

HOUSE No. 2967

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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
2 2006 Official Edition, is hereby amended by striking it out in its entirety and inserting in place
3 thereof the following:

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

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

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