

From Restructuring Government Committee

CITY OF CHARLOTTE

COMMERCIAL NON-DISCRIMINATION ORDINANCE

Recitals

THIS ORDINANCE establishes a Commercial Non-Discrimination Policy with investigation and enforcement provisions for firms that engage in business with the City of Charlotte. The purposes of this Ordinance are: (a) to establish a clear policy against discrimination in business on the basis of race, gender, religion, national origin, ethnicity, age, or disability; (b) to establish a clear policy for the City not to enter into *contracts* with *business firms* that discriminate in the solicitation, selection, or treatment of vendors, suppliers, subcontractors, or *commercial customers* in connection with City *contracts* or *solicitations*; and (c) to establish a formal complaint process and investigation process for alleged violations of this policy, providing due process for hearing evidence, rendering findings, and imposing sanctions for policy violations.

The City Council finds that in order to avoid becoming a passive participant in private sector commercial discrimination, it is necessary to establish and firmly enforce a clear policy against discrimination in business on the basis of race, gender, religion, national origin, ethnicity, age, or disability. Under this policy, the City shall not *contract* with *business firms* that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or *commercial customers* in connection with City *contracts* or *solicitations*. Such a commercial non-discrimination policy approach has been favorably commented upon by the United States Supreme Court in City of Richmond v. J. A. Croson, 488 U.S. 469, 509-510 (1989), and by other federal courts.

The City Council has further determined that it has a compelling interest in assuring that public funds do not serve to finance private prejudice on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination.

It is in the best interests of the City of Charlotte to enhance competition on City projects by promoting equal opportunity and the full participation of all segments of the community in a marketplace environment that is free from the effects of discrimination. The City is likely to benefit from a discrimination-free marketplace through lower prices and higher revenues.

Through enactment of this Ordinance, the City of Charlotte provides a formal mechanism for receiving, investigating, and resolving complaints of *discrimination* in connection with City *contracts* or *solicitations*. The City also gives fuller meaning and effect to the goals and objectives of this Ordinance by including enforcement provisions that may subject violators of the Ordinance to possible contract termination, disqualification from participation in City *contracts* and *solicitations*, or other remedial actions.

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CHARLOTTE, That the following “Commercial Non-Discrimination Policy” is enacted with the stipulation that go into effect on October 1, 2003. Be it further ordained that effective as of October 1, 2003, the following provisions shall be added to the Charlotte City Code as “Chapter 2 Administration, Article V – Commercial Non-Discrimination Policy.”

**Charlotte City Code
Chapter 2 Administration
Article V – Commercial Non-Discrimination Policy**

ARTICLE V. COMMERCIAL NON-DISCRIMINATION POLICY.

Section 2.87. Policy statement.

It is the policy of the City of Charlotte not to enter into a *contract* with any *business firm* that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors or *commercial customers* on the basis of race, gender, religion, national origin, ethnicity, age, or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor’s, supplier’s, or *commercial customer’s* employees or owners in connection with a City *contract* or *solicitation*; provided that nothing in this Commercial Non-Discrimination Policy shall *prohibit* or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

Section 2.88 Purpose and Intent.

It is the intent of the City to avoid becoming a passive participant in private sector commercial discrimination by refusing to procure goods and services from *business firms* that *discriminate* in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or *commercial customers* on the basis of race, gender, religion, national origin, ethnicity, age or disability in connection with City *contracts* or *solicitations* by providing a procedure for receiving, investigating, and resolving complaints of *discrimination* involving City *contracts* or *solicitations*.

Section 2.89. Definitions.

For purposes of this Article V, the following terms have the meanings indicated unless the context clearly requires a different meaning.

(A) *Business firm.*

“*Business firm*” means: (a) any person, firm, sole proprietorship, partnership, corporation, limited liability company, or other business entity or combination thereof, including any *financial institution*, developer, consultant, prime contractor, subcontractor, supplier, or vendor, that has submitted a bid or proposal for, has been selected to engage in, or is engaged in providing goods or services to

the *City*, including selling or leasing supplies or goods, or providing construction, real estate development, financial, insurance, professional, or other services, in return for a fee or any other form of compensation paid by the City; and (b) any *subcontractor*. The term “business firm” does not include other government entities.

(B) *Charlotte Combined Statistical Area or CSA*

“*Charlotte CSA*” means the Charlotte Combined Statistical Area as defined from time to time by the United States Office of Management and Budget.

(C) *City*.

“*City*” means the City of Charlotte, North Carolina, which is a North Carolina municipal corporation.

(D) *City Manager*.

“*City Manager*” means the City Manager of the City of Charlotte, or his/her designee.

(E) *Commercial Customer*.

“*Commercial Customer*” means a business entity that procured or attempted to procure goods or services from a *business firm* for business as opposed to personal use. As used in this definition, “services” includes construction, real estate development, financial, insurance, professional and other services.

(F) *Commercial Non-Discrimination Policy*.

“*Commercial Non-Discrimination Policy*” means the regulations contained in Section 2, Article V of the Charlotte City Code, and any regulations or documentation requirements adopted by the City Manager pursuant to Article V.

(G) *Contract*.

“*Contract*” means an agreement with any *business firm* let by or on behalf of the *City* for that *business firm* to sell or lease supplies, or goods, or to provide construction, real estate development, financial, insurance, professional, or other services to the *City*, in return for a fee or any other form of compensation to be paid by the *City*.

(H) *Director*.

“*Director*” means the Director of the Small Business Development Office.

(I) *Discrimination.*

“*Discrimination*” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a vendor, supplier, subcontractor or *commercial customer* on the basis of race, gender, religion, national origin, ethnicity, age or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor’s, supplier’s, or commercial customer’s employees or owners in connection with a City *contract* or *solicitation*; provided that nothing in this definition or Article shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

(J) *Economic Development Project*

“*Economic Development Project*” means a real estate development, construction or renovation project that the City provides funding, land, road improvements, tax credits, a below market purchase price or other financial assistance to for the purpose of promoting economic development. For purposes of this definition, the terms “funding” and “financial assistance” do not include payments in exchange for goods or services, as long as such payments do not exceed the reasonable value of such goods or services.

