

HOUSE No. 3182

By Mr. Driscoll of Braintree, petition of Joseph R. Driscoll for legislation to regulate the procurement process for selection of architects, engineers and other professionals under the public procurement law of the Commonwealth. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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
2 inserting after Section 19 of Chapter 30B, the following new
3 Section:—

4 Section 20. SELECTION OF ARCHITECTS, ENGINEERS
5 AND RELATED PROFESSIONALS.

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

8 (1) “Firm” means any individual, firm, partnership, corpora-
9 tion, association, or other legal entity permitted by law to practice
10 the professions of architecture, engineering, land surveying, land-
11 scape architecture, environmental science, planning, and program
12 management.

13 (2) “Agency” means any department, commission, council,
14 board, bureau, committee, institution, agency, state university,
15 government corporation, authority, or other establishment or pro-
16 curement official of the Commonwealth, excluding cities, towns
17 or municipalities.

18 (3) “Architectural and engineering services” means:—

19 1.) professional services of an architectural or engineering
20 nature, as defined by State law, which are required to be per-
21 formed or approved by a person licensed, registered, or certified
22 to provide such services as described in this paragraph;

23 2.) professional services of an architectural or engineering
24 nature performed by contract that are associated with research,
25 planning, development, design, investigations, inspections, tests,
26 evaluations, consultations, program management, value engi-
27 neering, construction, alteration, or repair of real property; and

28 3.) such other professional services of an architectural or engi-
29 neering nature, or incidental services, which members of the
30 architectural and engineering professions (and individuals in their
31 employ) may logically or justifiably perform, including studies;
32 investigations; surveying and mapping; soil tests; construction
33 phase services; drawing reviews; evaluations; consultations; com-
34 prehensive planning; program management; conceptual designs,
35 plans and specifications; soils engineering; cost estimates or pro-
36 grams; preparation of drawings, plans, or specifications; supervi-
37 sion or administration of a construction contract; construction
38 management or scheduling; preparation of operation and mainte-
39 nance manuals, and other related services.

40 4.) “Related professional services” means:—

41 1.) professional services including land surveying, landscape
42 architecture, environmental science, planning, and licensed site
43 professionals, which are required to be performed or approved by
44 a person licensed, registered, or certified to provide such services
45 as described in this paragraph;

46 2.) professional services performed by contract that are associ-
47 ated with research, planning, development, design, investigations,
48 inspections, surveying and mapping, tests, evaluations, consulta-
49 tions, comprehensive planning, program management, value engi-
50 neering, construction, alteration, or repair of real property; and

51 3.) such other professional services, or incidental services,
52 which members of the related professions described in

53 (4) 1 above (and individuals in their employ) may logically or
54 justifiably perform, including master plans, studies, surveys, soil
55 tests, cost estimates or programs; preparation of drawings, plans,
56 or specifications; supervision or administration of a construction
57 contract; construction management or scheduling; conceptual
58 designs, plans and specifications; construction phase services,
59 soils engineering, drawing reviews, cost estimating, preparation of
60 operation and maintenance manuals, and other related services.

61 5.) “Project” means any capital improvement project or any
62 design, study, plan, survey, or new or existing program activity of
63 a State agency, including development of new or existing pro-
64 grams that require architectural, engineering or related profes-
65 sional services.

66 (B.) The Commonwealth of Massachusetts Legislature hereby
67 declares it to be the policy of the Commonwealth of Massachu-
68 setts to publicly announce all requirements for architectural, engi-
69 neering, and related professional services, to procure these
70 services on the basis of demonstrated competence and qualifica-
71 tions, and to negotiate contracts after selecting a firm, at fair and
72 reasonable prices.

73 (C.) PREQUALIFICATION. For those agencies that prequalify
74 architectural, engineering, and related services, the agency head
75 shall encourage firms engaged in the lawful practice of their pro-
76 fession to submit annually a statement of qualifications and per-
77 formance data.

78 (D.) PUBLIC NOTICE. Whenever a project requiring architec-
79 tural, engineering, or related professional services is proposed for
80 a State Agency, the agency shall provide no less than 14 days
81 advance notice published in a professional services bulletin or
82 advertised within the official State Agency website setting forth
83 the projects and services to be procured. The professional services
84 bulletin shall be made available to each firm that requests the
85 information. The professional services bulletin shall include a
86 description of each project and shall state the time and place for
87 interested firms to submit a letter of interest and, if required by
88 the public notice, a statement of qualifications. If it is determined
89 that a sole source selection of a qualified firm is in the best
90 interest of the agency then the project is not publicly advertised.

