

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Joseph R. Driscoll, Jr.**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to public safety and fair practices in procurement relating to the Commonwealth of Massachusetts selection of architects, engineers and related professionals.

PETITION OF:

NAME:

Joseph R. Driscoll, Jr.

DISTRICT/ADDRESS:

5th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3182 OF 2007-2008.]

## The Commonwealth of Massachusetts

—————  
In the Year Two Thousand and Nine  
—————

AN ACT RELATIVE TO PUBLIC SAFETY AND FAIR PRACTICES IN PROCUREMENT  
RELATING TO THE COMMONWEALTH OF MASSACHUSETTS SELECTION OF ARCHITECTS,  
ENGINEERS AND RELATED PROFESSIONALS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority  
of the same, as follows:*

1           SECTION 1. The General Laws are hereby amended by inserting after Section 19 of Chapter 30B,  
2 the following new Section:--

3

4           Section 20 – SELECTION OF ARCHITECTS, ENGINEERS AND RELATED PROFESSIONALS

5

6           (A) For purposes of this section the following phrases shall have the following meanings:

7           (1) “Firm” means any individual, firm, partnership, corporation, association, or other legal  
8 entity permitted by law to practice the professions of architecture, engineering, land surveying,  
9 landscape architecture, environmental science, planning and program management.

10

11           (2) “Agency” means any department, commission, council, board, bureau, committee,  
12 institution, agency, state university, government corporation, authority, or other  
13 establishment or procurement office of the Commonwealth, excluding cities, towns, or  
14 municipalities.

15

16 (3) "Architectural and Engineering Services" means:

- 17 1. professional services of an architectural or engineering nature, as defined by State law,  
18 which are required to be performed or approved by a person licensed, registered, or  
19 certified to provide such services as described in this paragraph;
- 20 2. professional services of an architectural or engineering nature performed by contract  
21 that are associated with research planning, development, design, investigations,  
22 inspections, tests, evaluations, consultations, program management, value engineering,  
23 construction, alteration, or repair of real property; and
- 24 3. such other professional services of an architectural or engineering nature, or incidental  
25 services, which members of the architectural and engineering professions (and  
26 individuals in their employ) may logically or justifiably perform, including studies;  
27 investigations; surveying and mapping; soil tests; construction phase services; drawing  
28 reviews; evaluations; consultations; comprehensive planning; program management;  
29 conceptual designs, plan and specifications; soils engineering; cost estimates or  
30 programs; preparation of drawings, plans, or specifications; supervision or  
31 administration of a construction contract; construction management or scheduling;  
32 preparation of operation and maintenance manuals, and other related services.  
33

34 (4) "Related Professional Services" means:

- 35 1. professional services including land surveying, landscape architecture, environmental  
36 science, planning and licensed site professionals, which are required to be performed or  
37 approved by a person licensed, registered, or certified to provide such services as  
38 described in this paragraph;
- 39 2. professional services performed by contract that are associated with research, planning,  
40 development, design, investigations, inspections, surveying and mapping, tests,  
41 evaluations, consultations, comprehensive planning program management, value  
42 engineering, construction, alteration, or repair of real property; and
- 43 3. such other professional services, or incidental services, which members of the related  
44 professions described in (4)<sup>1</sup> above (and individuals in their employ) may logically or  
45 justifiably perform, including master plans, studies, surveys, soil tests, cost estimates or  
46 programs; preparation of drawings, plans, or specifications supervision or  
47 administration of a construction contract; construction management or scheduling;  
48 conceptual designs, plans and specifications; construction phase services, soils  
49 engineering, drawing reviews, cost estimating, preparation of operation and  
50 maintenance manuals, and other related services.
- 51 4. Nothing contained in the foregoing as amended shall be construed as constituting  
52 regulation and/or oversight of any designated firms or identified professionals services.  
53

54 (5) "Project" means any capital improvement project or any design, study, plan,

55 survey, or new or existing program activity of a State agency, including the development of new or  
56 existing programs that require architectural, engineering or related professionals services and

57 shall not include any public building construction project undertaken pursuant to the provisions of  
58 Mass. Gen. Laws, Chapters 7, 149 or 149A.