(K) *Financial Institution.*

“*Financial Institution*” means any person or entity engaged in the business of lending money, guaranteeing loans, extending credit, securing bonds, providing venture or equity capital, or that offers financial services in connection with *City* projects or the administration of *City* government. *Financial Institution* includes banks, savings and loans, venture capital companies, insurance companies, bonding companies, mortgage companies, credit unions, and brokers.

(L) *Office.*

“*Office*” means the Small Business Development Office.

(M) *Procurement Services Director.*

“*Procurement Services Director*” means the Director of the Procurement Services Division of the City’s Business Support Service Key Business

(N) *Retaliate.*

“*Retaliate*” means to take any action that has a material negative effect against any person, business or other entity for reporting any incident of *discrimination* testifying as a witness at a hearing, or providing requested assistance to the Office in any investigation of an incident of *discrimination* pursuant to this Commercial Non-Discrimination Policy.

(O) *Subcontract.*

“*Subcontract*” means an agreement for the performance of a particular portion of work to be performed under a *contract* with the *City*, where: (i) the party providing the service is on reasonable notice that the work is to be performed under a *City contract*; and (ii) the amount to be paid for such service is material with respect to the overall amount of the *contract*.

(P) *Subcontractor.*

“*Subcontractor*” means the party providing service under a *subcontract*.

Section 2.90. Scope.

(A) *In general.*

This Commercial Non-Discrimination Policy applies to all *business firms* as defined in Section 2.89(A) of this Article. It also applies to those *economic development projects* as provided in Section 2.90(B) of this Article. The scope of the *discrimination* and *retaliation* claims that may be investigated and adjudicated under this Policy is limited to those claims that involve *discrimination* or *retaliation* that occurs in the Charlotte Combined Statistical Area in connection with *City contracts* or *solicitations*. For purposes of this Policy, *discrimination* or *retaliation* shall be deemed to occur in the Charlotte CSA if: (a) one of the parties was in the Charlotte CSA at the time the *discrimination* or *retaliation* is alleged to have occurred; or (b) one of the parties resides in or operates a place of business in the Charlotte CSA.

(B) *Economic development projects.*

As a condition of participating in an *economic development project*, the City will require the governmental agency, quasi-governmental agency, corporation, developer, or contractor that receives assistance from the City to comply with this Commercial Non-Discrimination Policy in administering the *economic development project*, and in awarding contracts to manage or perform the work entailed in the *economic development project*. Each contract and subcontract awarded in connection with the *economic development project* shall contain the non-discrimination clause set forth in Section 2.101 of this Article V. Any *discrimination* claims relating to the *economic development project* shall be subject to investigation and adjudication by the City in accordance with this Commercial Non-Discrimination Policy.

(C) *Exclusions*

This Commercial Non-Discrimination Policy shall not apply to the following:

- Any real property acquisition by the City (including but not limited to condemnation), other than a lease of real estate for the City’s use
- Settlement of litigation
- Settlement of judicial/administrative enforcement proceedings by or on behalf of the City (excluding proceedings to enforce this Commercial Non-Discrimination Policy)
- Agreements concerning standards for locating facilities in City right of way when business firm has statutory right to be in the right of way
- Agreements with non-profit agencies for the purpose of having the non-profit agencies perform functions which the City is authorized by law to perform

Section 2.91. Rules of construction.

The provisions of this Commercial Non-Discrimination Policy are to be liberally construed to accomplish its policies and purposes. The City Manager shall be authorized to construe the provisions of this Commercial Non-Discrimination Policy for purposes of administration, subject to judicial review under Section 2.100.

Section 2.92. Short title.

Article V of Section 2 of the Charlotte City Code may be cited as the “*Commercial Non-Discrimination Policy*”. The term “*Commercial Non-Discrimination Policy*” also includes any regulations or documentation requirements adopted by the City Manager pursuant to Article V of Section 2.

Section 2.93. Complaints of discrimination.

Any adult person, business entity, association, organization, or government agency may file an administrative complaint with the *Director* stating facts showing or tending to show that a *business firm* has within the preceding three year period engaged in *discrimination* or *retaliation* in connection with a *City contract* or *solicitation*. Within ten business days, the *Director* shall notify the *business firm* against whom the complaint was filed that a complaint has been received.

Section 2.94. Investigation of complaints.

The *Office* shall be responsible for investigating *discrimination* and *retaliation* complaints filed under this subsection. In conducting its investigation, the *Office* may enlist the assistance of one or more individuals who have been selected by the City Manager to participate in the Volunteer Expert Pool as described in Section 2.107. The role of such witnesses shall be to help the *Office* evaluate the claim by providing information regarding industry custom and practice in a particular area of business. The *Office* may request that the City Manager provide such additional City personnel and/or outside consultants as may be reasonably necessary or appropriate to conduct such investigations.

The *Office* shall exercise reasonable judgment in seeking relevant evidence from the complainant, the respondent *business firm* and, as necessary, external sources. However, nothing in this Article shall require the City to fund the cost of: (a) having City staff or others travel outside the Charlotte CSA to investigate any claim under this Article, or (b) having witnesses travel to Charlotte for the purpose of investigating any claims or testifying at any hearing or proceeding in connection with this Article. The *Office* shall exercise reasonable discretion in determining the extent of the investigation required to support the Director’s initial findings and recommendations pursuant to Section 2.95.

The *Office* shall have no authority to investigate complaints relating to discrimination that occurred outside the Charlotte Combined Statistical Area, as defined in Section 2.90(A).

In determining whether *discrimination* occurred under this Article and in evaluating the factors set forth in Section 2.95(A), the *Office* may consider evidence relating to acts or omissions that occurred during or prior to the three year period before the complaint was filed.

Section 2.95. Initial findings and recommendations.

