

**February 10, 2025**

**Senate Industry & Business**

**SCR 4021**

Mr. Chairman and members of the Senate Industry & Business 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 performing commercial construction in the state. Our association is comprised of 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 will share a couple personal experiences.

I have been an employee of the AGC of ND 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 officer to name a few. It was my job to make sure our company was following the DBE rules as they were applied then.

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, the prime contractors had to prove they considered the DBE quote but had a valid reason for not using it – in this case, cost. It was around this time that the application of that clause changed and, while Bid Differential is still included in the DBE program, it has basically become non-applicable in North Dakota. The message contractors have received is there is no valid excuse not to use the DBE quote no matter how much higher it is. We must meet our DBE participation goal. It was a long and

somewhat contentious meeting but, I will never forget, the Director at the time told the room, "we do not have a discrimination problem in construction in North Dakota." But 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 costing North Dakota taxpayers money.

The intention of this well-meaning program was to level the playing field, but the results of the program today are an uneven, costly set-aside.

Thank you for the opportunity to testify in favor of this resolution. The AGC of ND urges you to vote DO Pass.