

**HOUSE . . . . . No. 2978**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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  
2 Chapter 30B, the following new Section:--

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

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

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

13 (3) “Architectural and Engineering Services” means:

14 professional services of an architectural or engineering nature, as defined by State law,  
15 which are required to be performed or approved by a person licensed, registered, or certified to  
16 provide such services as described in this paragraph;

17 professional services of an architectural or engineering nature performed by contract that  
18 are associated with research planning, development, design, investigations, inspections, tests,  
19 evaluations, consultations, program management, value engineering, construction, alteration, or  
20 repair of real property; and

21 such other professional services of an architectural or engineering nature, or incidental  
22 services, which members of the architectural and engineering professions (and individuals in  
23 their employ) may logically or justifiably perform, including studies; investigations; surveying  
24 and mapping; soil tests; construction phase services; drawing reviews; evaluations; consultations;  
25 comprehensive planning; program management; conceptual designs, plan and specifications;  
26 soils engineering; cost estimates or programs; preparation of drawings, plans, or specifications;  
27 supervision or administration of a construction contract; construction management or scheduling;  
28 preparation of operation and maintenance manuals, and other related services.

29 (4) “Related Professional Services” means:

30 1. professional services including land surveying, landscape architecture,  
31 environmental science, planning and licensed site professionals, which are required to be  
32 performed or approved by a person licensed, registered, or certified to provide such services as  
33 described in this paragraph;

34 professional services performed by contract that are associated with research, planning,  
35 development, design, investigations, inspections, surveying and mapping, tests, evaluations,  
36 consultations, comprehensive planning program management, value engineering, construction,  
37 alteration, or repair of real property; and

38 such other professional services, or incidental services, which members of the related  
39 professions described in (4)1 above (and individuals in their employ) may logically or justifiably  
40 perform, including master plans, studies, surveys, soil tests, cost estimates or programs;  
41 preparation of drawings, plans, or specifications supervision or administration of a construction  
42 contract; construction management or scheduling; conceptual designs, plans and specifications;  
43 construction phase services, soils engineering, drawing reviews, cost estimating, preparation of  
44 operation and maintenance manuals, and other related services.

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

47 (5) "Project" means any capital improvement project or any design, study, plan,  
48 survey, or new or existing program activity of a State agency, including the development  
49 of new or existing programs that require architectural, engineering or related professionals  
50 services and shall not include any public building construction project undertaken pursuant to the  
51 provisions of Mass. Gen. Laws, Chapters 7, 149 or 149A.

52 (B) The Commonwealth of Massachusetts Legislature hereby declares it to be the policy  
53 of the Commonwealth of Massachusetts to publicly announce all requirements for architectural,  
54 engineering, and related professional services, to procure these services on the basis of

55 demonstrated competence and qualifications, and to negotiate contracts after selecting a firm, at  
56 fair and reasonable prices.

57 (C) PREQUALIFICATION.

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

61 (D) PUBLIC NOTICE.

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

71 (E) EVALUATION PROCEDURE.

72 An agency shall evaluate the firms submitting letters of interest and other prequalified  
73 firms, taking into account qualifications; and the agency may consider, but shall not be limited to  
74 considering, ability of professional personnel, past record and experience, performance data on  
75 file, willingness to meet time requirements, location, workload of the firm and any other

76 qualifications based on factors as the agency may determine in writing are applicable. The  
77 agency may conduct discussions with and require presentations by firms deemed to be the most  
78 qualified regarding their qualifications, approach to the project and ability to furnish the required  
79 services. In no case shall an agency, prior to selecting a firm for negotiation seek formal or  
80 informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours  
81 required, percentage of construction cost, or any other measure of compensation.

82 (F) SELECTION PROCEDURE.

83 An agency shall select architects, engineers and related professional firms on the basis  
84 of qualifications for the type of professional services required. An agency may solicit or use  
85 pricing policies and proposals or other pricing information to determine consultant  
86 compensation only after the agency has selected a firm and initiated negotiations with the  
87 selected firm.

88 The procedures that an agency creates for the screening and selection of firms shall  
89 be within the sole discretion of the agency and may be adjusted to accommodate the agency's  
90 scope, schedule and budget objectives for a particular project. Adjustments to  
91 accommodate an agency's objectives may include provision for the direct appointment of a  
92 firm if the value of the project does not exceed \$25,000, or if it is determined that a sole  
93 source selection of a qualified firm is in the best interest of the agency and the project is  
94 not publicly advertised.

95 The decision of an agency that has complied with the provisions of this Act is final  
96 and binding.

97 (G) CONTRACT NEGOTIATION.

98           The agency and the selected firm shall mutually discuss and refine the scope of services  
99 for the project and shall negotiate conditions, including but not limited to compensation level and  
100 performance schedule based on scope of services. The compensation level paid must be  
101 reasonable and fair to the agency as determined solely by the agency. In making such  
102 determination, the agency shall take into account the estimated value of the services to be  
103 rendered, the scope, complexity, and professional nature thereof.

104           If the agency and the selected firm are unable for any reason to negotiate a contract at a  
105 compensation level that is reasonable and fair to the agency, the agency shall, in writing,  
106 formally terminate negotiations with the selected firm. The agency shall then negotiate with the  
107 second ranked most qualified firm. The negotiation process may continue in this manner through  
108 successive ranked firms until an agreement is reached or the agency terminates the consultant  
109 contracting process.