(A) In determining whether to further proceed with an investigation and in making findings, the *Office* may consider any evidence provided by the complainant or the respondent *business firm* as to the following factors: (i) whether there was an intent to *discriminate* on the part of the respondent *business firm*; (ii) whether there was a pattern and practice of *discrimination* on the part of the respondent *business firm*; (iii) any actions taken by the respondent *business firm* to remedy the alleged *discrimination*; (iv) the effectiveness of any prior attempts by respondent *business firm* to remedy the discrimination; (v) whether the respondent *business firm* has procured goods or services from or otherwise engaged in business with persons or entities of the same category as the complainant to an extent sufficient to demonstrate that the respondent *business firm* has not discriminated against such category in the overall context of its business; and (vi) any other evidence deemed relevant by the *Director*.

(B) Based upon the investigative unit’s review and investigation, the *Director* shall make an initial finding of each allegation stated in the complaint, that either:

- (1) The investigation produced sufficient evidence to find that the alleged *discrimination* or *retaliation* did take place (“sustained”);
- (2) The investigation failed to produce sufficient evidence to find whether the alleged *discrimination* or *retaliation* took place (“not sustained”);
- (3) The investigation produced sufficient evidence to find that the alleged *discrimination* or *retaliation* did not take place (“unfounded”);
- (4) The investigation produced sufficient evidence to establish that the complainant knowingly made one or more false or frivolous allegations, and further investigation did not appear likely to produce sufficient evidence that the alleged *discrimination* or *retaliation* did take place (“false or frivolous”);

- (5) The allegation has been settled or otherwise resolved with the agreement of the respondent *business firm*, the complainant, and the *City* (“settled”); or
- (6) The allegation has been withdrawn with the approval of the Director (“withdrawn”). The Director shall approve the withdrawal of an allegation unless the Director determines that permitting the withdrawal is not in the *City*’s best interests. In such an instance, the Director may continue the investigation without the complainant’s participation as a party.
- (C) The *Director* shall recommend to the City Manager the appropriate action to be taken. That action may include additional investigation of the complaint, sanctions, remedies or other action consistent with this subsection. In recommending appropriate action on a *discrimination* claim, the Director may take into account any evidence provided or uncovered in the course of the investigation regarding: (i) the impact of the discrimination on affected parties; (ii) the impact of any authorized remedy on the *City* or any other party; (iii) actions taken by the respondent *business firm* to remedy the alleged *discrimination*; (iv) the effectiveness of any prior attempts by respondent *business firm* to remedy the discrimination; (v) whether the respondent *business firm* has procured goods or services from or otherwise engaged in business with persons or entities of the same protected class as the complainant to an extent sufficient to demonstrate that the respondent *business firm* has not discriminated against such protected class in overall context of its business; (vi) the number and scope of prior violations of this policy by the respondent *business firm*; and (vii) any other evidence deemed relevant by the *Director*.
- (D) The Director shall make the initial findings and recommendations within 120 calendar days of receipt of the complaint. The City Manager may extend this time limit at the request of the *Director* for good cause or if the parties agree to mediate a settlement to the complaint.
- (E) The *Director* shall notify the complainant and the *business firm* within five business days of the issuance of the initial findings and recommendations, including an explanation of the reasons justifying the initial findings.
- (F) Failure by a party to produce documents or other evidence relevant to an investigation under this Article within thirty days after such documents are requested by the Director shall constitute a violation of the Commercial Non-Discrimination Policy. In the event of such violation, the Director may recommend any remedy, sanction or combination thereof authorized by this Article for a violation of the Commercial Non-Discrimination Policy.

Section 2.96. Arbitration.

- (A) If the *Director* determines that one or more allegations of violations of this Policy are sustained, the *business firm* against whom the allegations were made shall be

entitled to submit the matter to an arbitration administered by the American Arbitration Association (“AAA”) in accordance with its rules.

- (B) If the *Director* determines that one or more allegations of *discrimination* or *retaliation* were false or frivolous under Section 2.95(B)(4), the complainant shall be entitled to submit the matter to an arbitration administered by AAA in accordance with its rules.
- (C) As a condition to doing business with the City and as a condition to filing a complaint under this Policy, the *business firm*, the complainant and the City all agree to faithfully observe the AAA rules and procedures for commercial arbitration (subject to the exceptions stated in this Policy), and further agree that a judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, subject to modification by the City Manager as provided in this Policy. Unless otherwise ordered by the arbitrator, the *business firm*, the complainant and the City shall each pay their own respective attorneys fees and other costs associated with the arbitration, provided that the City shall pay the cost of the arbitrator.
- (D) To submit a matter to arbitration under this Policy, the *party seeking the arbitration* must request arbitration by filing a written notice with AAA, the other party and the *Director* within fifteen calendar days of notice of the initial findings and recommendations. The notice must contain the following information:
 - a. a demand that the matter be referred to arbitration;
 - b. the names, addresses and telephone numbers of the *party seeking arbitration*, the *Director* and the other party; and
 - c. a reference to this Commercial Non-Discrimination Policy and the *Director's* findings and recommended actions that are being submitted to arbitration.

The notice delivered to AAA shall also contain a copy of: (i) this Commercial Non-Discrimination Policy, complete with any amendments as of the date arbitration is requested; and (ii) the *Director's* findings and recommended actions or lack thereof that are being submitted to arbitration.

If an arbitration is not properly requested within the required time period, the *Director's* initial findings and recommendations shall become the final administrative decision of the *City* subject to approval by the City Manager as set forth in Section 2.96(K).

- (E) For all arbitrations conducted under this Policy:
 - a. the parties to the arbitration shall be the *business firm*, the complainant and the City;

- b. the number of arbitrators shall be one;
- c. the place of arbitration shall be Charlotte North Carolina;
- d. the substantive law applicable to the dispute shall be: (i) the City of Charlotte's Commercial Non-Discrimination Policy and, (ii) for any matters not addressed by the Commercial Non-Discrimination Policy, the law of North Carolina;
- e. the language of the arbitration shall be English;
- f. the arbitrator shall be an attorney licensed to practice law in the United States of America; and
- g. If the *Director* determines that the allegations of *discrimination* or *retaliation* were sustained or that the allegations of *discrimination* were false or frivolous, the City shall have the burden of proof to establish that the *Director's* findings and recommendations are appropriate under this Policy.