91 (E.) EVALUATION PROCEDURE. An agency shall evaluate
92 the firms submitting letters of interest and other prequalified
93 firms, taking into account qualifications; and the agency may con-
94 sider, but shall not be limited to considering, ability of profes-
95 sional personnel, past record and experience, performance data on
96 file, willingness to meet time requirements, location, workload of
97 the firm and any other qualifications based on factors as the
98 agency may determine in writing are applicable. The agency may
99 conduct discussions with and require presentations by firms

100 deemed to be the most qualified regarding their qualifications,
101 approach to the project and ability to furnish the required services.
102 In no case shall an agency, prior to selecting a firm for negotiation
103 seek formal or informal submission of verbal or written estimates
104 of costs or proposals in terms of dollars, hours required, per-
105 centage of construction cost, or any other measure of compensa-
106 tion.

107 (F.) SELECTION PROCEDURE.

108 (1) An agency shall select architects, engineers and related pro-
109 fessional firms on the basis of qualifications for the type of pro-
110 fessional services required. An agency may solicit or use pricing
111 policies and proposals or other pricing information to determine
112 consultant compensation only after the agency has selected a firm
113 and initiated negotiations with the selected firm.

114 (2) The procedures that an agency creates for the screening and
115 selection of firms shall be within the sole discretion of the agency
116 and may be adjusted to accommodate the agency's scope,
117 schedule and budget objectives for a particular project. Adjust-
118 ments to accommodate an agency's objectives may include provi-
119 sion for the direct appointment of a firm if the value of the project
120 does not exceed \$25,000, or if it is determined that a sole source
121 selection of a qualified firm is in the best interest of the agency
122 and the project is not publicly advertised.

123 (3) The decision of an agency that has complied with the provi-
124 sions of this Act is final and binding.

125 (G.) CONTRACT NEGOTIATION.

126 (1) The agency and the selected firm shall mutually discuss and
127 refine the scope of services for the project and shall negotiate con-
128 ditions, including but not limited to compensation level and per-
129 formance schedule based on scope of services. The compensation
130 level paid must be reasonable and fair to the agency as determined
131 solely by the agency. In making such determination, the agency
132 shall take into account the estimated value of the services to be
133 rendered, the scope, complexity, and professional nature thereof

134 (2) If the agency and the selected firm are unable for any reason
135 to negotiate a contract at a compensation level that is reasonable
136 and fair to the agency, the agency shall, in writing, formally termi-
137 nate negotiations with the selected firm. The agency shall then
138 negotiate with the second ranked most qualified firm. The negoti-

139 ation process may continue in this manner through successive
140 ranked firms until an agreement is reached or the agency termi-
141 nates the consultant contracting process.

142 (H.) SMALL CONTRACTS AND SOLE SOURCE CON-
143 TRACTS. The provisions of this Act do not apply to architectural,
144 engineering, and related professional services contracts of less
145 than \$25,000, or sole source contracts that are awarded to a quali-
146 fied firm as determined to be in the best interest of the agency,
147 where only one firm has been solicited regarding the project and
148 the project is not publicly advertised.

149 (I.) EMERGENCY SERVICES. The provisions of this Act do
150 not apply in the procurement of architectural, engineering, and
151 related professional services by agencies (i) when an agency
152 determines in writing that it is in the best interest of the State to
153 proceed with the immediate selection of a firm or (ii) in emergen-
154 cies when immediate services are necessary to protect the public
155 health and safety, including, but not limited to, earthquake, tor-
156 nado, storm, or natural or man-made disaster.

157 (J) FIRM PERFORMANCE EVALUATION. Each agency shall
158 evaluate the performance of each firm upon completion of a con-
159 tract. That evaluation shall be made available to the firm who may
160 submit a written response, with the evaluation and response
161 retained solely by the agency. The evaluation and response shall
162 not be made available to any other person or firm and is exempt
163 from disclosure under the Freedom of Information Act.

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

1 SECTION 2. Chapter 30B, Section 1, subsection 15 of the
2 General Laws are hereby amended by striking the word
3 “designers” and adding the following new subsection:— (34A)
4 contracts with architects, engineers and related professionals.

1 SECTION 3. Chapter 30B, Section 2 of the General Laws are
2 hereby amended by striking the definition of “Designer” and
3 replacing it with the following text:—

4 “Architects and Engineers”, a person performing professional
5 services of an architectural or engineering nature, as defined by
6 State law, which are required to be performed or approved by a
7 person licensed, registered, or certified to provide such services as
8 described in this paragraph; professional services of an architec-
9 tural or engineering nature performed by contract that are associ-
10 ated with research, planning, development, design, investigations,
11 inspections, tests, evaluations, consultations, program manage-
12 ment, value engineering, construction, alteration, or repair of real
13 property; and such other professional services of an architectural
14 or engineering nature, or incidental services, which members of
15 the architectural and engineering professions (and individuals in
16 their employ) may logically or justifiably perform, including
17 studies; investigations; surveying and mapping; soil tests; con-
18 struction phase services; drawing reviews; evaluations; consulta-
19 tions; comprehensive planning; program management; conceptual
20 designs, plans and specifications; soils engineering; cost estimates
21 or programs; preparation of drawings, plans, or specifications;
22 supervision or administration of a construction contract; construc-
23 tion management or scheduling; preparation of operation and
24 maintenance manuals, and other related services.

