

HOUSE No. 3170

By Mr. Cabral of New Bedford, petition of Antonio F. D. Cabral and Paul Kujawski relative to proprietary specifications in public construction. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT CONCERNING PROPRIETARY SPECIFICATIONS IN PUBLIC CONSTRUCTION.

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

1 Paragraph (b) of section 39M of chapter 30 of the General
2 Laws, as so appearing in the 2004 Official Edition, is hereby
3 amended by striking it out in its entirety and inserting in place
4 thereof the following:

5 (b) Specifications awarded pursuant to the provisions of this
6 section and sections forty-four A to forty-four L of chapter 149,
7 shall be written to provide for full and open competition for each
8 item of material to be furnished under the contract. Specifications
9 shall be stated in terms of (1) descriptive elements and character-
10 istics, providing a written detail of material properties without the
11 use of trade or brand names or (2) performance standards,
12 including specifications of the range of acceptable characteristics
13 or of the minimum acceptable standards. For each item of material
14 the above described specifications shall provide for either a min-
15 imum of three named brands of material or a description of mate-
16 rial which can be met by a minimum of three manufacturers or
17 producers, whose names and model numbers shall be stated in the
18 specifications or in an addendum when any bidder requests same
19 in writing within a reasonable time prior to the bid opening date.

20 Specifications may be written other than as described above
21 only when the awarding authority has, after a reasonable investi-
22 gation, made a written determination that there are sound reasons
23 in the public interest for the use of specifications that are propri-

24 etary or otherwise do not allow for full and open competition. The
25 awarding authority shall set forth the basis for its determination in
26 the public records and will promptly make said determination
27 available to anyone making a written request therefore.

28 Every specification shall provide that an item equal to that
29 named or described in the specifications may be furnished; and an
30 item shall be considered equal to that named or described if, in the
31 opinion of the awarding authority (1) it is equal in quality, dura-
32 bility, appearance, strength and design, (2) it will perform at least
33 equally the function imposed by the general design for the public
34 work being contracted for or the materials being purchased, and
35 (3) it conforms substantially, even with deviations, to the detailed
36 requirements for the items in the specifications. No material sub-
37 mitted for approval as the equal of a brand named in the specifica-
38 tions shall be rejected for failing to meet a characteristic or
39 requirement not explicitly stated in the description of material in
40 the specifications.