

## CHAPTER 12.

### NDOT's Implementation of the Federal DBE Program

Chapter 12 reviews information relevant to NDOT's implementation of specific components of the Federal DBE Program for USDOT-funded contracts. Chapter 12 also includes a discussion of program measures for state-funded contracts. Regulations presented in 49 CFR Part 26 and associated documents offer state and local agencies guidance related to implementing the Federal DBE Program. Key requirements of the program are described below in the order that they are presented in 49 CFR Part 26.<sup>1</sup>

In addition, NDOT will find it helpful to review sample DBE programs development by USDOT.<sup>2</sup>

#### Reporting to DOT — 49 CFR Part 26.11 (b)

NDOT must periodically report DBE participation in its transportation-related construction and engineering contracts to FHWA. Keen Independent's review of NDOT's contracting data indicated that the agency typically requires prime contractors to submit information detailing the utilization of DBEs at the end of each FHWA-funded construction project. NDOT should consider continuing to do so and expanding its reporting process to also capture information about other NDOT transportation contracts, including engineering-related contracts, District contracts and state-funded contracts. In addition, NDOT should develop systems and train local agencies to capture complete information about DBE participation on LPA Program contracts.

#### Bidders List — 49 CFR Part 26.11 (c)

As part of its implementation of the Federal DBE Program, NDOT must develop a bidders list of businesses that are available for its transportation contracts. The bidders list must include the following information about each available business:

- Name;
- Address;
- DBE status;
- Type of work performed;
- Age of business; and
- Annual gross receipts (within a selected range).

NDOT should develop a bidders list that includes all of the above information. This information should integrate into NDOT's future utilization tracking systems. As such,

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<sup>1</sup> Because only certain portions of the Federal DBE Program are discussed in Chapter 12, NDOT should refer to the complete federal regulations when considering its implementation of the program.

<sup>2</sup> Such as the sample program updated June 25, 2013 <http://www.dot.gov/osdbu/disadvantaged-business-enterprise/49-cfr-part-26-sample-disadvantaged-business>

additional information including race, ethnicity and gender ownership of firms, regardless of DBE status, should be identified.

NDOT should:

- Collect and update this information for firms seeking NDOT prime contracts and subcontracts, perhaps through means such as the 2013 availability interviews;
- Require construction prime contractors to submit complete information for all subcontractors (including service providers), truckers and major suppliers at time of contract award;
- Require prime consultants to submit complete information for all subconsultants at time of agreement approval or task order award (using the most practicable method for that type of consulting work); and
- Require updates to the information at time of invoicing for all firms at all tiers involved in the work pertaining to that invoice.

These requirements should pertain to all firms in an NDOT transportation contract, not just DBEs.

**Use of 2013 availability interview information.** Availability interviews that the study team conducted as part of the disparity study collected information about local businesses that are potentially available for different types of NDOT construction and engineering prime contracts and subcontracts. NDOT should consider using the availability interview database to supplement its current bidders list.

**Further dissemination of information concerning bid and proposal awards.** NDOT might consider more efforts to publicize post-award bidder/proposer information on its website and through Contractor Bulletins or similar means. In-depth interviews indicated that such a system would be helpful to prime contractors and consultants in addition to subcontractors participating in those bids.

**Maintaining comprehensive vendor data.** In order to effectively track the utilization of MBE/WBEs on transportation contracts, NDOT should improve the information that it collects on the ownership status of utilized businesses, including prime contractors, subcontractors, trucking companies and suppliers. NDOT should collect information on the race, ethnicity and gender of business owners, regardless of certification status.

The B2GNow tracking system that NDOT will be implementing will facilitate collection and maintenance of this information.

### **Prompt Payment Mechanisms — 49 CFR Part 26.29**

NDOT policies concerning payment of prime contractors appear to comply with Nevada state law and with federal regulations in 49 CFR Part 26.29. NDOT is required to pay prime contractors for approved invoices within 15 days. Prime contractors are then required to pay subcontractors for satisfactory work no later than 15 days after receipt of each progress payment, and return retainage

payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. In 2012, FHWA notified NDOT that it was not in compliance with the prompt payment clauses in Title 49, per minutes of Nevada DOT Board of Directors Construction Working Group Meeting August 24, 2012. Information available indicates that NDOT is now in compliance.

In-depth anecdotal interviews with business owners and managers indicated satisfaction with NDOT payment and retainage, except for the following:

- One interviewee said the timely payment on change orders on State contracts is a problem. He said that payment on changes orders can sometimes take months to be resolved.
- There were some complaints from engineering-related firms that NDOT staff sit on invoices and delay payment. "A lot of it depends on who the project manager is," according to one interviewee.
- Some interviewees reported that subcontractors (especially second-tier subcontractors) face long delays in payment on NDOT contracts.

