

HOUSE No. 3200

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to public safety and fair practices in procurement relating to the Commonwealth of Massachusetts selection of land surveyors..

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.

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

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

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

9 (A) PUBLIC NOTICE.

10 Whenever a project requiring Engineering Survey Services or related professional
11 services is proposed for the Department, the Department shall provide no less than 14 days
12 advance notice published in a professional services bulletin or advertise with the official

Department website setting forth the project and services to be procured. The professional services bulletin shall be made available to each firm that requests the information. The professional services bulletin shall include a description of each project and shall state the time and place for interested firms to submit a letter of interest and, if required by the public notice, a statement of qualifications. If it is determined that a sole source selection of a qualified firm is in the best interest of the agency then the project is not publicly advertised.

(B) EVALUATION PROCEDURE.

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

(C) SELECTION PROCEDURE.

An agency shall select engineering survey firms and related professional firms on the basis of qualifications for the type of professional services required. The Department may solicit or use pricing policies and proposals or other pricing information to determine consultant

35 compensation only after the Department has selected a firm and initiated negotiations with the
36 selected firm.

37 The procedures that the Department creates for the screening and selection of firms shall
38 be within the sole discretion of the Department and may be adjusted to accommodate the
39 Department's scope, schedule and budget objectives for a particular project. Adjustments to
40 accommodate the Department's objectives may include provision for the direct appointment of a
41 firm if the value of the project does not exceed \$25,000, or if it is determined that a sole source
42 selection of a qualified firm is in the best interest of the Department and the project is not
43 publicly advertise.

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

46 (D) CONTRACT NEGOTIATION.

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

53 If the Department and the selected firm are unable for any reason to negotiate a contract
54 at a compensation level that is reasonable and fair to the Department, the Department shall, in
55 writing, formally terminate negotiations with the selected firm. The Department shall then
56 negotiate with the second ranked most qualified firm. The negotiation process may continue in

57 this manner through successive ranked firms until an agreement is reached or the agency
58 terminates the consultant contracting process.