(F) For all arbitrations conducted under this Policy, the AAA Commercial Arbitration Rules shall apply, with the following additions and exceptions. Any provisions in the AAA Commercial Arbitration Rules (the "AAA Rules") that are inconsistent with the items listed below shall not apply to arbitrations under this Policy:

- a. The following shall be added to the AAA Rules for purposes of arbitrations under this Policy:

Within thirty (30) days after notice to the parties of the commencement of the arbitration by AAA, the party seeking the arbitration shall file a written response to the *Director's* findings and recommended actions, along with any claims that the party seeking the arbitration may have under the Commercial Non-Discrimination Policy. The response shall state in detail all grounds on which the party seeking the arbitration contends that the *Director's* findings or recommendations are not appropriate under the Commercial Non-Discrimination Policy.

- b. The list of potential arbitrators to be provided by AAA shall include only attorneys licensed to practice law in the United States of America.
- c. The following shall be added to the AAA Rules for purposes of arbitrations under this Policy:

At least twenty days prior to the hearing, each party shall provide to the other parties copies of all documents that such party intends to introduce as evidence at the hearing.

- d. The following shall be added to the AAA Rules for purposes of arbitrations under this Policy:

The arbitrator shall be authorized to enter such orders as are reasonably necessary or convenient to: (a) govern the conduct of the hearing and the parties so that the purposes of this *Commercial Non-Discrimination Policy* are achieved; (b) require the production of any additional documents or information that the arbitrator deems relevant to the complaint or the arbitration; (c) conclude such hearings and issue decisions within a reasonable time; and (d) conduct such hearings in a manner that is consistent with this *Commercial Non-Discrimination Policy* and such due process rights as each party may have. The hearing shall afford the parties an opportunity to: present witnesses, conduct direct and cross-examination of witnesses, introduce relevant evidence and submit briefs and present oral argument.

The arbitrator may issue such protective orders for good cause as are lawful and as the arbitrator determines to be appropriate to: (i) limit, or otherwise impose conditions upon, access by any person to any document in the possession of a party, including without limitation any document in the City's possession or in the record of the hearing that is not a public record; and (ii) close all or any portion of the hearing, or otherwise impose conditions upon access thereto by any person. Without limiting the scope of the arbitrator's authority to issue protective orders, it is understood that the arbitrator may limit, or otherwise impose conditions upon, a party's access to records or presence during the hearing only to the extent such limits or conditions can be imposed in a manner that is consistent with such right, if any, as a party may have to access such records or be present during the hearing under applicable law, including, without limitation, express provisions of this *Commercial Non-Discrimination Policy*.

- e. The following shall be added to the AAA Rules for purposes of arbitrations under this Policy:

Experts in the Volunteer Pool of Experts appointed by the City Manager under the Commercial Non-Discrimination Policy shall be permitted to testify and present evidence at hearings under Commercial Non-Discrimination Policy.

- f. The following shall be added to the AAA Rules for purposes of arbitrations under this Policy:

Based upon the evidence presented at the arbitration, and within thirty calendar days of the hearing, the arbitrator shall prepare a written decision of award. Such decision may affirm or reject the initial findings and recommendations, may substitute different findings and shall recommend any appropriate remedies, or may continue the hearing and return the case to the *Director* for further investigation and findings and report to the arbitrator on the results of such investigation within such time as the arbitrator may specify. The arbitrator's award decision shall be based upon a preponderance of the evidence and shall reflect the evidentiary basis for its findings. In the event the arbitrator returns the case to the *Director* for further investigation and findings, the City shall pay its own cost in conducting such further investigation and making such findings.

- g. The following shall be added to the AAA Rules for purposes of arbitrations under this Policy:

Notwithstanding anything contained herein to the contrary, unless the arbitrator finds that one or more allegations giving rise to the *Director's* findings or the *business firm's* or complainant's challenge to such findings was frivolous or knowingly false when made or when pursued in arbitration, each party shall bear the cost of its own legal representation and expert witness fees. If the arbitrator finds that one or more allegations giving rise to the *Director's* findings or the *business firm's* or complainant's challenge to such findings was frivolous or knowingly false when made or when pursued in arbitration, the arbitrator shall be entitled to require the party who made such frivolous or knowingly false allegations or challenge to bear all or a portion of the other parties' respective legal fees and expert witness fees.

The City shall pay the cost of the arbitrator, unless the arbitrator finds that one or more allegations of the complaint or of the *business firm's* or complainant's challenge to the *Director's* findings was frivolous or knowingly false when made or when pursued in arbitration. If the arbitrator finds that one or more allegations of the complaint or of the *business firm's* or complainant's challenge to the *Director's* findings was frivolous or knowingly false when made or when pursued in arbitration, the arbitrator shall be entitled to, without limiting any other remedies the arbitrator may impose, require the party who made such frivolous or knowingly false allegations or to pay all or a portion of the cost of the arbitrator

- h. The Expedited Procedures shall not apply to arbitrations under this Policy.
- (G) The *business firm*, the *Director* and the complainant shall all cooperate in good faith to have the arbitration conducted within ninety days after the party seeking arbitration issues its notice of intent to arbitrate.
- (H) During the arbitration, the Director or the arbitrator may call as witnesses one or more individuals who have been selected by the City Manager to participate in the Volunteer Expert Pool as described in Section 2.107. The role of such witnesses shall be to provide information regarding industry custom and practice in a particular area of business.
- (I) Failure by a party to produce documents or other evidence relevant to an arbitration under this Article within thirty days after such documents are requested by the Director or the arbitrator shall constitute a violation of the Commercial Non-Discrimination Policy. In the event of such violation, the arbitrator may recommend any remedy, sanction or combination thereof authorized by this Article for a violation of the Commercial Non-Discrimination Policy.
- (J) If no timely arbitration is requested, the City Manager may vacate the Director's recommended remedy on written notice to all parties within five business days after the time for requesting arbitration has expired. In the absence of such notice, the City Manager shall be deemed to have approved the Director's recommended remedy. If the City Manager vacates the Director's proposed remedy, the City Manager shall initiate an arbitration by filing a notice of intent to arbitrate in compliance with the requirements of this Policy.
- (K) The scope of the arbitration provided under this Policy shall be limited to whether this Policy has been properly applied. Any challenges to the legality of the Policy itself must be brought in a court of competent jurisdiction.

