### Draft Proposal – Fiscal Years 2024-2026 FHWA DBE Goal – Disadvantaged Business Enterprise Participation in Transportation Related Projects

The North Dakota Department of Transportation (Department) will take all steps to ensure that no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the Department, its recipients, sub recipients, and contractors.

Department projection is that we will have a similar funding allocation from FHWA for the next three years as we've had in the past three years. We anticipate a construction and consultant workload in the next three years (2024-2026) as we've had in the past three years (2021-2023). We calculated the Type of Work by using the 2024-2027 Statewide Transportation Improvement Program (STIP) information. However, this will quickly change if financing through the Federal Highway Trust Fund is reduced or not available; we would then recalculate our DBE Goal.

Attachment A provides construction data by work category and the number of DBE and Non-DBE contractors in each category; Attachment B indicates which projects we included in each of the seven work categories. Specific work category information on consultants, subcontractors, and sub recipients will be included in the 2024-2026 methodology.

Included in the work category 'Other Federal Funds' is \$64,630,503 in federal funds that are identified for projects where there is little opportunity for DBE participation. This includes overtime for Highway Patrol Officers to patrol in construction work zones; money allocated to the ND State Parks and Recreation; money used for specific NDDOT employee time and supplies; planning and research funds; reimbursement of costs to railroads and private track owners and to utilities; payment for priority response from two federal agencies; property acquisition relocation, and damages; and other payments.

Several out-of-state contractors and subcontractors are still actively bidding on work in North Dakota. There are also more consultants from other states actively pursuing work in North Dakota. Between April 1, 2022, and March 31, 2023, approximately 59.7% of prime contractors, 60.0% of subcontractors, and 55.56% of consultants were from North Dakota.

	Prime		
	Contractors	Subcontractors	Consultants
2022-2023	59.7%	60.0%	53.4%
2019-2020	54.2%	56.5%	53.8%
2016-2017	50.0%	46.5%	42.8%

### **Attachment C** gives a list of the home states.

In accordance with 49 CFR Part 26, the Department calculated the FY 2024 - 2026 Disadvantaged Business Enterprise (DBE) goal at 4.21%, Step One Base Figure. The Department calculated the DBE goal using the following two step process. As permitted by 49 CFR Part 26 the Department is using the base figure calculated in Step One, not the higher

calculation in Step Two. This determination was made based on the loss of multiple DBEs within the last three years through withdrawal and program graduation.

#### STEP 1

Availability of DBEs is determined from information supplied by all federal-aid bidders on prime and consultant contracts, from April 1, 2022, to March 30, 2023. NDDOT believes this timeframe is appropriate as the difference between the kind of federal projects let during this timeframe and those planned for FY 2024-2026 were considered insignificant. The data from this timeframe is an accurate reflection of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts.

There was a total of 391 bidders and quoters on construction projects: 49 DBEs and 342 non-DBEs. A total of 62 consultants bid or were included in the bid on consulting projects: 4 DBEs and 58 Non-DBEs. A weighted average was developed by determining the comparative percentage non-DBEs and DBEs obtained in prime contracting (Asphalt, Bridge, Concrete, Consulting, Dirt, and Additional Contracting Opportunities) and consulting dollars.

**Appendix D** shows the data from 2022-2023.

### 1. Description of Calculation Performed

The relative availability was calculated by dividing the number of DBE primes that bid on **Asphalt** contracts (0) by the number of total prime bidders (32); and multiplying that quotient by the percentage of dollars projected for asphalt work in FY 2024-2026 as compared to overall dollars projected to be spent in FY 2024-2026 and multiplying that by the percent of work paid to primes in 2022-2023 ( $$933,616,489 / $1,547,691,806 = 60.32\% \times 73.23\% = 44.17\%$ ).

0 DBE primes/32 total primes =  $0.00\% \times 44.17\% = 0.00\%$ 

The relative availability was calculated by dividing the number of DBE primes that bid on **Bridge** contracts (0) by the number of total prime bidders (11); and multiplying that quotient by the percentage of dollars projected for bridge work in FY 2024-2026 as compared to overall dollars projected to be spent in FY 2024-2026 and multiplying that by the percent of work paid to primes in 2022-2023 ( $$217,639,160 / $1,547,691,806 = 14.06\% \times 73.23\% = 10.30\%$ ).