25 “Related Professionals” are professionals engaged in profes-
26 sional services including land surveying, landscape architecture,
27 environmental science, planning, and licensed site professionals,
28 which are required to be performed or approved by a person
29 licensed, registered, or certified to provide such services as
30 described in this paragraph; professional services performed by
31 contract that are associated with research, planning, development,
32 design, investigations, inspections, surveying and mapping, tests,
33 evaluations, consultations, comprehensive planning, program
34 management, value engineering, construction, alteration, or repair
35 of real property; and such other professional services, or inci-
36 dental services, which members of the related professions
37 described in (4)1 above (and individuals in their employ) may log-
38 ically or justifiably perform, including master plans, studies, sur-
39 veys, soil tests, cost estimates or programs; preparation of
40 drawings, plans, or specifications; supervision or administration
41 of a construction contract; construction management or sched-
42 uling; conceptual designs, plans and specifications; construction

43 phase services, soils engineering, drawing reviews, cost esti-
44 mating, preparation of operation and maintenance manuals, and
45 other related services.

1 SECTION 4. Chapter 7 of the General Laws is hereby amended
2 by adding the following new section: —

3 Section 30P. SELECTION OF ARCHITECTS, ENGINEERS
4 AND RELATED PROFESSIONALS.

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

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

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

17 (3) “Architectural and engineering services” means:—

18 1.) professional services of an architectural or engineering
19 nature, as defined by State law, which are required to be per-
20 formed or approved by a person licensed, registered, or certified
21 to provide such services as described in this paragraph;

22 2.) professional services of an architectural or engineering
23 nature performed by contract that are associated with research,
24 planning, development, design, investigations, inspections, tests,
25 evaluations, consultations, program management, value engi-
26 neering, construction, alteration, or repair of real property; and

27 3.) such other professional services of an architectural or engi-
28 neering nature, or incidental services, which members of the
29 architectural and engineering professions (and individuals in their
30 employ) may logically or justifiably perform, including studies;
31 investigations; surveying and mapping; soil tests; construction
32 phase services; drawing reviews; evaluations; consultations; com-
33 prehensive planning; program management; conceptual designs,
34 plans and specifications; soils engineering; cost estimates or pro-
35 grams; preparation of drawings, plans, or specifications; supervi-
36 sion or administration of a construction contract; construction

37 management or scheduling; preparation of operation and mainte-
38 nance manuals, and other related services.

39 4.) “Related Professional Services” means:—

40 1.) professional services including land surveying, landscape
41 architecture, environmental science, planning, and licensed site
42 professionals, which are required to be performed or approved by
43 a person licensed, registered, or certified to provide such services
44 as described in this paragraph;

45 2.) professional services performed by contract that are associ-
46 ated with research, planning, development, design, investigations,
47 inspections, surveying and mapping, tests, evaluations, consulta-
48 tions, comprehensive planning, program management, value engi-
49 neering, construction, alteration, or repair of real property; and

50 3.) such other professional services, or incidental services,
51 which members of the related professions described in

52 (4) 1 above (and individuals in their employ) may logically or
53 justifiably perform, including master plans, studies, surveys, soil
54 tests, cost estimates or programs; preparation of drawings, plans,
55 or specifications; supervision or administration of a construction
56 contract; construction management or scheduling; conceptual
57 designs, plans and specifications; construction phase services,
58 soils engineering, drawing reviews, cost estimating, preparation of
59 operation and maintenance manuals, and other related services.

60 5.) “Project” means any capital improvement project or any
61 design, study, plan, survey, or new or existing program activity of
62 a State agency or municipality, including development of new or
63 existing programs that require architectural, engineering or related
64 professional services.

65 (A.) The Commonwealth of Massachusetts Legislature hereby
66 declares it to be the policy of the Commonwealth of Massachu-
67 setts to publicly announce all requirements for architectural, engi-
68 neering, and related professional services, to procure these
69 services on the basis of demonstrated competence and qualifica-
70 tions, and to negotiate contracts after selecting a firm, at fair and
71 reasonable prices.

72 (B.) PREQUALIFICATION. For those agencies that prequalify
73 architectural, engineering, and related services, the agency head
74 shall encourage firms engaged in the lawful practice of their pro-

75 fession to submit annually a statement of qualifications and per-
76 formance data.

