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## Testimony in Support of H. 3170 AN ACT CONCERNING PROPRIETARY SPECIFICATIONS IN PUBLIC CONSTRUCTION

Before the Joint Committee on State Administration and Regulatory Oversight  
April 3, 2007

H. 3170 merges two earlier bills, identical in intent, that were filed separately by the Inspector General of the Commonwealth and by our organization jointly with Associated General Contractors. The combined bill addresses longstanding 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. 3170 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.3170 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