0 DBE primes/11 total primes =  $0.00\% \times 10.30\% = 0.00\%$ 

The relative availability was calculated by dividing the number of DBE primes that bid on **Concrete** contracts (0) by the number of total prime bidders (21); and multiplying that quotient by the percentage of dollars projected for concrete work in FY 2024-2026 as compared to overall dollars projected to be spent in FY 2024-2026 and multiplying that by the percent of work paid to primes in 2022-2023 ( $$6,694,125/$1,547,691,806 = 0.43\% \times 73.23\% = 0.32\%$ ).

0 DBE primes/21 total primes =  $0.00\% \times 0.32\% = 0.00\%$ 

The relative availability was calculated by dividing the number of DBE primes that bid on **Dirt** contracts (1) by the number of total prime bidders (17); and multiplying that quotient

by the percentage of dollars projected for dirt work in FY 2024-2026 as compared to overall dollars projected to be spent in FY 2024-2026 and multiplying that by the percent of work paid to primes in 2022-2023 (\$165,328,472 / \$1,547,691,806 = 10.68% x 73.23% = 7.82%).

1 DBE primes/17 total primes = 5.88% x 7.82% = 0.46%

The relative availability was calculated by dividing the number of DBE primes that bid on **Additional Contracting Opportunities** contracts (1) by the number of total prime bidders (21); and multiplying that quotient by the percentage of dollars projected for other work in FY 2024-2026 as compared to overall dollars projected to be spent in FY 2024-2026 and multiplying that by the percent of work paid to primes in 2022-2023 (\$129,138,057 / \$1,547,691,806 = 8.34% x 73.23% = 6.11%).

1 DBE primes/21 total primes = 4.76% x 6.11% = 0.29%

The relative availability was calculated by dividing the number of DBE **Consultants** that responded to an RFP or were included in a consultants response to an RFP (1) by the number of total consultants (25); and multiplying that by the percentage of dollars projected for consultants in FY 2024-2026 as compared to overall dollars projected to be spent in FY 2024-2026 and multiplying that by the percent of work paid to primes in 2022-2023 (\$30,645,000 / \$1,547,691,806 = 1.98% x 1.10% = 0.02%).

1 DBE consultants/26 total consultants = 3.84% x 0.02% = 0.0008%

The relative availability was calculated by dividing the number of DBE **Subcontractors** that bid (47) by the number of total subcontractors (343); and multiplying that sum by the percentage of dollars in 2022-2023 (25.29%). This serves as an indicator of the overall total dollars projected to be spent in FY 2024-2026.

47 DBE subcontractors/343 total subcontractors = 13.70% x 25.29% = 3.46%

2. **Resulting Baseline Goal -** The baseline goal for North Dakota is 4.21%.

$$0.46\% + 0.29\% + 0.0008\% + 3.46\% = 4.21\%$$

# STEP 2 ADJUSTMENTS

We calculated the median participation from the past 10 years which came to 5.77%. Averaging 5.77% and 4.21% brings the adjusted base figure to 4.99%. The increase from 4.21% and 4.99% is not significant and the Department has elected not to use the Step 2 figure.

1. Describe the Calculations Performed: The median past participation was calculated by sorting the DBE achievements in numerical order and then removing an equal number from the lowest achievement and the highest end. Then the remaining numbers are added, and the total divided by the number of numbers.

Fiscal Year	Percent Achieved
2019	4.61%
2018	5.02%
2016	5.15%
2020	5.25%
2021	5.37%
2015	6.17%
2022	6.41%
2017	7.46%
2013	7.66%
2014	7.86%

5.37% + 6.17% = 11.54% / 2 = 5.77% Median Past Participation

2. The average of the Step One Base Figure and the median past participation was calculated by adding the Median Past Participation in Step 1 and dividing by two.