In addition, it is unclear whether local agencies follow prompt payment policies on FHWA-funded LPA Program contracts.

NDOT might consider implementing a broader compliance audit to ensure that NDOT divisions, local agencies, and prime contractors follow its prompt payment policies, particularly as they relate to the requirement that prime contractors promptly pay subcontractors. More extensive compliance review and more communication about NDOT's policies to the contracting community might also be beneficial.

### **DBE Directory — 49 CFR Part 26.31**

The NDOT Civil Rights Program currently maintains a Certified DBE Vendors List on its website.<sup>3</sup>

The DBE database is searchable by business name, business description, vendor number, contact person, city, state, zip code, phone, email, website, and NAICS code. Utilizing that database could help bidders locate qualified DBEs. Through a form on this site companies can apply for a prime contractors Account with Nevada DBE. These prime contractors can then post bidding opportunities which are then listed on the NDOT Civil Rights Program website.<sup>4</sup>

Comments from interviewees included frustration at the difficulty in finding specific types of contractors on this list. One interviewee wanted NDOT to create a DBE list specific to individual projects. Another interviewee said that the list should also be displayed according to type of work (without having to sort the list to obtain this information).

NDOT might explore both of these ideas.

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<sup>3</sup> <http://www.nevadadbe.com/dbe-vendors>.

<sup>4</sup> <http://nevadadbe.com/bidding-opportunities>.

### **Overconcentration — 49 CFR Part 26.33**

Agencies implementing the Federal DBE Program are required to report and take corrective measures if they find that DBEs are so overconcentrated in certain work areas as to unduly burden non-DBEs working in those areas. Keen Independent investigated potential overconcentration on NDOT contracts. There were three sizeable subindustries in which certified DBEs accounted for 50 percent or more of total subcontract dollars (work going to DBEs and non-DBEs) for 2011 through June 2012:

- Trucking;
- Erosion control; and
- Materials testing.

Because the above figures are based only on subcontract dollars, they do not include work that prime contractors self-performed in those areas. If the study team had included self-performed work in those analyses, the percentages for which DBEs accounted would likely have decreased. As discussed in Chapter 8, there is other information to indicate that non-DBEs were not unduly burdened by DBE participation in these areas. Even so, NDOT should closely monitor DBE participation in these and other fields.

If NDOT were to take immediate action, it might be to change credit given for DBE truckers so that the goal credit will only be received for each truck the DBE owns or leases. If that DBE needs to lease additional trucks to perform the contract, he or she must lease the trucks from another certified DBE in order for the prime to receive goal credit for the additional trucks. Any trucks leased by a DBE that are not owned by a DBE-certified trucker will not be counted toward the DBE goal. This change might decrease the incentive for a prime contractor to always use a DBE trucker to help it meet a DBE contract goal. (Further action might be required if this change does not have the desired effect.)

If overconcentration persists in other fields, NDOT might consider limiting the amount of a DBE contract goal that can be met from a particular type of work (or combined work types), or designating a portion of its FHWA-funded contracts for which none of the DBE contract goal could be met from those types of work with potential overconcentration. NDOT would need to seek FHWA approval for any of the above actions concerning potential overconcentration, in accordance with 26.33(d).

### **Business Development Programs — 49 CFR Part 26.35 and Mentor-protégé Programs – 49 CFR Appendix D to Part 26**

Business development programs (BDPs) are programs that are designed to assist DBE-certified businesses in developing the capabilities to compete for work independent of the DBE Program.

NDOT participates in a number of training programs that assist DBEs in these areas. Some of the DBEs interviewed in the disparity study had favorable comments about past NDOT training. NDOT should continue specialized training, such as the Bonding Education Program, and serve as a referral source to training and technical assistance offered by other organizations in Nevada. NDOT

might spearhead efforts to compile an easily-accessible directory or website that can direct DBEs and other small businesses to available services.

As part of a BDP, or separately, agencies may establish a mentor-protégé program, in which a non-DBE or another DBE serves as a mentor and principle source of business development assistance to a protégé DBE. NDOT does not currently offer any mentor-protégé programs for DBEs. NDOT should consider re-starting the mentor-protégé program once operated by Nevada AGC if it can develop requirements or incentives for potential mentors to participate in the program.

Depending on NDOT's review of these types of programs, it might consider adding a Business Development Program component to its Plan.