59

60 (B) The Commonwealth of Massachusetts Legislature hereby declares it to be the policy of the  
61 Commonwealth of Massachusetts to publicly announce all requirements for architectural, engineering,  
62 and related professional services, to procure these services on the basis of demonstrated competence  
63 and qualifications, and to negotiate contracts after selecting a firm, at fair and reasonable prices.

64

65 (C) PREQUALIFICATION.

66 For those agencies that prequalify architectural, engineering, and related services, the agency head  
67 shall encourage firms engaged in the lawful practice of their profession to submit annually a statement  
68 of qualifications and performance data.

69

70 (D) PUBLIC NOTICE.

71 Whenever a project requiring architectural, engineering, or related professional services is proposed for  
72 a State Agency, the agency shall provide no less than 14 days advance notice published in a professional  
73 services bulletin or advertised within the official State Agency website setting forth the projects and  
74 services to be procured. The professional services bulletin shall be made available to each firm that  
75 requests the information. The professional services bulletin shall include a description of each project  
76 and shall state the time and place for interested firms to submit a letter of interest and, if required by  
77 the public notice, a statement of qualifications. If it is determined that a sole source selection of a  
78 qualified firm is in the best interest of the agency then the project is not publicly advertised.

79

80 (E) EVALUATION PROCEDURE.

81 An agency shall evaluate the firms submitting letters of interest and other prequalified firms, taking into  
82 account qualifications; and the agency may consider, but shall not be limited to considering, ability of  
83 professional personnel, past record and experience, performance data on file, willingness to meet time  
84 requirements, location, workload of the firm and any other qualifications based on factors as the agency  
85 may determine in writing are applicable. The agency may conduct discussions with and require  
86 presentations by firms deemed to be the most qualified regarding their qualifications, approach to the  
87 project and ability to furnish the required services. In no case shall an agency, prior to selecting a firm  
88 for negotiation seek formal or informal submission of verbal or written estimates of costs or proposals in  
89 terms of dollars, hours required, percentage of construction cost, or any other measure of  
90 compensation.

91

92 (F) SELECTION PROCEDURE.

93

94 (1) An agency shall select architects, engineers and related professional firms on the basis of  
95 qualifications for the type of professional services required. An agency may solicit or use pricing  
96 policies and proposals or other pricing information to determine consultant compensation only after  
97 the agency has selected a firm and initiated negotiations with the selected firm.  
98

99 (2) The procedures that an agency creates for the screening and selection of firms shall be within  
100 the sole discretion of the agency and may be adjusted to accommodate the agency's scope,  
101 schedule and budget objectives for a particular project. Adjustments to accommodate an agency's  
102 objectives may include provision for the direct appointment of a firm if the value of the project does  
103 not exceed \$25,000, or if it is determined that a sole source selection of a qualified firm is in the  
104 best interest of the agency and the project is not publicly advertised.  
105

106 (3) The decision of an agency that has complied with the provisions of this Act is final and  
107 binding.  
108

109 (G) CONTRACT NEGOTIATION.

110

111 (1) The agency and the selected firm shall mutually discuss and refine the scope of services for the  
112 project and shall negotiate conditions, including but not limited to compensation level and  
113 performance schedule based on scope of services. The compensation level paid must be  
114 reasonable and fair to the agency as determined solely by the agency. In making such  
115 determination, the agency shall take into account the estimated value of the services to be  
116 rendered, the scope, complexity, and professional nature thereof.  
117

118 (2) If the agency and the selected firm are unable for any reason to negotiate a contract at a  
119 compensation level that is reasonable and fair to the agency, the agency shall, in writing,  
120 formally terminate negotiations with the selected firm. The agency shall then negotiate with the  
121 second ranked most qualified firm. The negotiation process may continue in this manner  
122 through successive ranked firms until an agreement is reached or the agency terminates the  
123 consultant contracting process.  
124

125

126 (H) SMALL CONTRACTS AND SOLE SOURCE CONTRACTS.

127 The provisions of this Act do not apply to architectural, engineering, and related professional services  
128 contracts of less than \$25,000, or sole source contracts that are awarded to a qualified firm as  
129 determined to be in the best interest of the agency, where only one firm has been solicited regarding  
130 the project and the project is not publicly advertised.

