

**HOUSE . . . . . No. 824**

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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 adoption of the accompanying bill:

An Act concerning proprietary specifications in public construction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/18/2011</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>	<i>1/31/2011</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>	<i>2/4/2011</i>

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By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 824) of Antonio F. D. Cabral, Martin J. Walsh and Denise Andrews relative to proprietary specifications in public construction. State Administration and Regulatory Oversight.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2967 OF 2009-2010.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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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  
2 2008 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 forty-  
5 four A to forty-four L of chapter 149, shall be written to provide for full and open competition  
6 for each item of material to be furnished under the contract. Specifications shall be stated in  
7 terms of (1) descriptive elements and characteristics, providing a written detail of material  
8 properties without the use of trade or brand names or (2) performance standards, including  
9 specifications of the range of acceptable characteristics or of the minimum acceptable standards.  
10 For each item of material the above described specifications shall provide for either a minimum

11 of three named brands of material or a description of material which can be met by a minimum  
12 of three manufacturers or producers, whose names and model numbers shall be stated in the  
13 specifications or in an addendum when any bidder requests same in writing within a reasonable  
14 time prior to the bid opening date.

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

21           Every specification shall provide that an item equal to that named or described in the  
22 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.