

**March 5, 2025**

**House Finance & Taxation**

**SCR 4021**

Mr. Chairman and members of the House Finance & Taxation Committee, my name is Carey Burke, and I am with the Associated General Contractors of North Dakota (AGC of ND). The AGC is the largest construction trade association in North Dakota representing more than 400 member companies. Our association is comprised of commercial contractors, subcontractors, and suppliers – most of whom are affected by the Disadvantaged Business Enterprise (DBE) program.

The AGC of ND is here today in support of SCR 4021. Before I turn the podium over to our members who are the current experts on the program and who will give specific examples of the cost of the DBE program to ND, I would like to share a couple thoughts.

I have been an AGC of ND employee since 2018. Prior to that, I was an active AGC member for 22 years. As the third generation in our family-owned construction company I wore many hats – accountant, janitor, and DBE representative to name a few. It was my job to make sure our company was following the DBE rules as they were applied at that time.

As a member, I participated in a meeting between AGC contractors and the NDDOT about 12 years ago. Civils Rights representatives were in attendance, as well as the NDDOT Director. The contractors' main concern was the application of the DBE Bid Differential clause. This clause allows the prime contractor not to use a DBE quote due to Bid Differential – either another quote was lower or the contractor could self-perform the work at a lower cost. For Good Faith Efforts, prime contractors had to prove they considered the DBE quote but had a valid reason for not using it. It was around this time that the application of that clause changed and, while Bid Differential is technically still included in the DBE program, it has basically become non-applicable in North Dakota. Projects with a DBE provision now require the prime contractor to use the DBE quote even if that price is higher than a non-DBE quote. We must meet our DBE participation goal. It was a long and

somewhat contentious meeting but, I will never forget, the NDDOT Director at the time told the room, "we do not have a discrimination problem in construction in North Dakota." But, because we rely on federal funding, it's the game we must play.

And it has become a game. For example, it's easy to become a DBE supplier. On bid night, a non-DBE culvert supplier quotes the prime contractors. The DBE culvert supplier gets the same quote from the non-DBE culvert supplier, puts it on DBE supplier letterhead, marks it up, and quotes the same prime contractors. The contractors have to use the marked-up DBE quote if they want to be awarded the project. It's a paperwork magic trick.

There are a number of talented and driven DBE contractors and suppliers who perform admirably and can compete on their own merits. They don't need a Disadvantaged Business Enterprise program to succeed. So, the fact they can price their work higher is just a bonus to them and extra cost for taxpayers.

However, there are DBE contractors and suppliers who, because of their status, are given contracts but are simply unable to perform. If the DBE can't perform or abandons the project, the prime contractor must then find another DBE to do the work, almost always at a greater, unrecoverable cost.

The DBE program has been in existence for decades with dubious results and added costs for the taxpayer. While the intention of this well-meaning program was to level the playing field, the result is an uneven, discriminatory, costly set-aside.

The time for the DBE program has passed and it should be ended.

Thank you for the opportunity to testify in favor of this resolution. I urge you to vote DO PASS.