

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Antonio F.D. Cabral**

*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 concerning proprietary specifications in public construction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3170 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### 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 Laws, as so appearing in the 2006 Official  
2 Edition, is hereby amended by striking it out in its entirety and inserting in place thereof the following:

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

13            Specifications may be written other than as described above only when the awarding authority  
14 has, after a reasonable investigation, made a written determination that there are sound reasons in the  
15 public interest for the use of specifications that are proprietary or otherwise do not allow for full and  
16 open competition. The awarding authority shall set forth the basis for its determination in the public  
17 records and will promptly make said determination available to anyone making a written request  
18 therefore.

19            Every specification shall provide that an item equal to that named or described in the  
20 specifications may be furnished; and an item shall be considered equal to that named or described if, in  
21 the opinion of the awarding authority (1) it is equal in quality, durability, appearance, strength and  
22 design, (2) it will perform at least equally the function imposed by the general design for the public work  
23 being contracted for or the materials being purchased, and (3) it conforms substantially, even with  
24 deviations, to the detailed requirements for the items in the specifications. No material submitted for  
25 approval as the equal of a brand named in the specifications shall be rejected for failing to meet a  
26 characteristic or requirement not explicitly stated in the description of material in the specifications.

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