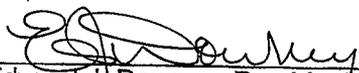
7. Respondent understands in order to make a decision relative to approving this Consent Order discussions must take place between Board Members, Board Staff and Board Counsel. Respondent understands that this discussion will take place at a regularly scheduled meeting of the Board in Montgomery Alabama. Respondent understands he has the right to be present when this matter is discussed but hereby waives that right.

8. Respondent understands it has the right to seek the advice of legal counsel. Respondent also understands it has the right to a formal fact finding hearing before the Board, to compel the testimony of witnesses, to cross-examine witnesses against it, and to obtain judicial review of the Board's decision in said formal hearing but expressly waives these rights with execution of this Consent Order and Final Order of the Board.

9. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review or to otherwise challenge or contest the validity of the Consent Order, the stipulated facts, conclusions of law and imposition of administrative action contained herein, and the Final Order of the Board incorporating said Consent Order.

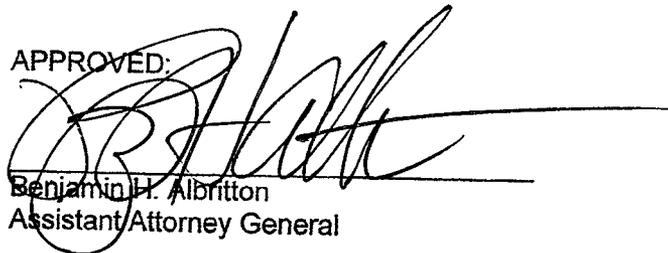
10. Respondent, for the purpose of avoiding further administrative action with respect to this cause executes this Consent Order. Should the Consent Order not be accepted by the Board, it is agreed that presentation to and consideration of the Consent Order by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation in or resolution of these proceedings. Likewise, if this Consent Order is not accepted, the Board shall not take into consideration the contents of this Order as evidence of an admission.

SIGNED this the 11TH day of July, 2011



Edward J. Downey, President
Downey Engineering Corporation

APPROVED:



Benjamin H. Albritton
Assistant Attorney General

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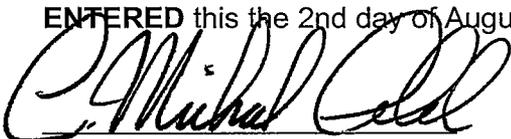
FINAL ORDER

On August 1-2, 2011, the Alabama Board of Licensure for Professional Engineers and Land Surveyors convened for a regularly scheduled meeting. The Board Members in attendance at the meeting were: Mr. C. Michael Arnold, Mr. William C. Ulrich, Jr., Mr. W. Gerald Wilbanks, Dr. Daniel S. Turner, Mr. Phillip E. Santora, Mr. Earl R. Foust and Mr. Don T. Arkle.

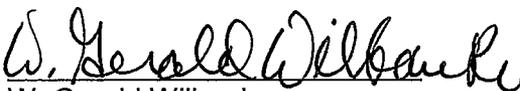
This Final Order is based upon a Consent Order signed by Edward J. Downey (hereafter referred to as Respondent) and dated July 11, 2011. In the Consent Order, Respondent stipulated he violated the Code of Alabama 1975, § 34-11-11(a) (2), § 34-11-9(a) (1) & (5), and the Rules of Professional Conduct of the *Administrative Code* § 330-X-14-.06(a) (1) & (5).

Upon Consideration of the above it is **ORDERED** that the Consent Order dated July 11, 2011 is adopted by the Board and hereby made a part of this Final Order. It is further **ORDERED** that Respondent abide by the Final Order in this manner.

ENTERED this the 2nd day of August, 2011



C. Michael Arnold



W. Gerald Wilbanks



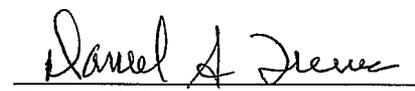
Phillip E. Santora



Don T. Arkle

RECUSED

William C. Ulrich, Jr



Daniel S. Turner



Earl R. Foust