Section 2.97. Remedies.

When an allegation is sustained in an arbitration under this Policy, the arbitrator may take additional evidence on the appropriate remedy to be recommended, including evidence relating to factors set forth in Section 2.95(C) of this Article, and any other evidence deemed relevant by the arbitrator. In such instances, the arbitrator shall recommend that the City Manager order any one or more of the following actions (listed in the order of severity):

- (A) Finding that the respondent *business firm* is not a "responsible bidder" within the meaning of the North Carolina bid statutes with respect to specific *contracts* that the City has put out for bids or intends to put out for bids at the time of such finding;

- (B) Exercise of any other rights or remedies available to the City under any current contract between the respondent *business firm* and the City other than rescission, suspension or termination of the contract, including but not limited to liquidated damages;
- (C) Rescission, suspension or termination of any current *contract* between the respondent *business firm* and the *City* under the terms thereof; or
- (D) Disqualification of the respondent *business firm* from bidding and contract awards on *City* projects and from participating in *City* contracts as a subcontractor, vendor or supplier for a period of not more than two years, provided that the respondent *business firm* shall have the right to petition the *City* for reinstatement of its active bidder status by demonstrating to the *City*'s reasonable satisfaction in accordance Section 2.99.1 that the problems for which it was disqualified have been cured; and
- (E) Referral of the matter for criminal prosecution of fraud and other violations under North Carolina law if appropriate under the circumstances.

As a condition to imposing the remedies set forth in Sections 2.97(A) through Section 2.97(D), the *City* shall first attempt to reach a written agreement with the respondent *business firm* under which the latter agrees to comply with a remediation plan that is reasonably calculated to remedy the effects of the *discrimination* or *retaliation* that occurred, and to ensure that similar instances of *discrimination* or *retaliation* do not occur in the future (the "*remediation plan*"). In developing the *remediation plan*, the *City* shall seek input from the complainant, and if the complainant disagrees with the *remediation plan* in the form finally agreed to by *City* staff and the respondent *business firm*, the remediation plan shall be considered as approved by the *City* only if the *City* Manager approves such plan after affording the complainant an opportunity to address the *City* Manager either in writing or in person regarding the merits or lack thereof of the proposed plan. Notwithstanding this section, the *City* shall not be required to seek agreement on a *remediation plan* with a respondent *business firm* that has been found to have *discriminated* or *retaliated* under the Policy on one or more occasions prior to the then current complaint.

In the event the remedy designated by the arbitrator or the *City* for violation of this Policy is disqualification from bidding on or participating in *City* contracts, the disqualification period shall begin to run on the date of the final administrative determination of the *City* or the arbitrator as to remedy, whichever is later, unless the party against whom the remedy has been imposed seeks judicial review. If the party against whom the remedy has been imposed seeks judicial review, the disqualification period shall begin to run on the date a final determination has been made by the court.

Nothing in this Policy shall be deemed to preclude the *City* from taking any action that it is otherwise entitled to take under a *City* contract, such as terminating the contract without cause.

Section 2.98. Sanctions for the filing of a false or frivolous complaint.

If the *Director* determines that one or more allegations of a complaint are false and that the complainant knew them to be false when filed or at the time the complainant requested arbitration, or that one or more of the allegations of a complaint are so frivolous that they are wholly without merit, the *Director* may refuse to review or investigate any complaint filed under this Policy by the same party for a period of up to three years. The *Director* may also recommend to the City Manager or the arbitrator that monetary sanctions be imposed against the complainant in the amount of the costs incurred by the City and/or the *business firm* in the investigation and review of the false or frivolous complaint (including reasonable attorney's fees). The City Manager and the arbitrator shall have authority and discretion to impose one or more of such remedies when, in their view, the totality of the evidence reflects such a measure is clearly necessary to deter future abuse of this policy and process.

Section 2.99. Final decision.

- (A) The arbitrator's decision with respect to the Director's findings shall become the final decision, subject to judicial review as provided in Section 2.100 of this Policy. The arbitrator's recommended remedy shall become final unless: (i) review is given by the City Manager or (ii) the *business firm* or complainant against whom an allegation was sustained files a request for a review in writing with the City Manager within fifteen calendar days from service of the notice of the recommended decision. The City Manager shall within ten calendar days of receipt of the request for review, notify all parties and the arbitrator that a review has been requested. The arbitrator shall transfer the entire record of the investigation and arbitration to the City Manager in advance of the review. Within forty-five calendar days of receipt of the request for review, the review shall be completed and the City Manager shall render a final administrative decision regarding the remedy to be enforced under this Policy. In reaching a decision, the City Manager shall have the authority to reduce but not to increase the severity of any remedy or remedies imposed by the arbitrator.

- (B) The City Manager shall be authorized to enter such orders as are reasonably necessary or convenient to: (i) govern the conduct of the review and the parties so that the purpose of this Commercial Non-Discrimination Policy are achieved; (ii) conclude such review and issue final decisions within a reasonable time; and (iii) conduct such review in a manner that is consistent with this Commercial Non-Discrimination Policy and such due process rights as each party may have. The review shall be conducted in a manner that provides an opportunity for all parties to submit written briefs and oral argument in support of their respective positions. All briefs and arguments are to be based solely upon the record of evidence presented during the arbitration hearing. No additional evidence may be presented or considered during the review. At the review, the *Director* or the *Director's* designee shall be responsible for presenting the justifications for its recommended remedies as previously sustained or modified by the arbitrator. Upon thorough review of the record, briefs, and arguments, the City Manager shall issue a final, written decision

to all interested parties either sustaining or not sustaining the arbitrator's recommended remedy or remedies.