5.77% + 4.21% = 9.98% / 2 = 4.99% Step One Base Figure adjusted for past participation.

The Department considered available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete. To determine the effects of discrimination on opportunities for DBEs to get financing, bonding, or insurance, we contacted the following:

Attorney General's Office
Department of Banking & Financial Institutions
Department of Commerce
Department of Human Services
Small Business Development Center
Office of Management & Budget
North Dakota University System
Independent Bankers Association

We received no information from these sources indicating that adjustment based on this evidence is warranted. No disparity studies have been conducted in the state.

**Public Participation Section 26.45(g) -** The regulation requires that the State must provide for public participation when establishing its overall goal.

A. **Consultation –** This section will be completed after the stakeholder meeting scheduled on Tuesday, September 12, 2023 from 9-10AM CT virtually via Microsoft Teams.

Questions and concerns expressed about the Methodology or DBE program were:

If Prime Bidders are using 'Non-Low' DBE subcontractors when preparing our proposals in lieu of risking losing a project thru the Good Faith review, does this have an effect on the department setting their goal?

Answer: It would have an impact, but the impact would be extremely minimal in the overall scope of things.

# BREAKOUT OF ESTIMATED RACE/GENDER-NEUTRAL AND RACE/GENDER-CONSCIOUS PARTICIPATION

The Department believes it will meet the goal of 4.21% by using race/gender-neutral and race/gender-conscious means as necessary.

For FY 2024-2026, NDDOT determined the race/gender-neutral and race/gender-conscious participation rates for the overall DBE participation based on the median value of actual past race/gender-neutral achievement.

Fiscal Year	Approved Goal	Percent Achieved	Approved Race/Gender Netural Goal	Percent Achieved by Race/Gender- Neutral	Percent Race/Gender- Neutral Participation
2018	4.91	5.02%	3.25%	1.56%	31.08%
2019	4.91	4.61%	3.25%	1.13%	24.51%
2020	4.91	5.25%	3.25%	1.28%	24.38%
2021	4.66	5.37%	2.65%	1.80%	33.52%
2022	4.66	6.41%	2.65%	1.70%	26.52%

The median race/gender-neutral DBE achievement during this ten-year period was 1.56%. Using this median value as the basis for determining the FY2024-2026 race/gender-neutral projection, 1.56% of the 4.21% DBE goal will be met by race/gender-neutral means. The remaining 2.65% goal will be achieved through race/gender-conscious means.

Goals will be set on construction projects to achieve the race/gender-conscious portion of the goal. Consultant projects will all be race/gender neutral. Attachment E illustrates the comparison between Federal and State funded construction projects. State funded projects are not assigned DBE goals.

The DBE regulations require NDDOT to meet the maximum feasible portion of our overall goal by race/gender-neutral means. This will be achieved in the following way:

1. Using the DBE newsletter and CRD Listserv/GovDelivery, inform DBEs and non-DBEs about important issues. Businesses intending to bid as prime contractors or businesses intending to bid/quote over the amount identified in our program document use the newsletter to advertise which federal projects they are bidding. The newsletter is

- published two weeks prior to each regularly scheduled bid opening. The newsletter is electronically distributed using an electronic emailing system.
- 2. The newsletter and the electronic Sign-In requirement for prime contractors, or businesses intending to bid/quote over the amount identified in our program document provides a way for DBEs and non-DBEs to know who is bidding before each bid opening to facilitate the exchange of quotes.
- 3. Bid documents such as the Plans and Proposals, Notice to Bidders, Subscribe to receive Notice to Bidders Email Notifications, Project Bid files, and other related bid documents are available for viewing and downloading on the NDDOT's website at the following web address: https://www.dot.nd.gov/business/bidinfo.htm
- 4. Continue to provide a supportive services program that provides education to DBEs in the areas of quoting, bidding reports, and data available after each bid opening, specific sites within the Department's website that will assist them in the bidding and quoting process and being a successful DBE.
- 5. Ensure distribution of NDDOT's DBE Directory, at the following web address: <a href="https://dotnd.diversitycompliance.com/">https://dotnd.diversitycompliance.com/</a> to potential prime contractors, subcontractors, consultants, cities, counties, and state and federal contracting agencies. The electronic directory is updated instantly as changes occur.

