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Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Commercial Nondiscrimination Policy**

3 FOR the purpose of establishing a "Commercial Nondiscrimination Policy" under the
4 State procurement law; specifying the purpose, intent, and scope of the policy;
5 defining terms; specifying rules of construction; authorizing certain persons to
6 file certain complaints alleging discrimination; specifying investigation
7 procedures, duties, and responsibilities for handling complaints; providing an
8 opportunity for hearings and the adjudication of complaints; specifying certain
9 remedies and sanctions; providing for judicial review of certain decisions;
10 specifying certain contract clauses relating to nondiscrimination; specifying
11 certain disclosure requirements; requiring the Special Secretary of Minority
12 Affairs to establish a certain expert pool; providing for the debarment of certain
13 persons for certain violations of procurement law; and generally relating to the
14 "Commercial Nondiscrimination Policy" under the State procurement law.

15 BY repealing and reenacting, with amendments,
16 Article - State Finance and Procurement
17 Section 16-203(a)
18 Annotated Code of Maryland
19 (2001 Replacement Volume and 2004 Supplement)

20 BY adding to
21 Article - State Finance and Procurement
22 Section 19-101 through 19-121, inclusive, to be under the new title "Title 19.
23 Commercial Nondiscrimination Policy"
24 Annotated Code of Maryland
25 (2001 Replacement Volume and 2004 Supplement)

Preamble

1

2 WHEREAS, The purposes of this Act are:

3 (1) to establish a clear policy against discrimination in business on the
4 basis of sex, race, age, color, creed, or national origin, or on the basis of disability or
5 any other form of unlawful discrimination;

6 (2) to establish a clear policy for the State not to enter into contracts
7 with business entities that discriminate in the solicitation, selection, or treatment of
8 vendors, suppliers, subcontractors, or commercial customers; and

9 (3) to establish a formal complaint process and investigation process for
10 alleged violations of this policy, providing due process for hearing evidence, rendering
11 findings, and imposing sanctions for policy violations; and

12 WHEREAS, The General Assembly finds that in order to avoid becoming a
13 passive participant in private sector commercial discrimination, and consistent with
14 the requirements of the State procurement law, it is necessary to establish and firmly
15 enforce a clear policy against discrimination in business on the basis of sex, race, age,
16 color, creed, or national origin, or on the basis of disability or any other form of
17 unlawful discrimination; and

18 WHEREAS, Under this policy, it is the intent of the State that it not contract
19 with business entities that discriminate in the solicitation, selection, hiring, or
20 treatment of vendors, suppliers, subcontractors, or commercial customers in
21 contravention of the standards specified under the State procurement law; and

22 WHEREAS, Such a commercial nondiscrimination policy approach has been
23 favorably commented upon by the United States Supreme Court in *City of Richmond*
24 *v. J. A. Croson*, 488 U.S. 469, 509-510 (1989), and by other federal courts; and

25 WHEREAS, The General Assembly has further determined that it has a
26 compelling interest in assuring that public funds do not serve to finance private
27 prejudice on the basis of sex, race, age, color, creed, or national origin or on the basis
28 of disability or any other form of unlawful discrimination; and

29 WHEREAS, It is in the best interests of the State to enhance competition on
30 State projects by promoting equal opportunity and the full participation of all
31 segments of the community in a marketplace environment that is free from the effects
32 of discrimination, in that the State is likely to benefit from a discrimination-free
33 marketplace through increased business activity, lower prices, and higher State
34 revenues; and

35 WHEREAS, Through enactment of this Act, the State provides a formal
36 mechanism for receiving, investigating, and resolving complaints of discrimination
37 filed against businesses that have submitted a bid or proposal for, have been selected
38 to engage in, or are engaged in providing goods or services to the State; and

1 WHEREAS, The State also gives fuller meaning and effect to the goals and
2 objectives of this Act by including enforcement provisions that may subject violators
3 of the Act to possible contract termination, disqualification from participation in
4 State contracts and projects, or other remedial actions; now, therefore,

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - State Finance and Procurement**

8 16-203.

9 (a) A person may be debarred from entering into a contract with the State if
10 the person, an officer, partner, controlling stockholder or principal of that person, or
11 any other person substantially involved in that person's contracting activities has:

12 (1) been convicted under the laws of the State, another state or the
13 United States of:

14 (i) a criminal offense incident to obtaining, attempting to obtain, or
15 performing a public or private contract, except as provided in § 16-202; or

16 (ii) fraud, embezzlement, theft, forgery, falsification or destruction
17 of records, or receiving stolen property;

18 (2) been convicted of a criminal violation of an antitrust statute of the
19 State, another state, or the United States;

20 (3) been convicted of a violation of the Racketeer Influenced and Corrupt
21 Organization Act, or the Mail Fraud Act, for acts in connection with the submission of
22 bids or proposals for a public or private contract;

23 (4) been convicted of a violation of § 14-308 of this article;

24 (5) been convicted of conspiracy to commit any act or omission that
25 would constitute grounds for conviction under any of the laws or statutes described in
26 paragraphs (1), (2), (3), or (4) of this subsection; [or]

27 (6) been found civilly liable under an antitrust statute of the State,
28 another state, or the United States for acts or omissions in connection with the
29 submission of bids or proposals for a public or private contract; OR

30 (7) BEEN FOUND IN A FINAL ADMINISTRATIVE DECISION TO HAVE
31 VIOLATED THE COMMERCIAL NONDISCRIMINATION POLICY UNDER TITLE 19 OF THIS
32 ARTICLE WITH REGARD TO A PUBLIC OR PRIVATE CONTRACT.

1 TITLE 19. COMMERCIAL NONDISCRIMINATION POLICY.

2 19-101.

3 (A) IT IS THE POLICY OF THE STATE NOT TO ENTER INTO A CONTRACT WITH
4 ANY BUSINESS ENTITY THAT HAS DISCRIMINATED IN THE SOLICITATION,
5 SELECTION, HIRING, OR TREATMENT OF VENDORS, SUPPLIERS, SUBCONTRACTORS,
6 OR COMMERCIAL CUSTOMERS ON THE BASIS OF SEX, RACE, AGE, COLOR, CREED, OR
7 NATIONAL ORIGIN, OR ON THE BASIS OF DISABILITY OR ANY OTHERWISE UNLAWFUL
8 USE OF CHARACTERISTICS REGARDING THE VENDOR'S, SUPPLIER'S, OR
9 COMMERCIAL CUSTOMER'S EMPLOYEES OR OWNERS.

10 (B) NOTHING IN THIS TITLE SHALL BE CONSTRUED TO PROHIBIT OR LIMIT
11 OTHERWISE LAWFUL EFFORTS TO REMEDY THE EFFECTS OF DISCRIMINATION THAT
12 HAS OCCURRED OR IS OCCURRING IN THE MARKETPLACE.

13 19-102.

14 IT IS THE INTENT OF THE STATE TO AVOID BECOMING A PASSIVE PARTICIPANT
15 IN PRIVATE SECTOR COMMERCIAL DISCRIMINATION BY REFUSING TO PROCURE
16 GOODS AND SERVICES FROM BUSINESS ENTITIES THAT DISCRIMINATE IN THE
17 SOLICITATION, SELECTION, HIRING, OR TREATMENT OF VENDORS, SUPPLIERS,
18 SUBCONTRACTORS, OR COMMERCIAL CUSTOMERS ON THE BASIS OF SEX, RACE, AGE,
19 COLOR, CREED, OR NATIONAL ORIGIN OR ON THE BASIS OF DISABILITY OR OTHER
20 UNLAWFUL FORMS OF DISCRIMINATION BY PROVIDING A PROCEDURE FOR
21 RECEIVING, INVESTIGATING, AND RESOLVING COMPLAINTS OF DISCRIMINATION
22 FILED AGAINST BUSINESS ENTITIES THAT:

23 (1) HAVE SUBMITTED A BID OR PROPOSAL; OR

24 (2) HAVE BEEN SELECTED TO ENGAGE IN, OR ARE ENGAGED IN
25 PROVIDING GOODS OR SERVICES TO THE STATE.

26 19-103.