Section 2.99.1 Petitions for Reinstatement

- A. To petition the City for reinstatement of its active bidder status pursuant to Section 2.97(D), the respondent *business firm* shall file a written petition with the Director, and shall submit with such petition a written statement describing in detail the basis for the *business firm's* claim that the problems for which it was disqualified have been cured (including but not limited the steps that the *business firm* has taken to cure the problem, and all evidence indicating that the problem has been cured). The Director shall conduct such further investigation and request such further documents and materials as the Director reasonably deems relevant to the issues, and the *business firm* shall fully cooperate in providing all relevant information and materials that the Director may request.
- B. Within sixty (60) days after receipt of a petition under the preceding paragraph, the Director shall notify the *business firm* in writing of the Director's findings and recommendation. If the Director has requested additional materials or information from the *business firm* within such sixty (60) day period, the deadline for the Director's decision shall be extended to thirty (30) days after all such materials or information has been provided. Failure by a *business firm* to provide relevant materials or information requested by the Director shall constitute grounds for the Director to deny the *business firm's* petition for reinstatement.
- C. If the Director denies a *business firm's* petition for reinstatement, the *business firm* may appeal the decision to the City Manager. Such appeal must be filed with the City Manager in writing within five (5) days after the *business firm* receives written notice of the Director's findings and recommendation. The City Manager, or the City Manager's designee, shall review the Director's decision, and shall within thirty (30) days after receipt of the notice of appeal notify the *business firm* in writing of the City Manager's findings and recommendation. Section 2.99(B) of this Policy shall apply to the City Manager's review of the Director's decision regarding reinstatement.
- D. The City Manager's decision shall be the final administrative decision of the City, provided that if the *business firm* does not properly appeal the Director's decision to the City Manager within the time frame specified in the preceding paragraph, the Director's findings and recommendation shall become the final administrative decision of the City.
- E. If a business firm's petition for reinstatement to active bidder status is denied at the conclusion of this process, the *business firm* that filed the petition shall be required to wait one hundred and twenty (120) days after receipt of notification of the City's final administrative decision before filing another petition for reinstatement.

Section 2.100. Judicial Review.

Any party who, after having exhausted all administrative remedies available, is aggrieved by a final decision of the arbitrator may seek judicial review of such decision in a in the nature of a petition for writ of certiorari, based on the established record of the arbitration. The standard of judicial review in such proceedings will be whether the arbitrator’s decision was arbitrary and capricious. .

Any party who, after having exhausted all administrative remedies available, is aggrieved by a final decision of the City Manager may seek judicial review of such decision in a proceeding in the nature of a petition for a writ of certiorari, based upon the established administrative record, to the appropriate court within 30 days of the issuance of that final decision of the City Manager.

If a party seeks judicial review of a final decision of the arbitrator or the City to impose damages under Section 2.97(B) or disqualification under Section 2.97(D), the City shall not take any action to enforce the decision for which review is sought until there has been a final determination by the court.

Section 2.101. Mandatory nondiscrimination contract clause.

Every *contract* and *subcontract* shall contain a nondiscrimination clause that reads substantially as follows:

As a condition of entering into this Agreement, the Company represents and warrants that it will fully comply with the City’s Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Company from participating in City contracts or other sanctions.

Section 2.102 Contractor bid requirements.

All requests for bids or proposals issued for *City contracts* shall include a certification to be completed by the bidder or proposer in substantially the following form:

The undersigned Bidder or Proposer hereby certifies and agrees that the following information is correct:

1. In preparing it's the enclosed bid or proposal, , the Bidder or Proposer has considered all bids and proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in *discrimination* as defined in Section 2.
2. For purposes of this section, *discrimination* means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or *commercial customer* on the basis of race, ethnicity, gender, age, religion, national origin, disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, *discrimination* also includes retaliating against any person or other entity for reporting any incident of *discrimination*.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the bid or proposal submitted with this certification, and terminate any contract awarded based on such bid or proposal It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Bidder or Proposer to any remedies allowed thereunder, including possible disqualification from participating in City contracts or bid processes for up to two years.
4. As a condition of contracting with the City, the Bidder or Proposer agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitutes grounds for the City to reject the bid or proposal and to any contract awarded on such bid or proposal. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance, and shall subject the Bidder or Proposer to any remedies that are allowed thereunder.
5. As part of its bid or proposal, the Bidder or Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder or Proposer in a legal or administrative proceeding alleging that Bidder or Proposer discriminated against its subcontractors, vendors, suppliers, or *commercial customers*, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a bid or proposal to the City, the Bidder or Proposer agrees to comply with the City's Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

Section 2.103 Contract disclosure requirements.

Every *contract* that the *City* enters into shall include a clause that reads substantially as follows:

As a condition of entering into this Agreement, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Agreement; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five years, including the total dollar amount paid by Contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Commercial Non-Discrimination Policy as set forth in Section 2, Article V of the City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

Section 2.104. Other legal remedies.

The remedies provided by this subsection are in addition to any other statutory, legal, or equitable remedies that may be available and are not intended to be prerequisite to or exclusive of any other remedies.

Section 2.105. Non-interruption of performance.

The filing, investigation, hearing, and appeal of a complaint under this Commercial Non-Discrimination Policy shall not hinder or affect the award of, performance of, or payment on a *contract* prior to a final administrative decision that establishes a violation.

Section 2.106. Policies and procedures.