We have enhanced the functionality of the NDDOT DBE Directory to allow contractors to download complete contact information for all DBEs. Contractors then may include the email addresses, fax numbers, and telephone numbers in their contact databases. In addition, contractors may search by work category and download contact information for only those DBEs certified to perform specific work.

For reporting purposes, race/gender-neutral DBE participation includes, but is not necessarily limited to:

- 1. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures or through the consultant selection process; and
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal; and
- 3. DBE participation through a subcontract with a prime contractor that did not consider a firm's DBE status in making the award.

Questions regarding the goal calculation may be directed to Ramona Bernard at 701-328-2576.

RONALD J. HENKE 52/ac Enclosures

Attachment A

Contractors Sorted by Type of Work

	C			
Categories	2024	2025	2026	<b>Grand Total</b>
Asphalt	\$299,934,202	\$335,902,334	\$297,779,953	\$933,616,489
Bridge	\$81,198,620	\$62,484,071	\$73,956,469	\$217,639,160
Concrete	\$2,274,736	\$202,325	\$4,217,064	\$6,694,125
Dirt	\$70,137,493	\$57,315,079	\$37,875,900	\$165,328,472
Consulting	\$10,215,000	\$10,215,000	\$10,215,000	\$30,645,000
Additional Contracting Opportunities: ITS, WIMS, etc.	\$39,263,890	\$46,436,301	\$43,437,866	\$129,138,057
Other Federal Funds	\$21,251,947	\$22,959,914	\$20,418,642	\$64,630,503
Grand Total	\$524,275,888	\$535,515,024	\$487,900,894	\$1,547,691,806

Numbers of Prime Contractors			
Categories	DBE Prime	Non-DBE Prime	All Prime Contractor Totals
Asphalt	0	32	32
Bridge	0	11	11
Concrete	0	21	21
Dirt	1	16	17
Consultants	1	52	53
Other (Pave Mark)	1	20	21
Non-Traditional (DBE SS)	1	0	1
<b>Grand Total</b>	4	152	156

## Attachment B Key - Work Types by Category

ŀ	Aggregate Base, Asphalt Overlay>2" <or=3", bituminous="" grade,="" hot="" imp<="" intersect="" pave,="" th=""></or=3",>
F	Aggregate Base, Bikeway/Walkway, ITS, PCC Pave
F	Aggregate Base, Grade, Hot Bituminous Pave
ŀ	Aggregate Base, PCC Pave
Å	Asphalt Overlay>2" <or=3"< td=""></or=3"<>
	Asphalt Overlay>2" <or=3", aggregate="" selective="" shoulders,="" subcut<="" td=""></or=3",>
	Asphalt Overlay>2" <or=3", bituminous="" concrete="" guardrail,="" hot="" pavemei<br="" pavement="" repair,="">Ramps, Structural/Incidentals</or=3",>
ŀ	Asphalt Overlay>2" <or=3", grading<="" pipe="" replacement,="" selective="" sliver="" subcut,="" td=""></or=3",>
ŀ	Asphalt Overlay>2" <or=3", grading,="" incidentals,="" replacement<="" sliver="" structural="" td=""></or=3",>
E	Bikeway/Walkway
E	Bikeway/Walkway, Milling pavement surface/Overlay 2" Max
E	Blended Bituminous Base, Thin Overlay, Selective Subcut, Structural/Incidentals
(	County Construction
(	County Roadways
(	Concrete Pavement Repair, Milling pavement surface/Overlay 2" Max
(	Concrete Pavement Repair, Thin Overlay
(	Crack & Seat, Hot Bituminous Pave, PCC Pave, Structural/Incidentals
(	Crossing Improvements
(	Culvert Rehab, Thin Overlay, Milling, Selective Subcut, Structural/Incidentals
(	Curb & Gutter, Hot Bituminous Pave, Walk/Drive Ways
	Drainage Improvements, Milling pavement surface/Overlay>2 <or=3", subcut<="" td=""></or=3",>
(	Grinding, Friction Surface, Joint Sealant, Marking, Signing
ŀ	Hot Bituminous Pave, Median X-Overs, Ramp Conn
ŀ	Hot Bituminous Pave, Pipe Replacement, Turn Lanes, Widening
ŀ	Hot Bituminous Pave, Pipe Replacement, Widening
ŀ	Hot Bituminous Pave, Thin Overlay
ŀ	Hot Bituminous Pave, Widening
ŀ	Hot Bituminous Pave, Widening, Pipe Replacement, Turn Lanes
١	Intersect Imp
I	Intersect Imp, Widening, Hot Bituminous Pave
	Microsurfacing
_	Milling pavement surface/Overlay 2" Max
	Milling pavement surface/Overlay 2" Max, Recycle Hot Bituminous Pavement
	Milling pavement surface/Overlay 2" Max, Shoulder Rehab
	Milling pavement surface/Overlay>2 <or=3"< td=""></or=3"<>
	Milling pavement surface/Overlay>2 <or=3", signals<="" td=""></or=3",>