110           (H) SMALL CONTRACTS AND SOLE SOURCE CONTRACTS.

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

115           (I) EMERGENCY SERVICES.

116           The provisions of this Act do not apply in the procurement of architectural, engineering,  
117 and related professional services by agencies (i) when an agency determines in writing that it is  
118 in the best interest of the State to proceed with the immediate selection of a firm or (ii) in

119 emergencies when immediate services are necessary to protect the public health and safety,  
120 including, but not limited to, earthquake, tornado, storm, or natural or man-made disaster.

121 (J) FIRM PERFORMANCE EVALUATION.

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

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

130 SECTION 2. Chapter 30B, Section 1, subsection 15 of the General Laws are hereby  
131 amended by striking the word "designers" and adding the following new subsection:

132 (34A) contracts with architects, engineers and related professionals.

133 SECTION 3. Chapters 30B, Section 2 of the General Laws are hereby amended by  
134 striking the definition of "Designer" and replacing it with the following text:

135 "Architects and Engineers", a person performing professional services of an architectural  
136 or engineering nature, as defined by State law, which are required to be performed or approved  
137 by a person licensed, registered, or certified to provide such services as described in this  
138 paragraph; professional services of an architectural or engineering nature performed by contract  
139 that are associated with research, planning, development, design, investigations, inspections,

140 tests, evaluations, consultations, program management, value engineering, construction,  
141 alteration, or repair of real property; and such other professional services of an architectural or  
142 engineering nature, or incidental services, which members of the architectural and engineering  
143 professions (and individuals in their employ) may logically or justifiably perform, including  
144 studies; investigations; surveying and mapping; soil tests; construction phase services; drawing  
145 reviews; evaluations; consultations; comprehensive planning; program management; conceptual  
146 designs, plans and specifications; soils engineering; cost estimates or programs; preparation of  
147 drawings, plans, or specifications; supervision or administration of a construction contract;  
148 construction management or scheduling; preparation of operation and maintenance manuals, and  
149 other related services.

150 "Related Professionals" are professionals engaged in professional services including land  
151 surveying, landscape architecture, environmental science, planning, and licensed site  
152 professionals, which are required to be performed or approved by a person licensed, registered,  
153 or certified to provide such services as described in this paragraph; professional services  
154 performed by contract that are associated with research, planning, development, design,  
155 investigations, inspections, surveying and mapping, tests, evaluations, consultations,  
156 comprehensive planning, program management, value engineering, construction, alteration, or  
157 repair of real property; and such other professional services, or incidental services, which  
158 members of the related professions described in (4)1 above (and individuals in their employ)  
159 may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost  
160 estimates or programs; preparation of drawings, plans, or specifications; supervision or  
161 administration of a construction contract; construction management or scheduling; conceptual  
162 designs, plans and specifications; construction phase services, soils engineering, drawing



163 reviews, cost estimating, preparation of operation and maintenance manuals, and other related  
164 services.

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

167 SECTION 4. The General Laws are hereby amended by deleting Section 8A of Chapter  
168 81, in its entirety and inserting the following new Section:--

169 Section 8A. The Department shall publicly announce all Requests for Engineering  
170 Survey Services; procure these services on the basis of demonstrated competence and  
171 qualifications; and negotiate contracts after selecting a firm, at fair and reasonable prices.

172 The Department shall adhere to the following processes for each Request of Engineering  
173 Survey Services.

174 (A) PUBLIC NOTICE.

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

184 (B) EVALUATION PROCEDURE.

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

196 (C) SELECTION PROCEDURE.

197 An agency shall select engineering survey firms and related professional firms on the  
198 basis of qualifications for the type of professional services required. The Department may solicit  
199 or use pricing policies and proposals or other pricing information to determine consultant  
200 compensation only after the Department has selected a firm and initiated negotiations with the  
201 selected firm.

202 The procedures that the Department creates for the screening and selection of firms shall  
203 be within the sole discretion of the Department and may be adjusted to accommodate the  
204 Department's scope, schedule and budget objectives for a particular project. Adjustments to  
205 accommodate the Department's objectives may include provision for the direct appointment of a

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

209 The decision of the Department that has complied with the provisions of this Act is final  
210 and binding.

211 (D) CONTRACT NEGOTIATION.

212 The Department and the selected firm shall mutually discuss and refine the scope of  
213 services for the project and shall negotiate conditions, including but not limited to compensation  
214 level and performance schedule based on the scope of services. The compensation level paid  
215 must be reasonable and fair to the Department as determined solely by the Department. In  
216 making such determination, the Department shall take into account the estimated value of the  
217 services to be rendered, the scope, complexity, and professional nature thereof.

218 If the Department and the selected firm are unable for any reason to negotiate a contract  
219 at a compensation level that is reasonable and fair to the Department, the Department shall, in  
220 writing, formally terminate negotiations with the selected firm. The Department shall then  
221 negotiate with the second ranked most qualified firm. The negotiation process may continue in  
222 this manner through successive ranked firms until an agreement is reached or the agency  
223 terminates the consultant contracting process.

224 (E)\_SMALL CONTRACTS AND SOLE SOURCE CONTRACTS

225 The provisions of this Act do not apply to architectural, engineering, and related  
226 professional services contracts of less than \$25,000, or sole source contracts that are awarded to

227 a qualified firm as determined to be in the best interest of the Department, where only one firm  
228 has been solicited regarding the project and the project is not publicly advertised.

229 (F) EMERGENCY SERVICES

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