27 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

28 (B) (1) "BUSINESS ENTITY" MEANS ANY PERSON, FIRM, SOLE
29 PROPRIETORSHIP, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, OR
30 OTHER BUSINESS ENTITY OR A COMBINATION OF ANY OF THESE ENTITIES,
31 INCLUDING ANY FINANCIAL INSTITUTION, DEVELOPER, CONSULTANT, PRIME
32 CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR VENDOR, THAT HAS SUBMITTED A
33 BID OR PROPOSAL FOR, HAS BEEN SELECTED TO ENGAGE IN, OR IS ENGAGED IN
34 PROVIDING GOODS OR SERVICES TO THE STATE.

35 (2) "BUSINESS ENTITY" INCLUDES:

36 (I) SELLING OR LEASING SUPPLIES OR GOODS, OR PROVIDING
37 CONSTRUCTION, REAL ESTATE DEVELOPMENT, FINANCIAL, INSURANCE,

1 PROFESSIONAL, OR OTHER SERVICES, IN RETURN FOR A FEE OR ANY OTHER FORM
2 OF COMPENSATION PAID OR PROVIDED BY THE STATE; AND

3 (II) ANY SUBCONTRACTOR OF THE BUSINESS ENTITY.

4 (3) "BUSINESS ENTITY" DOES NOT INCLUDE ANOTHER GOVERNMENTAL
5 ENTITY.

6 (C) "COMMERCIAL CUSTOMER" MEANS A BUSINESS ENTITY THAT PROCURED
7 OR ATTEMPTED TO PROCURE GOODS OR SERVICES FROM A BUSINESS ENTITY FOR
8 BUSINESS AS OPPOSED TO PERSONAL USE.

9 (D) "COMMERCIAL NONDISCRIMINATION POLICY" MEANS THE PROVISIONS
10 CONTAINED UNDER THIS TITLE AND ANY REGULATIONS OR DOCUMENTATION
11 REQUIREMENTS ADOPTED BY THE SPECIAL SECRETARY FOR THE OFFICE OF
12 MINORITY AFFAIRS IN ACCORDANCE WITH THIS TITLE.

13 (E) "CONTRACT" MEANS AN AGREEMENT WITH A BUSINESS ENTITY THAT IS
14 LET BY OR ON BEHALF OF THE STATE FOR THAT BUSINESS ENTITY TO SELL OR
15 LEASE SUPPLIES OR GOODS, OR TO PROVIDE CONSTRUCTION, REAL ESTATE
16 DEVELOPMENT, FINANCIAL, INSURANCE, PROFESSIONAL, OR OTHER SERVICES TO
17 THE STATE, IN RETURN FOR A FEE OR ANY OTHER FORM OF COMPENSATION TO BE
18 PAID OR PROVIDED BY THE STATE.

19 (F) (1) "DISCRIMINATION" MEANS ANY DISADVANTAGE, DIFFERENCE,
20 DISTINCTION, OR PREFERENCE IN THE SOLICITATION, SELECTION, HIRING, OR
21 TREATMENT OF A VENDOR, SUPPLIER, SUBCONTRACTOR, OR COMMERCIAL
22 CUSTOMER ON THE BASIS OF SEX, RACE, AGE, COLOR, CREED, OR NATIONAL ORIGIN
23 OR ON THE BASIS OF DISABILITY OR ANY OTHERWISE UNLAWFUL USE OF
24 CHARACTERISTICS REGARDING THE VENDOR'S, SUPPLIER'S, OR COMMERCIAL
25 CUSTOMER'S EMPLOYEES OR OWNERS.

26 (2) "DISCRIMINATION" DOES NOT INCLUDE LAWFUL EFFORTS TO
27 REMEDY THE EFFECTS OF DISCRIMINATION THAT HAS OCCURRED OR IS OCCURRING
28 IN THE MARKETPLACE.

29 (G) "ECONOMIC DEVELOPMENT PROJECT" MEANS A REAL ESTATE
30 DEVELOPMENT, CONSTRUCTION, OR RENOVATION PROJECT FOR WHICH THE STATE
31 PROVIDES:

32 (1) FUNDING OR OTHER FINANCIAL ASSISTANCE, OTHER THAN
33 PAYMENTS IN EXCHANGE FOR GOODS OR SERVICES;

34 (2) LAND;

35 (3) ROAD IMPROVEMENTS;

36 (4) TAX CREDITS; OR

37 (5) A BELOW MARKET PURCHASE PRICE.

1 (H) (1) "FINANCIAL INSTITUTION" MEANS A PERSON:

2 (I) ENGAGED IN THE BUSINESS OF LENDING MONEY,
3 GUARANTEEING LOANS, EXTENDING CREDIT, SECURING BONDS, OR PROVIDING
4 VENTURE OR EQUITY CAPITAL; OR

5 (II) THAT OFFERS FINANCIAL SERVICES IN CONNECTION WITH
6 STATE PROJECTS OR THE ADMINISTRATION OF STATE GOVERNMENT.

7 (2) "FINANCIAL INSTITUTION" INCLUDES BANKS, SAVINGS AND LOANS,
8 VENTURE CAPITAL COMPANIES, INSURANCE COMPANIES, BONDING COMPANIES,
9 MORTGAGE COMPANIES, CREDIT UNIONS, AND BROKERS.

10 (I) "OFFICE" MEANS THE GOVERNOR'S OFFICE OF MINORITY AFFAIRS.

11 (J) "PRESIDING OFFICER" MEANS THE INDIVIDUAL ASSIGNED BY THE OFFICE
12 OF ADMINISTRATIVE HEARINGS TO CONDUCT A HEARING UNDER THIS TITLE.

13 (K) "RETALIATE" MEANS TO TAKE ANY ACTION THAT HAS A MATERIAL
14 NEGATIVE EFFECT AGAINST ANY PERSON, BUSINESS OR OTHER ENTITY FOR
15 REPORTING ANY INCIDENT OF DISCRIMINATION, TESTIFYING AS A WITNESS AT A
16 HEARING, OR PROVIDING REQUESTED ASSISTANCE TO THE OFFICE IN ANY
17 INVESTIGATION OF AN INCIDENT OF DISCRIMINATION UNDER THIS TITLE.

18 (L) "SERVICES" INCLUDES CONSTRUCTION, REAL ESTATE DEVELOPMENT,
19 FINANCIAL, INSURANCE, PROFESSIONAL, AND OTHER SERVICES.

20 (M) "SPECIAL SECRETARY" MEANS THE SPECIAL SECRETARY OF THE OFFICE
21 OF MINORITY AFFAIRS, OR THE SPECIAL SECRETARY'S DESIGNEE.

22 (N) "STATE SUBCONTRACT" MEANS AN AGREEMENT FOR THE PROVISION OF
23 GOODS OR THE PERFORMANCE OF A PARTICULAR PORTION OF WORK TO BE
24 PERFORMED UNDER A CONTRACT WITH THE STATE, WHERE:

25 (1) THE PARTY PROVIDING THE GOODS OR SERVICES IS ON
26 REASONABLE NOTICE THAT THE WORK IS TO BE PERFORMED UNDER A STATE
27 CONTRACT; AND

28 (2) THE AMOUNT TO BE PAID FOR SUCH SERVICE IS MATERIAL WITH
29 RESPECT TO THE OVERALL AMOUNT OF THE CONTRACT.

30 (O) "STATE SUBCONTRACTOR" MEANS THE PARTY PROVIDING GOODS OR
31 SERVICES UNDER A STATE SUBCONTRACT.

32 19-104.

33 (A) AS A CONDITION OF PARTICIPATING IN AN ECONOMIC DEVELOPMENT
34 PROJECT, THE STATE SHALL REQUIRE THE GOVERNMENTAL ENTITY,
35 QUASI-GOVERNMENTAL ENTITY, CORPORATION, DEVELOPER, OR CONTRACTOR THAT
36 RECEIVES ASSISTANCE FROM THE STATE TO COMPLY WITH THIS TITLE:

1 (1) IN ADMINISTERING THE ECONOMIC DEVELOPMENT PROJECT; AND

2 (2) IN AWARDING CONTRACTS TO MANAGE OR PERFORM THE WORK
3 ENTAILED IN THE ECONOMIC DEVELOPMENT PROJECT.

4 (B) (1) EACH CONTRACT AND SUBCONTRACT AWARDED IN CONNECTION
5 WITH AN ECONOMIC DEVELOPMENT PROJECT SHALL CONTAIN THE
6 NONDISCRIMINATION CLAUSE SET FORTH IN § 19-115 OF THIS TITLE.