Marie D. J. H. (Dir. ). D. (
Milling, Recycle Hot Bituminous Pavement
Milling, Thin Overlay
Pavement Marking
Pavement Marking, Signing
Pavement Marking, Turn Lanes, Intersect Improvement
Ramp Revisions, Signal Revision, Turn Lanes
Recovery Approach, Turn Lanes
Seal Coats
Slurry Seal
Subcut, Milling pavement surface/Overlay>2 <or=3"< td=""></or=3"<>
Thin Overlay
Thin Overlay, Milling, Sliver Grading
Thin Overlay, Pipe Replacement, Pipe Extension, Subcut
Thin Overlay, Sliver Grading
Thin Overlay, Turn Lanes
Turn Lanes
Turn Lanes, Intersection Improvement
Turn Lanes, Intersection Improvement, Signing
Turn Lanes, Signals
Turn Lanes, Signing
Widening, Hot Bituminous Pavement, Signing
Widening, Signing
BRIDGE
Bridge Inspect
County Bridges
Deck Overlay, Approach Slabs
Deck Overlay, Structural/Incidentals
Structural Replace
Structural Repair
Structural Repair, Structure Paint
Structure Items
Structure Paint
Structure Paint, Structural/Incidentals
Box Culvert Extension, Guardrail, ITS, Recovery Approach, Selective Subcut
Deck Replacement
Structural Replace, Median X-Overs
Structural/Incidentals
Structural/Incidentals, Pipe Replacement
Structural Repair, Pipe Replacement

CONCRETE
ADA Ramp Rev
Approach Slabs, Concrete Pavement Repair, Grinding
Approach Slabs, Concrete Pavement Repair, Grinding  Approach Slabs, Concrete Pavement Repair, Grinding, Structure Paint
Approach Slabs, Culvert Rehab, Thin Overlay, Subcut
Approach Slabs, Deck Replacement
Concrete Pavement Repair, Curb & Gutter, Walk/Drive Ways
Concrete Pavement Repair, Dowel Retrofit, Grinding, Structural/Incidentals
Concrete Pavement Repair, Grinding
Concrete Pavement Repair, Grinding, Hot Bituminous Pavement on Ramps
Concrete Pavement Repair, Hot Bituminous Pavement on Ramps, Milling
Expansion Joint Modification, Approach Slabs
Expansion Joint Modification, Structural/Incidentals
Median X-Overs, Ramp Conn
PCC Pave, Structural/Incidentals
Approach Slabs, Structural/Incidentals
Concrete Pavement Repair
Concrete Pavement Repair, Grinding, Pavement Marking
Concrete Pavement Repair, Hot Bituminous Pave, Milling
Portland Concrete Cement Pavement
Concrete Over, Hot Bituminous Pavement on Ramps
Concrete Pavement Repair, Milling
CONSULTING
Construction, Prelim Engineer
Prelim Engineer
Prelim Engineer, Construction Engineering, Construction
DIRT
Grade Raise
Grade, Hot Bituminous Pave
Reconstruction
Slide Repair
Drainage Improvement
Reconstruction, Structural Incidentals
Reconstruction, Widening
Reconstruction, Structure Widen