131

132 (I) EMERGENCY SERVICES.

133 The provisions of this Act do not apply in the procurement of architectural, engineering, and related  
134 professional services by agencies (i) when an agency determines in writing that it is in the best interest  
135 of the State to proceed with the immediate selection of a firm or (ii) in emergencies when immediate  
136 services are necessary to protect the public health and safety, including, but not limited to, earthquake,  
137 tornado, storm, or natural or man-made disaster.

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141 (J) FIRM PERFORMANCE EVALUATION.

142 Each agency shall evaluate the performance of each firm upon completion of a contract. That evaluation  
143 shall be made available to the firm who may submit a written response, with the evaluation and  
144 response retained solely by the agency. The evaluation and response shall not be made available to any  
145 other person or firm and is exempt from disclosure under the Freedom of Information Act.

146

147 (K) CERTIFICATE OF COMPLIANCE. Each contract for architectural, engineering, and related professional  
148 services by an agency shall contain a certificate signed by a representative of the agency and the firm  
149 that each has complied with the provisions of this Act.

150

151 SECTION 2.

152 Chapter 30B, Section 1, subsection 15 of the General Laws are hereby amended by striking the word  
153 "designers" and adding the following new subsection:

154 (34A) contracts with architects, engineers and related professionals.

155

156 SECTION 3.

157 Chapters 30B, Section 2 of the General Laws are hereby amended by striking the definition of "Designer"  
158 and replacing it with the following text:

159

160 "Architects and Engineers", a person performing professional services of an architectural or engineering  
161 nature, as defined by State law, which are required to be performed or approved by a person licensed,  
162 registered, or certified to provide such services as described in this paragraph; professional services of  
163 an architectural or engineering nature performed by contract that are associated with research,  
164 planning, development, design, investigations, inspections, tests, evaluations, consultations, program  
165 management, value engineering, construction, alteration, or repair of real property; and such other  
166 professional services of an architectural or engineering nature, or incidental services, which members of  
167 the architectural and engineering professions (and individuals in their employ) may logically or justifiably  
168 perform, including studies; investigations; surveying and mapping; soil tests; construction phase  
169 services; drawing reviews; evaluations; consultations; comprehensive planning; program management;  
170 conceptual designs, plans and specifications; soils engineering; cost estimates or programs; preparation  
171 of drawings, plans, or specifications; supervision or administration of a construction contract;  
172 construction management or scheduling; preparation of operation and maintenance manuals, and other  
173 related services.

174

175 "Related Professionals" are professionals engaged in professional services including land surveying,  
176 landscape architecture, environmental science, planning, and licensed site professionals, which are  
177 required to be performed or approved by a person licensed, registered, or certified to provide such  
178 services as described in this paragraph; professional services performed by contract that are associated  
179 with research, planning, development, design, investigations, inspections, surveying and mapping, tests,  
180 evaluations, consultations, comprehensive planning, program management, value engineering,  
181 construction, alteration, or repair of real property; and such other professional services, or incidental  
182 services, which members of the related professions described in (4)<sup>1</sup> above (and individuals in their  
183 employ) may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost  
184 estimates or programs; preparation of drawings, plans, or specifications; supervision or administration  
185 of a construction contract; construction management or scheduling; conceptual designs, plans and  
186 specifications; construction phase services, soils engineering, drawing reviews, cost estimating,  
187 preparation of operation and maintenance manuals, and other related services.

188 Nothing contained in the foregoing shall be construed as constituting regulation and/or oversight of any  
189 designated firms or identified professionals services.

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191

192 SECTION 4.

193 The General Laws are hereby amended by deleting Section 8A of Chapter 81, in its entirety and inserting  
194 the following new Section:--

195  
196 Section 8A. The Department shall publicly announce all Requests for Engineering Survey  
197 Services; procure these services on the basis of demonstrated competence and qualifications; and  
198 negotiate contracts after selecting a firm, at fair and reasonable prices.  
199 The Department shall adhere to the following processes for each Request of Engineering Survey  
200 Services.