7 (2) ANY CLAIM OF DISCRIMINATION RELATING TO THE ECONOMIC
8 DEVELOPMENT PROJECT SHALL BE SUBJECT TO INVESTIGATION AND
9 ADJUDICATION BY THE STATE IN ACCORDANCE WITH THIS TITLE.

10 (C) THIS TITLE SHALL APPLY TO:

11 (1) OTHER THAN A LEASE OF REAL ESTATE FOR THE STATE'S USE, ANY
12 REAL PROPERTY ACQUISITION BY THE STATE, INCLUDING PROPERTY SUBJECT TO
13 CONDEMNATION;

14 (2) SETTLEMENT OF LITIGATION;

15 (3) EXCEPT FOR PROCEEDINGS TO ENFORCE THIS TITLE, SETTLEMENT
16 OF JUDICIAL OR ADMINISTRATIVE ENFORCEMENT PROCEEDINGS BY OR ON BEHALF
17 OF THE STATE;

18 (4) AGREEMENTS CONCERNING STANDARDS FOR LOCATING FACILITIES
19 IN A STATE RIGHT-OF-WAY WHEN A BUSINESS ENTITY HAS STATUTORY RIGHT TO BE
20 IN THE RIGHT-OF-WAY; AND

21 (5) AGREEMENTS WITH NOT-FOR-PROFIT ENTITIES FOR THE PURPOSE
22 OF HAVING THE ENTITIES PERFORM FUNCTIONS THAT THE STATE IS AUTHORIZED
23 TO PERFORM.

24 19-105.

25 (A) THE PROVISIONS OF THIS TITLE ARE TO BE LIBERALLY CONSTRUED TO
26 ACCOMPLISH ITS OBJECTIVES AND PURPOSES.

27 (B) FOR PURPOSES OF ADMINISTRATION, THE SPECIAL SECRETARY SHALL
28 CONSTRUE THE PROVISIONS OF THIS TITLE.

29 (C) A DECISION OF THE SPECIAL SECRETARY IS SUBJECT TO JUDICIAL
30 REVIEW UNDER § 19-113 OF THIS TITLE.

31 19-106.

32 (A) ANY PERSON MAY FILE AN ADMINISTRATIVE COMPLAINT WITH THE
33 SPECIAL SECRETARY STATING FACTS SHOWING OR TENDING TO SHOW THAT A
34 BUSINESS ENTITY HAS WITHIN THE PRECEDING 3-YEAR PERIOD ENGAGED IN
35 DISCRIMINATION OR RETALIATION IN VIOLATION OF THIS TITLE.

1 (B) WITHIN 10 BUSINESS DAYS, THE SPECIAL SECRETARY SHALL NOTIFY THE
2 BUSINESS ENTITY AGAINST WHOM THE COMPLAINT WAS FILED THAT A COMPLAINT
3 HAS BEEN RECEIVED.

4 19-107.

5 (A) THE OFFICE SHALL BE RESPONSIBLE FOR INVESTIGATING
6 DISCRIMINATION AND RETALIATION COMPLAINTS FILED UNDER THIS TITLE.

7 (B) (1) IN CONDUCTING ITS INVESTIGATION, THE OFFICE MAY ENLIST THE
8 ASSISTANCE OF ONE OR MORE INDIVIDUALS WHO HAVE BEEN SELECTED BY THE
9 SPECIAL SECRETARY TO PARTICIPATE IN THE VOLUNTEER EXPERTS POOL
10 ESTABLISHED UNDER § 19-120 OF THIS TITLE.

11 (2) THE ROLE OF ANY WITNESSES SELECTED FROM THE VOLUNTEER
12 EXPERTS POOL SHALL BE TO HELP THE OFFICE EVALUATE THE CLAIM BY
13 PROVIDING INFORMATION REGARDING INDUSTRY CUSTOM AND PRACTICE IN A
14 PARTICULAR AREA OF BUSINESS.

15 (C) THE OFFICE MAY REQUEST THAT THE SPECIAL SECRETARY PROVIDE
16 ADDITIONAL STATE PERSONNEL OR OUTSIDE CONSULTANTS AS MAY BE
17 REASONABLY NECESSARY OR APPROPRIATE TO CONDUCT AN INVESTIGATION.

18 (D) (1) THE OFFICE SHALL EXERCISE REASONABLE JUDGMENT IN SEEKING
19 RELEVANT EVIDENCE FROM THE COMPLAINANT, THE RESPONDENT BUSINESS
20 ENTITY AND, AS NECESSARY, EXTERNAL SOURCES.

21 (2) THIS TITLE MAY NOT BE CONSTRUED TO REQUIRE THE STATE TO
22 FUND THE COST OF:

23 (I) HAVING STATE STAFF OR OTHER INDIVIDUALS TRAVEL
24 OUTSIDE THE MARYLAND METROPOLITAN STATISTICAL AREA TO INVESTIGATE ANY
25 CLAIM UNDER THIS TITLE; OR

26 (II) HAVING WITNESSES TRAVEL TO THE STATE FOR THE PURPOSE
27 OF INVESTIGATING A CLAIM OR TESTIFYING AT A HEARING OR PROCEEDING UNDER
28 THIS TITLE.

29 (E) THE OFFICE SHALL EXERCISE REASONABLE DISCRETION IN
30 DETERMINING THE EXTENT OF THE INVESTIGATION REQUIRED TO SUPPORT THE
31 SPECIAL SECRETARY'S INITIAL FINDINGS AND RECOMMENDATIONS.

32 (F) THE OFFICE SHALL HAVE NO OBLIGATION TO INVESTIGATE COMPLAINTS
33 RELATING TO DISCRIMINATION THAT OCCURRED OUTSIDE THE MARYLAND
34 METROPOLITAN STATISTICAL AREA, EXCEPT THAT THE OFFICE MAY DO SO IF THE
35 COMPLAINANT PROVIDES EVIDENCE OF A NEXUS BETWEEN THE DISCRIMINATION
36 THAT OCCURRED AND THE POTENTIAL FOR DISCRIMINATION IN THE MARYLAND
37 METROPOLITAN STATISTICAL AREA.

1 (G) IN DETERMINING WHETHER DISCRIMINATION OCCURRED UNDER THIS
2 TITLE, AND IN EVALUATING THE FACTORS SET FORTH IN § 19-108(A) OF THIS TITLE,
3 THE OFFICE MAY CONSIDER EVIDENCE RELATING TO ACTS OR OMISSIONS THAT
4 OCCURRED DURING OR PRIOR TO THE 3-YEAR PERIOD BEFORE THE COMPLAINT WAS
5 FILED.

6 19-108.

7 (A) IN DETERMINING WHETHER TO FURTHER PROCEED WITH AN
8 INVESTIGATION AND IN MAKING FINDINGS, THE OFFICE MAY CONSIDER ANY
9 EVIDENCE PROVIDED BY THE COMPLAINANT OR THE RESPONDENT BUSINESS
10 ENTITY AS TO THE FOLLOWING FACTORS:

11 (1) WHETHER THERE WAS AN INTENT TO DISCRIMINATE ON THE PART
12 OF THE RESPONDENT BUSINESS FIRM;

13 (2) WHETHER THERE WAS A PATTERN AND PRACTICE OF
14 DISCRIMINATION ON THE PART OF THE RESPONDENT BUSINESS ENTITY;

15 (3) ANY ACTIONS TAKEN BY THE RESPONDENT BUSINESS ENTITY TO
16 REMEDY THE ALLEGED DISCRIMINATION;

17 (4) THE EFFECTIVENESS OF ANY PRIOR ATTEMPTS BY THE
18 RESPONDENT BUSINESS ENTITY TO REMEDY THE DISCRIMINATION;

19 (5) WHETHER THE RESPONDENT BUSINESS ENTITY HAS PROCURED
20 GOODS OR SERVICES FROM OR OTHERWISE ENGAGED IN BUSINESS WITH PERSONS
21 OR ENTITIES OF THE SAME PROTECTED CLASS AS THE COMPLAINANT TO AN EXTENT
22 SUFFICIENT TO DEMONSTRATE THAT THE RESPONDENT BUSINESS ENTITY HAS NOT
23 DISCRIMINATED AGAINST SUCH PROTECTED CLASS IN THE OVERALL CONTEXT OF
24 ITS BUSINESS; AND

25 (6) ANY OTHER EVIDENCE DEEMED RELEVANT BY THE SPECIAL
26 SECRETARY.

