

March 5, 2025
Finance and Taxation Committee
SCR 4021

Mr. Chairman and members of the Finance and Taxation committee, thank you for your time, I appreciate the opportunity to present this testimony in favor of SCR 4021. My name is Amber Schoenborn I have worked for Northern Improvement Company for the last 22 years; I am a Vice President and for the last 15 years I have been the Equal Employment Opportunity Officer and DBE contact for the company.

First, I would like to say that North Dakota has several fantastic DBE companies that we work with on federally funded as well as non-federally funded projects. SCR 4021 does not imply anything negative toward any of the DBE companies, it is strictly focused on the fact that our priority as a prime contractor should be to bring forward the most competitive bid possible. That being said there are certainly DBE companies that are not doing an adequate job resulting in the prime stepping in and completing the work or in some cases the DBE being removed which results in replacement that requires a minimum five (5) day notice to the DBE, then the prime to contact all the other DBE's that do the same type of work to see if they are available which delays the work even further. We have also had issues with DBE's not paying proper wage rates resulting in the DOT not releasing payment to the prime, which then delays our payment to all of our subcontractors.

The current SP states "The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for bidder's failure to meet the contract DBE goal, as long as such costs are reasonable." Unfortunately, reasonable does not come with any guidance, what I think is reasonable and what you think is reasonable might not be the same, and what the NDDOT Civil Rights thinks is reasonable changes based on the size of the job. We have been directly told it depends on the total prime contract amount. For example, a 50% difference might be unreasonable for a \$100,000 subcontract on a \$500,000 project, but the same quote that is 50% higher on a \$100,000 subcontract would NOT be unreasonable if the full contract was \$10M. I am sure you can understand how this

is not only confusing but also frustrating for prime contractors as they attempt to put together their bid.

If you could bear with me for a moment, I would like to give a couple additional examples of issues the program has caused.

In November of 2024 Northern Improvement was the apparent low bidder for a federally funded Shared Use Path in Casselton North Dakota with a bid of \$1.9M, we were \$75K less than the Engineers Estimate on the project and \$269K less than the 2nd bidder. We utilized six DBE's four of which were 33%, 35%, 45%, and 65% higher than their non-DBE competitors and the Good Faith Efforts committee still recommended to 'not award' the project to Northern Improvement Company, the DOT was prepared to award the project to the second bidder for an additional cost to taxpayers of \$269K. We filed for an administrative reconsideration meeting in which we did prevail and were awarded the contract, but not without additional time and effort. The DBE program is not only costing taxpayers additional money when we, as a contractor, are using quotes that are upwards of 65% higher but there is also a cost to the NDDOT, and employees of prime contractors being burdened with preparation for the meetings as well as the reconsideration meetings themselves.

Another example was a project bid in November of 2022 in which Civil Rights recommended 'not award' because we failed to send an email to 1st tier subcontractors requesting that they utilize 2nd tier DBE's when possible. We filed for an Administrative Reconsideration Meeting in the meeting I stated our job as a prime contractor is to put forth a competitive bid, using subcontractors qualified to do the work who are expected to use suppliers they are confident in. We are certainly not experts in the fields that our subcontractors supply quotes in, we do not feel that we should be expected to suggest how they conduct their business. The NDDOT unfortunately agreed with the Good Faith Efforts Committee in that we didn't do enough to get adequate DBE participation. In this example all bids were rejected the project was rebid the following year and resulted in \$400K of additional cost to taxpayers.

I would love to put a true fiscal cost to the program, but it is impossible to do. If two prime contractors receive a quote the price difference of what contractor A has for self-performing vs contractor B wouldn't be the same. Two primes might receive different non-DBE quotes that result in that price difference being higher for one or the other, these things are not tracked. It should be easy for the DOT to put a cost to the jobs that are not awarded to the apparent low bidder due to DBE goals when they are then awarded to a higher bidder, but that is just a fraction of the true calculated cost. Primes are only providing the DOT with bid differentials when they didn't meet the DBE project goal, and it is submitted as part of the good faith efforts. Unfortunately, we can't put a true value to this program, only that is a large cost.

The DBE program costs taxpayers additional money by not allowing contractors to use the lowest quotes to put forth the most competitive bid.

Thank you for the opportunity to comment on SCR 4021, Northern Improvement Company asks that you issue a Do Pass Recommendation to this resolution in its entirety. I would stand for questions from the committee, if there are any.