201  
202 (A) PUBLIC NOTICE.

203 Whenever a project requiring Engineering Survey Services or related professional services is  
204 proposed for the Department, the Department shall provide no less than 14 days advance notice  
205 published in a professional services bulletin or advertise with the official Department website  
206 setting forth the project and services to be procured. The professional services bulletin shall be  
207 made available to each firm that requests the information. The professional services bulletin  
208 shall include a description of each project and shall state the time and place for interested firms  
209 to submit a letter of interest and, if required by the public notice, a statement of qualifications. If  
210 it is determined that a sole source selection of a qualified firm is in the best interest of the agency  
211 then the project is not publicly advertised.

212  
213 (B) EVALUATION PROCEDURE.

214 The Department shall evaluate the firms submitting letters of interest and other prequalified  
215 firms, taking into account qualifications; and the Department may consider, but shall not be  
216 limited to considering, ability of professional personnel, past record and experience, performance  
217 data on file, willingness to meet time requirements, location, workload of the firm and any other  
218 qualifications based on factors as the agency may determine in writing are applicable. The  
219 Department may conduct discussions with and requires presentations by firms deemed to be the  
220 most qualified regarding their qualifications, approach to the project and ability to furnish the  
221 required services. In no case shall the Department, prior to selecting a firm for negotiation seek  
222 formal or informal submission of verbal or written estimates of costs and proposals in terms of  
223 dollars, hours required, percentage of construction cost, or any other measure of compensation.

224  
225 (C) SELECTION PROCEDURE.

226  
227 (1) An agency shall select engineering survey firms and related professional firms on the  
228 basis of qualifications for the type of professional services required. The Department  
229 may solicit or use pricing policies and proposals or other pricing information to  
230 determine consultant compensation only after the Department has selected a firm and  
231 initiated negotiations with the selected firm.

232  
233 (2) The procedures that the Department creates for the screening and selection of firms  
234 shall be within the sole discretion of the Department and may be adjusted to  
235 accommodate the Department's scope, schedule and budget objectives for a particular  
236 project. Adjustments to accommodate the Department's objectives may include  
237 provision for the direct appointment of a firm if the value of the project does not



238 exceed \$25,000, or if it is determined that a sole source selection of a qualified firm is  
239 in the best interest of the Department and the project is not publicly advertise.

240  
241 (3) The decision of the Department that has complied with the provisions of this Act is  
242 final and binding.

243  
244

245 (D) CONTRACT NEGOTIATION.

246  
247 (1) The Department and the selected firm shall mutually discuss and refine the scope of  
248 services for the project and shall negotiate conditions, including but not limited  
249 to compensation level and performance schedule based on the scope of services. The  
250 compensation level paid must be reasonable and fair to the Department as determined  
251 solely by the Department. In making such determination, the Department shall take  
252 into account the estimated value of the services to be rendered, the scope, complexity,  
253 and professional nature thereof.

254  
255 (2) If the Department and the selected firm are unable for any reason to negotiate a contract  
256 at a compensation level that is reasonable and fair to the Department, the Department  
257 shall, in writing, formally terminate negotiations with the selected firm. The  
258 Department shall then negotiate with the second ranked most qualified firm. The  
259 negotiation process may continue in this manner through successive ranked firms until  
260 an agreement is reached or the agency terminates the consultant contracting process.

261  
262

263 (E)\_SMALL CONTRACTS AND SOLE SOURCE CONTRACTS

264 The provisions of this Act do not apply to architectural, engineering, and related professional  
265 services contracts of less than \$25,000, or sole source contracts that are awarded to a qualified  
266 firm as determined to be in the best interest of the Department, where only one firm has been  
267 solicited regarding the project and the project is not publicly advertised.

268  
269

269 (F) EMERGENCY SERVICES

270 The provisions of this Act do not apply in the procurement of engineering survey services and  
271 related professional services by agencies (i) when the Department determines in writing that it is  
272 in the best interest of the State to proceed with the immediate selection of a firm or (ii) in  
273 emergencies when immediate services are necessary to protect the public health and safety,  
274 including, but not limited to, earthquake, tornado, storm, or natural or man-made disaster.

275