The City Manager shall recommend and City Council shall approve such additional rules and regulations as may be required from time to time to implement this subsection. The City Manager shall be entitled to establish documentation and reporting requirements to further the purpose and intent of the Commercial Non-Discrimination Policy, and such requirements shall be deemed part of this Policy. The City Manager is authorized to include the provisions of this Policy in the City's *contracts* and *solicitation* documents, and to include remedies for violations of this Policy in such *contracts* and *solicitation* documents. The City Manager is further authorized to modify the clauses, certifications and forms required by Sections 2.101, 2.102 and 2.103 of this Policy, consistent with the purpose and intent of this of this Policy.

Section 2.107. Volunteer Expert Pool.

Within sixty days after this Policy is adopted, the City Manager shall appoint a pool of volunteers to serve as advisors to the Director in investigating *discrimination* claims and expert witnesses in hearings under this Article. (the "Volunteer Expert Pool"). The role of the Volunteer Experts shall be to: (i) assist the *Office* in evaluating alleged violations of the Commercial Non-Discrimination Policy in light of industry practice, and (ii) provide testimony at hearings under this Article on matters relating to industry custom and practice in a particular line of business. Such services shall be provided from time to time as requested by the *Director* or the Arbitrator.

Notice of volunteer opportunities in the Volunteer Expert Pool shall be posted in local newspapers at least fifteen days prior to the deadline for submitting applications. The Volunteer Expert Pool shall be limited to fifteen individuals, provided that the City Manager may increase the number of Volunteer Experts in the Pool from time to time to provide specific expertise that may potentially be needed to assist in evaluating *discrimination* claims in certain types of City contracts.

Section 2.108. Effective Date.

This Commercial Non-Discrimination Policy shall take effect on October 1, 2003. *Discrimination* that occurs before the effective date shall not be actionable under this Policy.

AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on October 1, 2003.

Approved as to form: _____
Senior Assistant City Attorney

Commercial Non-Discrimination Ordinance Complaint Initiation

The undersigned Complainant hereby submits this Complaint pursuant to the City of Charlotte's Commercial Non-Discrimination Ordinance. A complete copy of the Commercial Non-Discrimination Ordinance can be obtained at <http://smallbiz.charmeck.org>

Complainant	Contact Name:			
	Business:			
	Address:			
	Telephone:		Fax:	
Respondent--Business firm against whom the complaint is being filed	Contact Name:			
	Business::			
	Address:			
	Telephone:		Fax:	
Describe the City contract or procurement in which the alleged discrimination occurred:				
City department that issued the contract or oversaw the procurement:				
Alleged basis of discrimination (Select all that apply)	<input type="checkbox"/> race <input type="checkbox"/> gender <input type="checkbox"/> religion <input type="checkbox"/> national origin <input type="checkbox"/> ethnicity <input type="checkbox"/> age <input type="checkbox"/> disability			
How did alleged discrimination occur? (Select all that apply. Provide additional information as an attachment.)	<input type="checkbox"/> Solicitation or selection of vendors, suppliers or subcontractors to perform on City contract <input type="checkbox"/> Treatment of vendors, suppliers or subcontractors on City contract <input type="checkbox"/> Treatment as a commercial customer <input type="checkbox"/> Retaliation against the Complainant for reporting an incident of discrimination, testifying as a witness at a hearing, or providing requested assistance to the Office in any investigation of an incident of discrimination pursuant to the Commercial Non-Discrimination Policy.			
Date of alleged violation				

The undersigned Complainant acknowledges and agrees that:

1. The undersigned has read and agrees to comply with all provisions of the City's Commercial Non-Discrimination Ordinance (the "Ordinance") and to be bound by the award of any arbitration conducted under such the Ordinance.
2. Attached to this cover sheet is a true and accurate description of the facts giving rise to this complaint of discrimination. (The description should be as detailed as possible.)
3. The undersigned will fully cooperate in the investigation conducted by the City in response to this Complaint, and will provide any documents relevant to such investigation that are requested by the City.
4. If any of the allegations made in support of this complaint are found to be frivolous or knowingly false when made, the undersigned agrees to bear all or a portion of the other parties' respective legal fees and expert witness fees incurred in connection with this proceeding, as may be required under the Ordinance.

Complainant's Signature: _____

Questions and Answers
Regarding The City of Charlotte's Request for Special Legislation
For a Commercial Non-Discrimination Ordinance

March 7, 2003

1. **What is the purpose of the Ordinance?** To allow the City to decline to do business with companies that discriminate against subcontractors, vendors, suppliers or commercial customers on the basis of race, gender, religion, national origin, ethnicity, age or disability
2. **Does the City have the authority to do part of this without special legislation?** Yes. The City is seeking the special legislation for only two reasons:
 - a. To have a better definition of discrimination (one which includes women); and
 - b. To have a stronger remedy than what the City is allowed under the bid statute. Specifically, the City wants to be able to decline to do business with companies that are proven to have discriminated against subcontractors, vendors, suppliers or commercial customers on the basis or race, gender, religion, national origin, ethnicity, age or disability.
3. **Does the Ordinance apply to employment discrimination?** No. It only covers claims involving discrimination against subcontractors, vendors, suppliers or commercial customers.
4. **Does the Ordinance apply to any business in the private sector?** No. It only applies to companies that provide goods or services on City contracts.
5. **If a company does business with the City, does the Ordinance apply to that company's private sector contracting?** Yes. If a subcontractor proves that a company is refusing to do business with minority or women firms in its private sector contracts, the Ordinance would allow the City to refuse to enter into contracts with that company. However, the company would have a right to have the matter heard by an independent third party arbitrator prior to the City taking any enforcement action. Also, if the company disagreed with the arbitrator, the Company could take the matter to court.
6. **Would the Ordinance cover discrimination that occurs outside the Charlotte area?** Only if: (a) the person filing the claim shows that the discrimination that occurred elsewhere creates the potential for discrimination in the Charlotte area; and (b) City staff elects to investigate the complaint. For example, if an African American subcontractor filed affidavits stating that a construction contractor bidding on a City contract had refused to hire any African American contractors on a project in Greenville, South Carolina and had openly stated that he threw away all African American subcontractor bids without even opening them, City staff could choose to investigate that claim.
7. **How would it be determined whether discrimination occurred?** City staff would perform the initial investigation and make findings. If either party were dissatisfied with

the City's findings they could appeal to an outside, third party arbitrator. If either party were dissatisfied with the arbitrator's decision, they could go to court.