77 (C.) PUBLIC NOTICE. Whenever a project requiring architec-
78 tural, engineering, or related professional services is proposed for
79 a State Agency, the agency shall provide no less than 14 days
80 advance notice published in a professional services bulletin or
81 advertised within the official State Agency website setting forth
82 the projects and services to be procured. The professional services
83 bulletin shall be made available to each firm that requests the
84 information. The professional services bulletin shall include a
85 description of each project and shall state the time and place for
86 interested firms to submit a letter of interest and, if required by
87 the public notice, a statement of qualifications. If it is determined
88 that a sole source selection of a qualified firm is in the best
89 interest of the agency then the project is not publicly advertised.

90 (D.) EVALUATION PROCEDURE. An agency shall evaluate
91 the firms submitting letters of interest and other prequalified
92 firms, taking into account qualifications; and the agency may con-
93 sider, but shall not be limited to considering, ability of profes-
94 sional personnel, past record and experience, performance data on
95 file, willingness to meet time requirements, location, workload of
96 the firm and any other qualifications based on factors as the
97 agency may determine in writing are applicable. The agency may
98 conduct discussions with and require presentations by firms
99 deemed to be the most qualified regarding their qualifications,
100 approach to the project and ability to furnish the required services.
101 In no case shall an agency, prior to selecting a firm for negotiation
102 seek formal or informal submission of verbal or written estimates
103 of costs or proposals in terms of dollars, hours required, per-
104 centage of construction cost, or any other measure of compensa-
105 tion.

106 (E.) SELECTION PROCEDURE.

107 (1) An agency shall select architects, engineers and related pro-
108 fessional firms on the basis of qualifications for the type of pro-
109 fessional services required. An agency may solicit or use pricing
110 policies and proposals or other pricing information to determine
111 consultant compensation only after the public agency has selected
112 a firm and initiated negotiations with the selected firm

113 (2) The procedures that an agency creates for the screening and
114 selection of firms shall be within the sole discretion of the agency
115 and may be adjusted to accommodate the agency's scope,
116 schedule and budget objectives for a particular project. Adjust-
117 ments to accommodate an agency's objectives may include provi-
118 sion for the direct appointment of a firm if the value of the project
119 does not exceed \$25,000, or if it is determined that a sole source
120 selection of a qualified firm is in the best interest of the agency
121 and the project is not publicly advertised.

122 (3) The decision of an agency that has complied with the provi-
123 sions of this Act is final and binding.

124 (F.) CONTRACT NEGOTIATION.

125 (1) The agency and the selected firm shall mutually discuss and
126 refine the scope of services for the project and shall negotiate con-
127 ditions, including but not limited to compensation level and per-
128 formance schedule based on scope of services. The compensation
129 level paid must be reasonable and fair to the agency as determined
130 solely by the agency. In making such determination, the agency
131 shall take into account the estimated value of the services to be
132 rendered, the scope, complexity, and professional nature thereof

133 (2) If the agency and the selected firm are unable for any reason
134 to negotiate a contract at a compensation level that is reasonable
135 and fair to the agency, the agency shall, in writing, formally termi-
136 nate negotiations with the selected firm. The agency shall then
137 negotiate with the second ranked most qualified firm. The negoti-
138 ation process may continue in this manner through successive
139 ranked firms until an agreement is reached or the agency termi-
140 nates the consultant contracting process.

141 (G.) SMALL CONTRACTS AND SOLE SOURCE CON-
142 TRACTS. The provisions of this Act do not apply to architectural,
143 engineering, and related professional services contracts of less
144 than \$25,000, or sole source contracts that are awarded to a quali-
145 fied firm as determined to be in the best interest of the agency,
146 where only one firm has been solicited regarding the project and
147 the project is not publicly advertised.

148 (H.) EMERGENCY SERVICES. The provisions of this Act do
149 not apply in the procurement of architectural, engineering, and
150 related professional services by agencies (i) when an agency
151 determines in writing that it is in the best interest of the State

152 Agency to proceed with the immediate selection of a firm or (ii) in
153 emergencies when immediate services are necessary to protect the
154 public health and safety, including, but not limited to, earthquake,
155 tornado, storm, or natural or man-made disaster.

156 (I.) FIRM PERFORMANCE EVALUATION. Each agency shall
157 evaluate the performance of each firm upon completion of a con-
158 tract. That evaluation shall be made available to the firm who may
159 submit a written response, with the evaluation and response shall
160 retained solely by the agency. The evaluation and response shall
161 not be made available to any other person or firm and is exempt
162 from disclosure under the Freedom of Information Act.

163 (J.) CERTIFICATE OF COMPLIANCE. Each contract for
164 architectural, engineering, and related professional services by an
165 agency shall contain a certificate signed by a representative of the
166 agency and the firm that each has complied with the provisions of
167 this Act.