



Associated Subcontractors of Massachusetts, Inc.

One Washington Mall, 5th Floor, Boston, MA 02108

TEL: 617-742-3412 • FAX: 617-742-2331

E-Mail: mail@associatedsubs.com • Web: www.associatedsubs.com

Testimony in Support of H. 2967 **AN ACT CONCERNING PROPRIETARY SPECIFICATIONS** **IN PUBLIC CONSTRUCTION**

Before the Joint Committee on State Administration and Regulatory Oversight

June 18, 2009

H. 2967 merges two earlier bills, identical in intent, that were filed separately by the Inspector General of the Commonwealth and by our organization. The combined bill addresses long-standing problems in the selection of products and materials for public construction projects, under c.30, §39M. By clarifying the language of the statute, this bill will improve competition for project materials, and thereby reduce costs and lessen the potential for disputes and delays on public construction projects.

BACKGROUND ON THE PROBLEM

The intent of c.30, §39M is to ensure competition in the selection of project products and materials, and to avoid the arbitrary use of “proprietary specifications” and single product selection. It is not uncommon, however, for architects and owners to name just one product brand in the contract specifications, when there is no apparent reason to restrict to that brand. Subcontractors may suggest a substitute product that may be better or more cost effective, only to be rejected for failing to meet requirements that were never clearly stated.

Even worse, contract specifications may simply describe a product in general terms, as if to suggest there are several brands that will be acceptable, when in fact only one brand will meet the special requirements of the project. In this situation, subcontractors don’t have the information they need to select the right product, and once again, they may lose the contract for failing to choose the preferred product.

In both cases, the stage is set for disputes and delays, as well as higher costs due to lack of product competition. Problems with material specifications are one of the most common complaints of contractors today.

REMEDY

H. 2967 corrects the situation, by tightening the language of the statute, in three ways:

First: Instead of simply saying the material specifications must be written to ensure full competition, it now requires that the specifications be stated in terms of (1) detailed descriptive elements or (2) specific performance standards.

Second: It adds a requirement to provide specific manufacturer names and model numbers.

Third: It prohibits the rejection of products offered as equals, if the requirements were not clearly stated in the specifications.

All other provisions of c.30, §39M remain the same, though rearranged for more logical sequence. The awarding authority still has the right to name a proprietary product if it is in the public interest, but must show good reasons for doing so, in writing. By clarifying the statute, **H. 2967 will not only improve competition, but help save money and avoid disputes on public construction projects.** The proposed changes are long overdue, and we urge the Committee's support.

Respectfully,

Monica Lawton, CEO
Associated Subcontractors of Massachusetts
617-742-3412
mlawton@associatedsubs.com

The Associated Subcontractors of Massachusetts, Inc. (ASM), founded in 1950, is a statewide trade association representing specialty contractors and suppliers in the commercial construction industry. Members include over 400 companies, both large and small, union and open shop, who together employ over 25,000 workers on private and public building construction in the Commonwealth.