27 (B) BASED ON THE OFFICE'S REVIEW AND INVESTIGATION, THE OFFICE
28 SHALL MAKE AN INITIAL FINDING OF EACH ALLEGATION STATED IN THE
29 COMPLAINT, THAT EITHER:

30 (1) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO FIND
31 THAT THE ALLEGED DISCRIMINATION OR RETALIATION DID TAKE PLACE
32 ("SUSTAINED");

33 (2) THE INVESTIGATION FAILED TO PRODUCE SUFFICIENT EVIDENCE
34 TO FIND WHETHER THE ALLEGED DISCRIMINATION OR RETALIATION TOOK PLACE
35 ("NOT SUSTAINED");

36 (3) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO FIND
37 THAT THE ALLEGED DISCRIMINATION OR RETALIATION DID NOT TAKE PLACE
38 ("UNFOUNDED");

1 (4) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO
2 ESTABLISH THAT THE COMPLAINANT KNOWINGLY MADE ONE OR MORE FALSE OR
3 FRIVOLOUS ALLEGATIONS, AND FURTHER INVESTIGATION DID NOT APPEAR LIKELY
4 TO PRODUCE SUFFICIENT EVIDENCE THAT THE ALLEGED DISCRIMINATION OR
5 RETALIATION DID TAKE PLACE ("FALSE OR FRIVOLOUS");

6 (5) THE ALLEGATION HAS BEEN SETTLED OR OTHERWISE RESOLVED
7 WITH THE AGREEMENT OF THE RESPONDENT BUSINESS ENTITY, THE COMPLAINANT,
8 AND THE STATE ("SETTLED"); OR

9 (6) THE ALLEGATION HAS BEEN WITHDRAWN WITH THE APPROVAL OF
10 THE SPECIAL SECRETARY ("WITHDRAWN").

11 (C) THE SPECIAL SECRETARY SHALL APPROVE THE WITHDRAWAL OF AN
12 ALLEGATION BY THE COMPLAINANT UNLESS THE SPECIAL SECRETARY DETERMINES
13 THAT PERMITTING THE WITHDRAWAL IS NOT IN THE BEST INTERESTS OF THE
14 STATE.

15 (D) IF THE SPECIAL SECRETARY DETERMINES THAT THE COMPLAINANT'S
16 WITHDRAWAL OF AN ALLEGATION IS NOT IN THE BEST INTERESTS OF THE STATE,
17 THEN THE SPECIAL SECRETARY MAY CONTINUE THE INVESTIGATION WITHOUT THE
18 COMPLAINANT'S PARTICIPATION AS A PARTY.

19 (E) ON COMPLETION OF ITS INITIAL INVESTIGATION, THE OFFICE SHALL
20 RECOMMEND TO THE SPECIAL SECRETARY THE APPROPRIATE ACTION TO BE TAKEN,
21 INCLUDING:

22 (1) ADDITIONAL INVESTIGATION OF THE COMPLAINT;

23 (2) THE SPECIAL SECRETARY'S ADOPTION OF THE INITIAL FINDINGS
24 RENDERED BY THE OFFICE;

25 (3) IMPOSITION OF SANCTIONS;

26 (4) IMPOSITION OF REMEDIES; OR

27 (5) OTHER ACTION CONSISTENT WITH THIS SUBTITLE.

28 (F) IN DETERMINING APPROPRIATE ACTION ON A DISCRIMINATION CLAIM,
29 THE SPECIAL SECRETARY MAY TAKE INTO ACCOUNT ANY EVIDENCE PROVIDED OR
30 UNCOVERED IN THE COURSE OF THE INVESTIGATION REGARDING:

31 (1) THE IMPACT OF THE DISCRIMINATION ON AFFECTED PARTIES;

32 (2) THE IMPACT OF ANY AUTHORIZED REMEDY ON THE STATE OR ANY
33 OTHER PARTY;

34 (3) ACTIONS TAKEN BY THE RESPONDENT BUSINESS ENTITY TO
35 REMEDY THE ALLEGED DISCRIMINATION;

1 (4) THE EFFECTIVENESS OF ANY PRIOR ATTEMPTS BY THE
2 RESPONDENT BUSINESS ENTITY TO REMEDY THE DISCRIMINATION;

3 (5) WHETHER THE RESPONDENT BUSINESS ENTITY HAS PROCURED
4 GOODS OR SERVICES FROM OR OTHERWISE ENGAGED IN BUSINESS WITH PERSONS
5 OR ENTITIES OF THE SAME PROTECTED CLASS AS THE COMPLAINANT TO AN EXTENT
6 SUFFICIENT TO DEMONSTRATE THAT THE RESPONDENT BUSINESS ENTITY HAS NOT
7 DISCRIMINATED AGAINST SUCH PROTECTED CLASS IN THE OVERALL CONTEXT OF
8 ITS BUSINESS;

9 (6) THE NUMBER AND SCOPE OF PRIOR VIOLATIONS OF THIS POLICY BY
10 THE RESPONDENT BUSINESS ENTITY; AND

11 (7) ANY OTHER EVIDENCE DETERMINED TO BE RELEVANT BY THE
12 SPECIAL SECRETARY.

13 (G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
14 SPECIAL SECRETARY SHALL MAKE THE INITIAL FINDINGS AND ISSUE
15 RECOMMENDATIONS FOR APPROPRIATE ACTION WITHIN 120 CALENDAR DAYS OF
16 THE RECEIPT OF THE COMPLAINT.

17 (2) THE SPECIAL SECRETARY MAY EXTEND THE TIME LIMIT SET FORTH
18 IN PARAGRAPH (1) OF THIS SUBSECTION FOR GOOD CAUSE OR IF THE PARTIES AGREE
19 TO MEDIATE A SETTLEMENT TO THE COMPLAINT.

20 (H) THE SPECIAL SECRETARY SHALL NOTIFY THE COMPLAINANT AND THE
21 BUSINESS ENTITY WITHIN 5 BUSINESS DAYS OF THE ISSUANCE OF THE INITIAL
22 FINDINGS AND RECOMMENDATIONS, INCLUDING AN EXPLANATION OF THE
23 REASONS JUSTIFYING THE INITIAL FINDINGS.

24 (I) (1) FAILURE BY A PARTY TO PRODUCE DOCUMENTS OR OTHER
25 EVIDENCE RELEVANT TO AN INVESTIGATION UNDER THIS ARTICLE WITHIN 30 DAYS
26 AFTER THE DOCUMENTS ARE REQUESTED BY THE SPECIAL SECRETARY
27 CONSTITUTES A VIOLATION OF THIS TITLE.

28 (2) THE SPECIAL SECRETARY MAY RECOMMEND ANY REMEDY OR
29 SANCTION AUTHORIZED BY THIS TITLE AGAINST ANY PARTY WHO VIOLATES THIS
30 SUBSECTION.

31 19-109.

32 (A) IF THE SPECIAL SECRETARY DETERMINES THAT ONE OR MORE
33 ALLEGATIONS ARE SUSTAINED, THE BUSINESS ENTITY AGAINST WHOM THE
34 ALLEGATIONS WERE MADE SHALL BE ENTITLED TO REQUEST A CONTESTED CASE
35 HEARING.

36 (B) (1) TO SUBMIT A MATTER TO AN ADMINISTRATIVE HEARING AS A
37 CONTESTED CASE UNDER THIS TITLE, THE BUSINESS ENTITY MUST REQUEST A
38 CONTESTED CASE HEARING BY FILING A WRITTEN NOTICE WITH THE SPECIAL

1 SECRETARY AND THE COMPLAINANT WITHIN 15 CALENDAR DAYS OF NOTICE OF THE
2 INITIAL FINDINGS AND RECOMMENDATIONS.

3 (2) THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

4 (I) A DEMAND THAT THE MATTER BE REFERRED TO THE OFFICE
5 OF ADMINISTRATIVE HEARINGS FOR A CONTESTED CASE HEARING IN ACCORDANCE
6 WITH § 10-205(C)(2) OF THE STATE GOVERNMENT ARTICLE;

7 (II) THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF THE
8 SPECIAL SECRETARY, AND THE COMPLAINANT;

9 (III) A REFERENCE TO THIS TITLE; AND

10 (IV) A SUMMARY OF THE SPECIAL SECRETARY'S FINDINGS AND
11 RECOMMENDATIONS THAT ARE BEING SUBMITTED FOR RESOLUTION TO THE
12 PRESIDING OFFICER FOR THE CONTESTED CASE HEARING.