OTHER: FEDERAL FUNDS
Billboard Control Program
Director's Task Force
Highway Patrol Overtime
Innovation
ND Parks & Recreation
Right Of Way
State Planning & Research - University Study
SRED, State Rural Economic Development
Training
US Corps of Engineers
US Fish and Wildlife
Utilities
Wetlands/Tree Planting
ADDITIONAL CONTRACTING OPPORTUNITIES: ITS, WIMS, SIGNALS/SIGNING
Guardrail
Intelligent Transport System
Intelligent Transport System, Lighting
Intelligent Transport System, Signing
Lift Station
Lighting
Missile Roads
MPO Planning
On the Job Training Program Hourly Reimbursement
Preventive Maintenance
Protect Devices
Recovery App
Rehabilitation
Safety
State Infrastructure Bank Payback
Signals
Signing
Weigh In Motion, Automatic Traffic Recorder

Subcor	ntractor	Prime (	Contractor	Sub Consultants		Consu	ultants
DBE Home	Non- DBE	DBE Home	Non-DBE Home	DBE Home	Non- DBE	DBE Home	Non- DBE
State	Home State	State	State	State	Home State	State	Home State
AZ – 1	IA – 1	ND – 2	IN – 1	MN – 1	ND – 16	ND – 1	IN – 1
MN – 6	IL – 1		MN – 18	ND - 2	DC - 1		MN – 8
MO – 1	IN – 1		ND – 25		MN - 9		ND – 14
MT – 4	KS – 2		SD – 1		MT – 5		SD – 2
ND – 29	MI – 2		UT – 1		NV – 1		
NJ – 1	MN – 73		WI – 1		TX – 1		
OK – 1	MO – 2						
SD – 3	MT – 14						
WI – 1	ND – 181						
	NE – 1						
	OH – 1						
	SD – 11						
	WI – 2						
	WY - 4						
47	296	2	47	3	33	1	25
Total	Total	Total	Total	Total	Total	Total	Total

Attachment D

April 2022 – March 2023 Actuals

Firms	DBE	Non-DBE	Total
All Prime Bidders	2	46	48
All Sub Contractors	47	296	343
All Consultants	1	25	26
All Sub Consultants	3	33	36
TOTAL	53	400	453

Dollars	DBE	Non-DBE	Total
All Prime Bidders	\$2,496,651	\$535,223,980	\$537,720,631
Sub Contractors or Suppliers	\$28,571,779	\$157,149,743	\$185,721,522
All Consultants	\$192,225	\$7,899,759	\$8,091,984
Other	\$98,941	\$2,704,501	\$2,803,442

	DOLLARS	PERCENT
Prime	\$537,720,631	73.23%
Subcontract	\$185,721,522	25.29%
Consultants	\$8,091,984	1.10%
Other FHWA Funds	\$2,803,442	0.38%
TOTAL	\$734,337,579	100.00%

### **Attachment E**

### **State Funded Projects**

April 1, 2022 to March 31, 2023

	Number of Firms	Contract Dollars	Percent of the
			Total
Contractors DBE	0	0	0%
Contractors non-DBE	25	\$52,357,080.50	100%
Total	25	\$52,357,080.50	100%
Subcontractors DBE	9	\$3,573,438.79	12.42%
Subcontractors non-	56	\$25,195,638.25	87.58%
DBE			
Total	65	\$28,769,077.04	100%

Federally Funded Projects April 1, 2022 to March 31, 2023

	Number of Firms	Contract Dollars	Percent of the
			Total
Contractors DBE	2	\$2,496,621	0.47%
Contractors non-DBE	46	\$535,233,980	99.53%
Total	48	\$537,720,631	100%
Subcontractors DBE	47	\$28,571,779	15.39%
Subcontractors non-	296	\$157,149,743	84.61%
DBE			
Total	343	\$185,721,522	100.00%