8. **Will the private sector have any voice in determining which claims get investigated?** Yes. The City Manager will appoint a pool of volunteer industry experts representing all segments of the business community to assist and advise City staff in determining whether discrimination occurred in a given situation.
9. **How would the arbitrator be selected?** In accordance with the rules of the Commercial Arbitration and Mediation Center for the Americas (CAMCA). CAMCA would send both parties a list of arbitration candidates, and they would follow a process of selection that involved each party having a certain number of names that they are allowed to strike from the list.
10. **Could the City Manager overrule the arbitrator's decision about whether discrimination occurred?** No. The City and all other parties are bound by the arbitrator's decision, unless someone takes it to court. The City Manager does have the authority to lessen the remedy recommended by the arbitrator in order to avoid harm to the City. For instance, if the arbitrator found that the City should terminate a construction contract that was 60% complete, the City Manager could reject that remedy.
11. **If not satisfied with the arbitrator's decision, may either party go to court?** Yes.
12. **Who pays for the cost associated with investigation and arbitration?** Each party bears its own costs associated with the investigation and arbitration, unless the arbitrator finds that someone made a false or frivolous claim. If someone makes a false or frivolous claim, the arbitrator can require them to pay for the other parties' costs and attorneys' fees.
13. **Who has the burden of proof in arbitration?** It depends.
 - a. If City staff finds that discrimination occurred or that the complainant made a frivolous claim, the City has the burden to show that in the arbitration.
 - b. If City staff does not find discrimination and the complainant appeals it to arbitration, the complainant has the burden to establish discrimination in the arbitration.
 - c. If City staff does not find that the complainant made a false or frivolous claim and the respondent business firm appeals to arbitration for a finding that the complainant's claims were false or frivolous, the respondent business firm has the burden of showing in arbitration that the complainant's claims were false or frivolous.
14. **What happens if someone files a frivolous claim?** They could be assessed monetary damages, including the other party's attorney's fees and costs associated with the investigation. They could also be disqualified from participating in City contracts for up to three years.

15. **What remedies could the arbitrator impose if discrimination were found?** The arbitrator could choose one of the following remedies:
- a. Any remedy that is agreed to by the respondent business firm and the City; provided that, if the complainant objects to the remedy it must be approved by the City Manager.
 - b. Finding that the respondent business firm is not a “responsible bidder” within the meaning of the North Carolina bid statutes with respect to specific contracts that the City has put out for bids or intends to put out for bids; or
 - c. Exercise of any rights or remedies that are available to the City for discrimination under any contract between the respondent business firm and the City other than rescission, suspension or termination of the contract, including but not limited to liquidated damages;
 - d. Rescission, suspension or termination of any current contract between the respondent business firm and the City under the terms thereof;
 - e. Disqualification of the respondent business firm from bidding and contract awards on City projects and from participating in City contracts as a subcontractor, vendor or supplier for a period of not more than three years;
 - f. Referral of the matter for criminal prosecution of fraud and other violations under North Carolina law if appropriate under the circumstances.
16. **What factors would the arbitrator consider in determining a remedy?**
- a. Impact of the discrimination on affected parties;
 - b. Impact of any authorized remedy on the City or any other party;
 - c. Actions taken by the respondent to remedy the alleged discrimination;
 - d. Effectiveness of any prior attempts by respondent to remedy the discrimination;
 - e. Whether the respondent has procured goods or services from or otherwise engaged in business with persons or entities of the same category as the complainant to an extent sufficient to demonstrate that the respondent has not discriminated against individuals in such category in overall context of its business;
 - f. The number and scope of prior violations of this Ordinance by the respondent; and
 - g. Any other evidence that the Director or the arbitrator deem relevant to the issue of remedy

17. **Is there is any precedent for a city conducting investigations and making findings of this nature?** Yes. It is common for cities to use city staff and administrative hearing processes to investigate claims and impose sanctions. Examples include:
- a. Community Relations Committee: Hears complaints involving discrimination in housing practices
 - b. Citizens Review Board: Hears complaints of police misconduct
 - c. Civil Service Review Board: Hears challenges to disciplinary action against police officers and fire fighters
 - d. Zoning Board of Adjustment: Hears zoning appeals and variance requests
 - e. Historic District Commission: Hears requests for certificates of appropriateness
18. **Is the Ordinance constitutional?** Yes. The ordinance does not violate equal protection and provides ample due process under both state and federal law. The commercial non-discrimination policy approach has been favorably commented upon by the United States Supreme Court in *City of Richmond v. J. A. Croson*, 488 U.S. 469, 509-510 (1989), the landmark decision on affirmative action in the commercial context.
19. **Does Senate Bill 914 make this Ordinance unnecessary?** No. Senate bill 914 does have a clause stating that: “It is the policy of the State not to accept bids or proposals from, nor to engage in business with, any business that, within the last two years, has been finally found by a court or an administrative agency of competent jurisdiction to have unlawfully discriminated on the basis of race, gender, religion, national origin, age, physical disability, or any other unlawful basis in its solicitation, selection, hiring, or treatment of another business.” However, this doesn’t eliminate the need for Charlotte’s proposed Ordinance because:
- a. This particular provision of Senate Bill 914 is only available to the State.
 - b. It requires a court determination of discrimination. This is a problem because for women and some of the other categories covered by the City’s Ordinance, there would be no basis for taking a case to court because discrimination against them in the commercial context is not unlawful. Second, the court system has not proven to be an effective forum for resolving cases based on race discrimination in the commercial context due to the expense and the length of time involved, relative to the amount typically at stake in a single subcontract.