13 (C) IF THE BUSINESS ENTITY FAILS TO PROPERLY REQUEST A CONTESTED
14 CASE HEARING, THE INITIAL FINDINGS AND RECOMMENDATIONS OF THE SPECIAL
15 SECRETARY SHALL BECOME THE FINAL ADMINISTRATIVE DECISION OF THE STATE,
16 AND THE SPECIAL SECRETARY SHALL THEN BE AUTHORIZED TO ENTER ANY ORDER
17 AND TO TAKE ANY ACTION REASONABLY NECESSARY OR CONVENIENT TO:

18 (1) IMPLEMENT REMEDIES UNDER § 19-110 OF THIS TITLE;

19 (2) IMPOSE SANCTIONS UNDER § 19-111 OF THIS TITLE; AND

20 (3) GOVERN THE CONDUCT OF THE PARTIES IN THE MANNER
21 DESCRIBED UNDER § 19-112 OF THIS TITLE SO THAT THE PURPOSES OF THIS TITLE
22 ARE ACHIEVED.

23 (D) FOR EACH CONTESTED CASE HEARING PROPERLY REQUESTED BY THE
24 BUSINESS ENTITY, THE SPECIAL SECRETARY SHALL DELEGATE THE MATTER TO THE
25 OFFICE OF ADMINISTRATIVE HEARINGS TO ASSIGN A PRESIDING OFFICER TO
26 CONDUCT A HEARING IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THIS
27 SUBSECTION.

28 (1) WITHIN 30 DAYS AFTER NOTICE TO THE PARTIES OF THE
29 COMMENCEMENT OF THE CONTESTED CASE HEARING BY THE PRESIDING OFFICER,
30 THE BUSINESS ENTITY SHALL FILE A WRITTEN RESPONSE TO THE SPECIAL
31 SECRETARY'S FINDINGS AND RECOMMENDED ACTIONS, ALONG WITH ANY CLAIMS
32 THAT THE BUSINESS ENTITY MAY HAVE UNDER THIS TITLE.

33 (2) THE RESPONSE OF THE BUSINESS ENTITY SHALL STATE IN DETAIL
34 ALL GROUNDS ON WHICH THE BUSINESS ENTITY CONTENDS THAT THE SPECIAL
35 SECRETARY'S FINDINGS OR RECOMMENDATIONS ARE NOT APPROPRIATE UNDER
36 THIS TITLE.

1 (3) AT LEAST 20 DAYS BEFORE THE HEARING, EACH PARTY SHALL
2 PROVIDE TO THE OTHER PARTIES COPIES OF ALL DOCUMENTS THAT THE PARTY
3 INTENDS TO INTRODUCE AS EVIDENCE AT THE HEARING.

4 (4) THE PRESIDING OFFICER MAY ENTER ANY ORDER THAT IS
5 DETERMINED TO BE REASONABLY NECESSARY OR CONVENIENT TO:

6 (I) GOVERN THE CONDUCT OF THE HEARING AND THE PARTIES SO
7 THAT THE PURPOSES OF THIS TITLE ARE ACHIEVED;

8 (II) CONCLUDE ANY HEARING AND ISSUE ANY DECISION WITHIN A
9 REASONABLE TIME; AND

10 (III) CONDUCT ANY HEARING IN A MANNER THAT IS CONSISTENT
11 WITH THIS TITLE AND ANY DUE PROCESS RIGHTS TO WHICH ANY PARTY IS
12 ENTITLED.

13 (5) THE HEARING SHALL AFFORD ALL PARTIES AN OPPORTUNITY TO
14 PRESENT WITNESSES, CONDUCT DIRECT AND CROSS-EXAMINATION OF WITNESSES,
15 INTRODUCE RELEVANT EVIDENCE, SUBMIT BRIEFS, AND PRESENT ORAL ARGUMENT.

16 (6) THE PRESIDING OFFICER MAY ISSUE A PROTECTIVE ORDER FOR
17 GOOD CAUSE AS IS LAWFUL AND AS THE PRESIDING OFFICER DETERMINES TO BE
18 APPROPRIATE TO:

19 (I) LIMIT, OR OTHERWISE IMPOSE CONDITIONS ON, ACCESS BY
20 ANY PERSON TO ANY DOCUMENT IN THE POSSESSION OF A PARTY, INCLUDING ANY
21 DOCUMENT IN THE STATE'S POSSESSION OR IN THE RECORD OF THE HEARING THAT
22 IS NOT A PUBLIC RECORD; AND

23 (II) CLOSE ALL OR ANY PORTION OF THE HEARING, OR OTHERWISE
24 IMPOSE CONDITIONS ON ACCESS TO THE HEARING BY ANY PERSON.

25 (7) WITHOUT LIMITING THE SCOPE OF THE PRESIDING OFFICER'S
26 AUTHORITY TO ISSUE PROTECTIVE ORDERS, IT IS UNDERSTOOD THAT THE
27 PRESIDING OFFICER MAY LIMIT, OR OTHERWISE IMPOSE CONDITIONS ON, A PARTY'S
28 ACCESS TO RECORDS OR PRESENCE DURING THE HEARING ONLY TO THE EXTENT
29 THE LIMITS OR CONDITIONS CAN BE IMPOSED IN A MANNER THAT IS CONSISTENT
30 WITH THE RIGHT, IF ANY, A PARTY MAY HAVE TO ACCESS THE RECORDS OR BE
31 PRESENT DURING THE HEARING UNDER APPLICABLE LAW, INCLUDING EXPRESS
32 PROVISIONS OF THIS TITLE.

33 (8) BASED ON THE EVIDENCE PRESENTED AT THE CONTESTED CASE
34 HEARING, AND WITHIN 30 CALENDAR DAYS AFTER THE HEARING, THE PRESIDING
35 OFFICER SHALL PREPARE A WRITTEN DECISION.

36 (9) THE PRESIDING OFFICER'S WRITTEN DECISION MAY:

37 (I) AFFIRM OR REJECT THE INITIAL FINDINGS AND
38 RECOMMENDATIONS;

1 (II) SUBSTITUTE DIFFERENT FINDINGS OR RECOMMEND
2 APPROPRIATE REMEDIES; OR

3 (III) CONTINUE THE HEARING AND RETURN THE CASE TO THE
4 SPECIAL SECRETARY FOR FURTHER INVESTIGATION AND FINDINGS AND TO REPORT
5 TO THE PRESIDING OFFICER ON THE RESULTS OF THE INVESTIGATION WITHIN THE
6 TIME FRAME THE PRESIDING OFFICER MAY SPECIFY.

7 (10) THE PRESIDING OFFICER'S WRITTEN DECISION SHALL BE SOLELY
8 BASED ON A PREPONDERANCE OF THE EVIDENCE CONTAINED IN THE RECORD OF
9 THE CONTESTED CASE HEARING AND SHALL REFLECT THE EVIDENTIARY BASIS FOR
10 ITS FINDINGS.

11 (E) NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS TITLE, UNLESS
12 THE PRESIDING OFFICER FINDS THAT ONE OR MORE ALLEGATIONS GIVING RISE TO
13 THE SPECIAL SECRETARY'S FINDINGS OR THE BUSINESS ENTITY'S CHALLENGE TO
14 THE FINDINGS WERE FRIVOLOUS OR KNOWINGLY FALSE WHEN MADE, EACH PARTY
15 SHALL BEAR THE COST OF ITS OWN LEGAL REPRESENTATION AND EXPERT WITNESS
16 FEES.

17 (F) IF THE PRESIDING OFFICER FINDS THAT ONE OR MORE ALLEGATIONS
18 GIVING RISE TO THE SPECIAL SECRETARY'S FINDINGS OR THE BUSINESS ENTITY'S
19 CHALLENGE TO THE FINDINGS WAS FRIVOLOUS OR KNOWINGLY FALSE WHEN
20 MADE, THE PRESIDING OFFICER MAY REQUIRE THE PARTY WHO MADE THE
21 FRIVOLOUS OR KNOWINGLY FALSE ALLEGATIONS TO BEAR ALL OR A PORTION OF
22 THE OTHER PARTIES' LEGAL FEES AND EXPERT WITNESS FEES.

23 (G) THE BUSINESS ENTITY, THE SPECIAL SECRETARY, AND THE
24 COMPLAINANT SHALL COOPERATE IN GOOD FAITH TO HAVE THE CONTESTED CASE
25 HEARING CONCLUDED WITHIN 90 DAYS AFTER THE BUSINESS ENTITY ISSUES ITS
26 NOTICE FOR A CONTESTED CASE HEARING.

27 (H) DURING THE CONTESTED CASE HEARING, THE SPECIAL SECRETARY OR
28 THE PRESIDING OFFICER MAY CALL AS WITNESSES ONE OR MORE INDIVIDUALS WHO
29 HAVE BEEN SELECTED BY THE SPECIAL SECRETARY TO PARTICIPATE IN THE
30 VOLUNTEER EXPERT POOL AS DESCRIBED IN § 19-120 OF THIS TITLE FOR THE
31 PURPOSE OF PROVIDING TESTIMONY REGARDING INDUSTRY CUSTOM AND PRACTICE
32 IN A PARTICULAR AREA OF BUSINESS.

33 (I) IF THE SPECIAL SECRETARY DETERMINES THAT ONE OR MORE
34 ALLEGATIONS ARE FALSE OR FRIVOLOUS, THE COMPLAINANT MAKING THE
35 ALLEGATIONS SHALL BE ENTITLED TO A CONTESTED CASE HEARING ON THE
36 ALLEGATIONS AS ARE DETERMINED TO BE FALSE OR FRIVOLOUS IN ACCORDANCE
37 WITH THE PROCEDURES SET FORTH IN THIS SECTION, EXCEPT THAT ALL
38 REFERENCES TO THE BUSINESS ENTITY WITH RESPECT TO MATTERS OF CONTESTED
39 CASE HEARING RULES AND PROCEDURE SHALL APPLY TO THE COMPLAINANT.

40 (J) IF THE COMPLAINANT FAILS TO PROPERLY REQUEST A CONTESTED CASE
41 HEARING REGARDING A DETERMINATION OF A FALSE OR FRIVOLOUS ALLEGATION
42 AS PROVIDED IN THIS TITLE, THE INITIAL FINDINGS AND RECOMMENDATIONS

1 SHALL BECOME THE FINAL ADMINISTRATIVE DECISION OF THE STATE IN
2 ACCORDANCE WITH § 19-112 OF THIS TITLE.

3 (K) ABSENT GOOD CAUSE, FAILURE BY A PARTY TO PRODUCE RELEVANT
4 DOCUMENTS OR OTHER EVIDENCE IN ACCORDANCE WITH AN INITIAL
5 INVESTIGATION OR TO A CONTESTED CASE HEARING UNDER THIS TITLE WITHIN 30
6 DAYS AFTER THE DOCUMENTS ARE REQUESTED BY THE SPECIAL SECRETARY OR
7 THE PRESIDING OFFICER SHALL CONSTITUTE A VIOLATION OF THIS TITLE AND, IN
8 THE EVENT OF A VIOLATION, THE PRESIDING OFFICER MAY ORDER ANY REMEDY,
9 SANCTION, OR ANY COMBINATION OF BOTH, AUTHORIZED BY THIS TITLE.

10 (L) (1) IF A TIMELY CONTESTED CASE HEARING IS NOT REQUESTED, THE
11 SPECIAL SECRETARY MAY VACATE THE OFFICE'S RECOMMENDED REMEDY ON
12 WRITTEN NOTICE TO ALL PARTIES WITHIN 5 BUSINESS DAYS AFTER THE TIME FOR
13 REQUESTING A CONTESTED CASE HEARING HAS EXPIRED.

14 (2) IN THE ABSENCE OF NOTICE, THE SPECIAL SECRETARY SHALL BE
15 DEEMED TO HAVE APPROVED THE OFFICE'S RECOMMENDED REMEDY.

16 (M) IF THE SPECIAL SECRETARY VACATES THE OFFICE'S PROPOSED REMEDY,
17 THE SPECIAL SECRETARY SHALL INITIATE A CONTESTED CASE HEARING BY FILING A
18 REQUEST FOR A CONTESTED CASE HEARING WITH THE OFFICE OF ADMINISTRATIVE
19 HEARINGS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS POLICY.

20 (N) THE SCOPE OF THE CONTESTED CASE HEARING PROVIDED UNDER THIS
21 POLICY SHALL BE LIMITED TO WHETHER THIS POLICY HAS BEEN PROPERLY
22 APPLIED, AND ANY CHALLENGES TO THE LEGALITY OF THE POLICY ITSELF MUST BE
23 BROUGHT IN A COURT OF COMPETENT JURISDICTION.

24 (O) TO THE EXTENT THAT PROCEDURES AND STANDARDS STATED IN THIS
25 TITLE DIFFER FROM THOSE CONTAINED IN TITLE 10, SUBTITLE 2 OF THE STATE
26 GOVERNMENT ARTICLE, THIS TITLE SHALL GOVERN BUT, IN ALL OTHER RESPECTS,
27 THE PROVISIONS OF THE STATE GOVERNMENT ARTICLE SHALL GOVERN.

28 19-110.

29 (A) (1) WHEN AN ALLEGATION IS SUSTAINED BY A PRESIDING OFFICER
30 UNDER THIS TITLE, THE PRESIDING OFFICER MAY TAKE ADDITIONAL EVIDENCE ON
31 THE APPROPRIATE REMEDY TO BE RECOMMENDED, INCLUDING EVIDENCE
32 RELATING TO FACTORS SET FORTH IN § 19-108(F) OF THIS SUBTITLE AND ANY OTHER
33 EVIDENCE DEEMED RELEVANT BY THE PRESIDING OFFICER.

34 (2) IF THE PRESIDING OFFICER SUSTAINS AN ALLEGATION, THE
35 PRESIDING OFFICER SHALL ORDER ANY ONE OR MORE OF THE FOLLOWING ACTIONS:

36 (I) ANY REMEDY THAT IS AGREED TO BY THE RESPONDENT
37 BUSINESS ENTITY, THE COMPLAINANT, AND THE SPECIAL SECRETARY, PROVIDED
38 THAT, IF THE COMPLAINANT OBJECTS TO THE REMEDY AGREED TO BY THE
39 RESPONDENT BUSINESS ENTITY AND THE SPECIAL SECRETARY, THE REMEDY MAY
40 BE CONSIDERED AS APPROVED BY THE STATE ONLY IF THE SPECIAL SECRETARY

1 APPROVES THE REMEDY AFTER AFFORDING THE COMPLAINANT AN OPPORTUNITY
2 TO ADDRESS THE SPECIAL SECRETARY ORALLY OR IN WRITING REGARDING THE
3 MERITS OR LACK OF MERIT OF THE PROPOSED REMEDY;

4 (II) REFERRAL OF THE RESPONDENT BUSINESS ENTITY TO THE
5 BOARD OF PUBLIC WORKS FOR A DETERMINATION OF DEBARMENT PURSUANT TO §§
6 16-306 AND 16-307 OF THIS ARTICLE TO PRECLUDE THE BUSINESS ENTITY FROM:

7 1. BIDDING ON OR RECEIVING CONTRACT AWARDS ON
8 STATE PROJECTS ; AND

9 2. PARTICIPATING IN STATE CONTRACTS AS A
10 SUBCONTRACTOR, VENDOR, OR SUPPLIER FOR A PERIOD OF NOT MORE THAN 3
11 YEARS;

12 (3) RESCISSION, SUSPENSION, OR TERMINATION OF ANY CURRENT
13 CONTRACT BETWEEN THE RESPONDENT BUSINESS ENTITY AND THE STATE UNDER
14 THE TERMS OF THAT CONTRACT;

15 (4) EXERCISE OF ANY OTHER RIGHTS OR REMEDIES AVAILABLE TO THE
16 STATE UNDER ANY CURRENT CONTRACT BETWEEN THE RESPONDENT BUSINESS
17 ENTITY AND THE STATE, INCLUDING, BUT NOT LIMITED TO, LIQUIDATED DAMAGES;

18 (5) FINDING THAT THE RESPONDENT BUSINESS ENTITY IS NOT A
19 "RESPONSIBLE BIDDER" WITHIN THE MEANING OF THIS ARTICLE WITH RESPECT TO
20 SPECIFIC CONTRACTS THAT THE STATE HAS PUT OUT FOR BIDS OR INTENDS TO PUT
21 OUT FOR BIDS; OR

22 (6) REFERRAL OF THE MATTER FOR CRIMINAL PROSECUTION OF FRAUD
23 AND OTHER VIOLATIONS UNDER STATE LAW IF APPROPRIATE UNDER THE
24 CIRCUMSTANCES.

25 19-111.

26 (A) IF THE SPECIAL SECRETARY DETERMINES THAT ONE OR MORE
27 ALLEGATIONS OF A COMPLAINT FILED UNDER THIS TITLE ARE FALSE AND THAT THE
28 COMPLAINANT KNEW THEM TO BE FALSE WHEN FILED, OR THAT ONE OR MORE OF
29 THE ALLEGATIONS OF A COMPLAINT ARE SO FRIVOLOUS THAT THEY ARE WHOLLY
30 WITHOUT MERIT, FOR A PERIOD OF UP TO 3 YEARS THE SPECIAL SECRETARY MAY
31 REFUSE TO REVIEW OR INVESTIGATE ANY SUBSEQUENT COMPLAINT FILED BY THAT
32 COMPLAINANT.

33 (B) WHEN THE TOTALITY OF THE EVIDENCE CLEARLY WARRANTS
34 EXTRAORDINARY ACTION TO DETER FUTURE ABUSE OF THE PROTECTIONS MADE
35 AVAILABLE UNDER THIS TITLE, THE SPECIAL SECRETARY MAY ALSO RECOMMEND
36 TO THE PRESIDING OFFICER:

37 (1) THAT MONETARY SANCTIONS BE IMPOSED AGAINST THE
38 COMPLAINANT IN THE AMOUNT OF THE COSTS INCURRED BY THE STATE AND THE

1 BUSINESS ENTITY IN THE INVESTIGATION AND REVIEW OF THE FALSE OR
2 FRIVOLOUS COMPLAINT, INCLUDING REASONABLE ATTORNEYS' FEES; AND

3 (2) THAT THE COMPLAINANT BE DISQUALIFIED FROM BIDDING AND
4 CONTRACT AWARDS ON STATE PROJECTS FOR A PERIOD OF NOT MORE THAN 3
5 YEARS.

6 19-112.

7 (A) ABSENT A REQUEST FOR A CONTESTED CASE HEARING, THE SPECIAL
8 SECRETARY'S FINDINGS AND RECOMMENDATIONS SHALL BECOME THE FINAL
9 ADMINISTRATIVE DECISION OF THE STATE, SUBJECT TO SUCH JUDICIAL REVIEW AS
10 IS PROVIDED FOR IN A CONTESTED CASE UNDER § 10-222 OF THE STATE
11 GOVERNMENT ARTICLE.

12 (B) IN CASES WHERE A CONTESTED CASE HEARING HAS BEEN REQUESTED,
13 THE PRESIDING OFFICER'S WRITTEN DECISION SHALL BECOME THE FINAL
14 ADMINISTRATIVE DECISION OF THE STATE SUBJECT TO JUDICIAL REVIEW AS
15 PROVIDED FOR IN A CONTESTED CASE UNDER § 10-222 OF THE STATE GOVERNMENT
16 ARTICLE.

17 (C) UPON ISSUANCE OF A FINAL DECISION, THE SPECIAL SECRETARY OR THE
18 PRESIDING OFFICER MAY ENTER ANY ORDER REASONABLY NECESSARY OR
19 CONVENIENT TO GOVERN THE CONDUCT OF THE STATE AND THE PARTIES SO THAT
20 THE PURPOSES OF THIS TITLE ARE ACHIEVED.

21 19-113.

22 (A) ANY PARTY WHO, AFTER HAVING EXHAUSTED ALL ADMINISTRATIVE
23 REMEDIES AVAILABLE, IS AGGRIEVED BY A FINAL DECISION OF THE SPECIAL
24 SECRETARY OR THE PRESIDING OFFICER MAY SEEK JUDICIAL REVIEW OF SUCH
25 DECISION UNDER § 10-222 OF THE STATE GOVERNMENT ARTICLE.

26 (B) AN APPEAL MAY NOT BE TAKEN BEYOND THE CIRCUIT COURT.

27 19-114.

28 EVERY CONTRACT AND SUBCONTRACT SHALL CONTAIN A NONDISCRIMINATION
29 CLAUSE THAT READS AS FOLLOWS:

30 "AS A CONDITION OF ENTERING INTO THIS AGREEMENT, THE COMPANY
31 REPRESENTS AND WARRANTS THAT IT WILL FULLY COMPLY WITH THE STATE'S
32 COMMERCIAL NONDISCRIMINATION POLICY, AS DESCRIBED UNDER TITLE 19 OF THE
33 STATE FINANCE AND PROCUREMENT ARTICLE WITHIN THE ANNOTATED CODE OF
34 MARYLAND, AND CONSENTS TO BE BOUND BY ANY FINAL DECISION RENDERED
35 THEREUNDER. AS PART OF SUCH COMPLIANCE, THE COMPANY MAY NOT
36 DISCRIMINATE ON THE BASIS OF SEX, RACE, AGE, COLOR, CREED, OR NATIONAL
37 ORIGIN OR ON THE BASIS OF DISABILITY OR OTHER UNLAWFUL FORMS OF
38 DISCRIMINATION IN THE SOLICITATION, SELECTION, HIRING, OR TREATMENT OF
39 SUBCONTRACTORS, VENDORS, SUPPLIERS, OR COMMERCIAL CUSTOMERS, NOR

1 SHALL THE COMPANY RETALIATE AGAINST ANY PERSON FOR REPORTING
2 INSTANCES OF SUCH DISCRIMINATION. THE COMPANY SHALL PROVIDE EQUAL
3 OPPORTUNITY FOR SUBCONTRACTORS, VENDORS, AND SUPPLIERS TO PARTICIPATE
4 IN ALL OF ITS PUBLIC SECTOR AND PRIVATE SECTOR SUBCONTRACTING AND SUPPLY
5 OPPORTUNITIES, PROVIDED THAT NOTHING CONTAINED IN THIS CLAUSE SHALL
6 PROHIBIT OR LIMIT OTHERWISE LAWFUL EFFORTS TO REMEDY THE EFFECTS OF
7 MARKETPLACE DISCRIMINATION THAT HAS OCCURRED OR IS OCCURRING IN THE
8 MARKETPLACE. THE COMPANY UNDERSTANDS AND AGREES THAT A VIOLATION OF
9 THIS CLAUSE SHALL BE CONSIDERED A MATERIAL BREACH OF THIS AGREEMENT
10 AND MAY RESULT IN TERMINATION OF THIS AGREEMENT, DISQUALIFICATION OF
11 THE COMPANY FROM PARTICIPATING IN STATE CONTRACTS, OR OTHER SANCTIONS".
12 19-115.

13 ALL REQUESTS FOR BIDS OR PROPOSALS ISSUED FOR STATE CONTRACTS SHALL
14 INCLUDE THE FOLLOWING CERTIFICATION TO BE COMPLETED BY THE BIDDER:

15 "THE UNDERSIGNED BIDDER HEREBY CERTIFIES AND AGREES THAT THE
16 FOLLOWING INFORMATION IS CORRECT:

17 IN PREPARING ITS BID ON THIS PROJECT, THE BIDDER HAS CONSIDERED ALL
18 PROPOSALS SUBMITTED FROM QUALIFIED, POTENTIAL SUBCONTRACTORS AND
19 SUPPLIERS, AND HAS NOT ENGAGED IN "DISCRIMINATION" AS DEFINED IN § 19-103
20 OF THE STATE GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND; TO
21 WIT: DISCRIMINATION IN THE SOLICITATION, SELECTION, OR TREATMENT OF ANY
22 SUBCONTRACTOR, VENDOR, SUPPLIER OR COMMERCIAL CUSTOMER ON THE BASIS
23 OF SEX, RACE, AGE, COLOR, CREED, OR NATIONAL ORIGIN OR ON THE BASIS OF
24 DISABILITY OR OTHER UNLAWFUL FORMS OF DISCRIMINATION. WITHOUT LIMITING
25 THE FOREGOING, "DISCRIMINATION" ALSO INCLUDES RETALIATING AGAINST ANY
26 PERSON OR OTHER ENTITY FOR REPORTING ANY INCIDENT OF "DISCRIMINATION".
27 WITHOUT LIMITING ANY OTHER PROVISION OF THE SOLICITATION FOR BIDS ON THIS
28 PROJECT, IT IS UNDERSTOOD AND AGREED THAT, IF THIS CERTIFICATION IS FALSE,
29 SUCH FALSE CERTIFICATION WILL CONSTITUTE GROUNDS FOR THE STATE TO
30 REJECT THE BID SUBMITTED BY THE BIDDER ON THIS PROJECT, AND TERMINATE
31 ANY CONTRACT AWARDED BASED ON THE BID. AS A CONDITION OF CONTRACTING
32 WITH THE STATE, THE BIDDER AGREES TO PROMPTLY PROVIDE TO THE STATE ALL
33 INFORMATION AND DOCUMENTATION THAT MAY BE REQUESTED BY THE STATE
34 FROM TIME TO TIME REGARDING THE SOLICITATION AND SELECTION OF
35 SUBCONTRACTORS. FAILURE TO MAINTAIN OR FAILURE TO PROVIDE THE
36 INFORMATION CONSTITUTES GROUNDS FOR THE STATE TO REJECT THE BID
37 SUBMITTED BY THE BIDDER AND TERMINATE ANY CONTRACT AWARDED ON THE BID.
38 AS PART OF ITS BID OR PROPOSAL, THE BIDDER SHALL PROVIDE TO THE STATE A
39 LIST OF ALL INSTANCES WITHIN THE IMMEDIATE PAST 10 YEARS WHERE A
40 COMPLAINT WAS FILED OR PENDING AGAINST THE BIDDER IN A LEGAL OR
41 ADMINISTRATIVE PROCEEDING ALLEGING THAT THE BIDDER DISCRIMINATED
42 AGAINST ITS SUBCONTRACTORS, VENDORS, SUPPLIERS, OR COMMERCIAL
43 CUSTOMERS, AND A DESCRIPTION OF THE STATUS OR RESOLUTION OF THAT
44 COMPLAINT, INCLUDING ANY REMEDIAL ACTION TAKEN. AS A CONDITION OF
45 SUBMITTING A BID OR PROPOSAL TO THE STATE, THE BIDDER AGREES TO COMPLY

1 WITH THE STATE'S COMMERCIAL NONDISCRIMINATION POLICY AS DESCRIBED
2 UNDER TITLE 19 OF THE STATE FINANCE AND PROCUREMENT ARTICLE OF THE
3 ANNOTATED CODE OF MARYLAND, AND CONSENTS TO BE BOUND BY ANY FINAL
4 DECISION ISSUED THEREUNDER."

5 19-116.

6 EVERY CONTRACT THAT THE STATE ENTERS INTO SHALL INCLUDE THE
7 FOLLOWING LANGUAGE:

8 "AS A CONDITION OF ENTERING INTO THIS AGREEMENT, THE COMPANY
9 AGREES TO: (A) PROMPTLY PROVIDE TO THE STATE ALL INFORMATION AND
10 DOCUMENTATION THAT MAY BE REQUESTED BY THE STATE FROM TIME TO TIME
11 REGARDING THE SOLICITATION, SELECTION, TREATMENT AND PAYMENT OF
12 SUBCONTRACTORS IN CONNECTION WITH THIS AGREEMENT; AND (B) IF REQUESTED,
13 PROVIDE TO THE STATE WITHIN 60 DAYS AFTER THE REQUEST A TRUTHFUL AND
14 COMPLETE LIST OF THE NAMES OF ALL SUBCONTRACTORS, VENDORS, AND
15 SUPPLIERS THAT COMPANY HAS USED IN THE PAST 5 YEARS ON ANY OF ITS
16 CONTRACTS THAT WERE UNDERTAKEN WITHIN THE MARYLAND STATE
17 METROPOLITAN STATISTICAL AREA, INCLUDING THE TOTAL DOLLAR AMOUNT PAID
18 BY CONTRACTOR ON EACH SUBCONTRACT OR SUPPLY CONTRACT. THE COMPANY
19 FURTHER AGREES TO FULLY COOPERATE IN ANY INVESTIGATION CONDUCTED BY
20 THE STATE PURSUANT TO THE STATE'S COMMERCIAL NONDISCRIMINATION POLICY
21 AS SET FORTH UNDER TITLE 19 OF THE STATE FINANCE AND PROCUREMENT
22 ARTICLE OF THE ANNOTATED CODE OF MARYLAND, TO PROVIDE ANY DOCUMENTS
23 RELEVANT TO ANY INVESTIGATION THAT IS REQUESTED BY THE STATE, AND TO BE
24 BOUND BY ANY FINAL DECISION ISSUED UNDER THAT POLICY. THE COMPANY
25 UNDERSTANDS AND AGREES THAT VIOLATION OF THIS CLAUSE SHALL BE
26 CONSIDERED A MATERIAL BREACH OF THIS AGREEMENT AND MAY RESULT IN
27 CONTRACT TERMINATION, DISQUALIFICATION OF THE STATE FROM PARTICIPATING
28 IN STATE CONTRACTS, AND OTHER SANCTIONS."

29 19-117.

30 THE REMEDIES PROVIDED BY THIS TITLE ARE IN ADDITION TO ANY OTHER
31 STATUTORY, LEGAL, OR EQUITABLE REMEDIES THAT MAY BE AVAILABLE AND ARE
32 NOT INTENDED TO BE PREREQUISITE TO OR EXCLUSIVE OF ANY OTHER REMEDIES.

33 19-118.

34 THE FILING, INVESTIGATION, HEARING, AND APPEAL OF A COMPLAINT UNDER
35 THIS TITLE MAY NOT HINDER OR AFFECT THE AWARD OF, PERFORMANCE OF, OR
36 PAYMENT ON A CONTRACT PRIOR TO A FINAL ADMINISTRATIVE DECISION THAT
37 ESTABLISHES A VIOLATION.

38 19-119.

39 (A) THE SPECIAL SECRETARY SHALL RECOMMEND REGULATIONS AS MAY BE
40 REQUIRED FROM TIME TO TIME TO IMPLEMENT THIS TITLE.

1 (B) THE SPECIAL SECRETARY MAY ESTABLISH DOCUMENTATION AND
2 REPORTING REQUIREMENTS TO FURTHER THE PURPOSES AND INTENT OF THIS
3 TITLE.

4 19-120.

5 (A) (1) WITHIN 60 DAYS AFTER THIS TITLE BECOMES LAW, THE SPECIAL
6 SECRETARY SHALL APPOINT A VOLUNTEER EXPERTS POOL TO SERVE AS ADVISORS
7 TO THE SPECIAL SECRETARY IN INVESTIGATING DISCRIMINATION CLAIMS AND AS
8 EXPERT WITNESSES IN HEARINGS UNDER THIS TITLE.

9 (2) AS REQUESTED BY THE SPECIAL SECRETARY OR THE PRESIDING
10 OFFICER, THE VOLUNTEER EXPERT POOL SHALL:

11 (I) ASSIST THE OFFICE IN EVALUATING ALLEGED VIOLATIONS OF
12 THIS TITLE; AND

13 (II) PROVIDE TESTIMONY AT HEARINGS UNDER THIS TITLE ON
14 MATTERS RELATING TO INDUSTRY CUSTOM AND PRACTICE IN A PARTICULAR LINE
15 OF BUSINESS.

16 (B) (1) NOTICE OF VOLUNTEER OPPORTUNITIES IN THE VOLUNTEER
17 EXPERT POOL SHALL BE POSTED IN LOCAL NEWSPAPERS AT LEAST 15 DAYS PRIOR TO
18 THE DEADLINE FOR SUBMITTING APPLICATIONS.

19 (2) THE VOLUNTEER EXPERT POOL SHALL BE LIMITED TO 15
20 INDIVIDUALS, PROVIDED THAT THE SPECIAL SECRETARY MAY INCREASE THE
21 NUMBER OF INDIVIDUALS IN THE POOL FROM TIME TO TIME TO PROVIDE SPECIFIC
22 EXPERTISE THAT MAY POTENTIALLY BE NEEDED TO ASSIST IN EVALUATING A
23 DISCRIMINATION CLAIM IN A MATTER UNDER THIS TITLE.

24 19-121.

25 THIS TITLE AND ANY REGULATIONS ADOPTED UNDER THIS TITLE MAY BE
26 CITED AS THE "COMMERCIAL NONDISCRIMINATION POLICY".

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect July 1, 2005.