### **Responsibilities for Monitoring the Performance of Other Program Participants — 49 CFR Part 26.37**

The Final Rule effective February 28, 2011 revised requirements for monitoring and enforcing that the work that prime contractors commit to DBE subcontractors at contract award (or through contract modifications) is actually performed by those DBEs. USDOT describes the requirements in 49 CFR Part 26.37(b). The Final Rule states that prime contractors can only terminate DBEs for “good cause” and with written consent from the awarding agency. NDOT reported that it has a mechanism in place to regularly verify that prime contractors actually utilize DBEs to the degree to which they committed to doing so at contract award. NDOT maintains a database to monitor contracts obtained by DBE firms, regardless of whether the DBE participation was race-neutral or race-conscious. NDOT reports DBE participation semi-annually to USDOT as directed.

Regarding monitoring the performance of DBEs, NDOT regulations state that the work that DBEs complete must fulfill commercially useful functions (CUFs) in order to count towards DBE goals. The Certified Acceptance Agency must conduct an on-site review for every utilized DBE subcontractor, regardless of whether its utilization is counting toward a specific DBE goal to ensure that the DBE is fulfilling a CUF. NDOT should consider carefully reviewing the requirements set forth in 49 CFR Part 26.37(b) and in the Final Rule to ensure that its monitoring and enforcement mechanisms are consistent with federal regulations.

### **Fostering Small Business Participation — 49 CFR Part 26.39**

When implementing the Federal DBE Program, NDOT must include a measure to structure contracting requirements to facilitate competition by small businesses, “taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.”<sup>5</sup> The Final Rule effective February 28, 2011 added a requirement for transportation agencies to foster small business participation in their contracting. It required agencies to submit a plan for fostering small business participation to USDOT in early 2012. NDOT submitted a small business participation plan to USDOT, which was approved.

**Unbundling contracts.** As presented in Chapter 8 and Appendix J, business owners identified the size of contracts as a substantial barrier to small business participation in public sector contracts.

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<sup>5</sup> 49 CFR Part 26.39(a).

Interviewees urged NDOT to further unbundle contracts and create smaller contract opportunities. As demonstrated in Chapter 8, MBE/WBEs received about one-quarter of the dollars on small construction contracts awarded through informal bidding.

**Contracting opportunities on engineering contracts.** Some business owners and trade association representatives indicated a lack of opportunities for engineering-related work at NDOT. Much of the consulting work goes to firms that already have NDOT contracts. They also report that, if they could just get in front of NDOT staff, they would have a better chance to obtain work (for details, see Chapter 8 and Appendix J). NDOT is in the process of putting more new engineering consulting work out for competition. NDOT engineering staff should reach out to DBEs and other small businesses to discuss future work opportunities, how they might participate as a prime consultant or subconsultant, and details concerning consultant prequalification, qualifications statement, proposal and interview processes. NDOT might also investigate creating an informal proposal process similar to Construction’s informal bidding system.

**Additional strategies.** USDOT also identifies the following potential strategies for fostering small business participation:

- Establishing a race- and gender-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
- For multi-year design-build contracts or other large contracts (e.g., “megaprojects”), requiring bidders on the prime contract to specify elements of the contract — or provide subcontracting opportunities — that are of a size that small businesses, including DBEs, can reasonably perform.
- On prime contracts that do not include DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

Chapter 11 of the report outlines many of NDOT's current and planned race- and gender-neutral measures and provides examples of neutral measures that other organizations in Nevada have implemented. NDOT should review that information and consider implementing measures that the agency deems would be effective. NDOT should also review legal and budgetary issues in considering different measures.

### **Prohibition of DBE Quotas and Prohibition of Set-asides for DBEs Unless in Limited and Extreme Circumstances — 49 CFR Part 26.43**

DBE quotas are prohibited under the Federal DBE Program. DBE set-asides are only to be used in extreme circumstances.

The Federal DBE Program requires the implementation of a small business program for small businesses that are bidding or proposing as prime contractors.

NDOT does not use quotas in any way in its administration of the Federal DBE Program.

### **Setting Overall Annual DBE Goals — 49 CFR Part 26.45**

In the Final Rule effective February 28, 2011, USDOT changed how often agencies that implement the Federal DBE Program are required to submit overall annual DBE goals. Agencies such as NDOT now need to develop and submit overall annual DBE goals every three years. That change was effective as of March 5, 2010. Chapter 10 provides NDOT with information that could be useful in developing its next overall annual DBE goal submission.

### **Analysis of Reasons for not Meeting Overall DBE Goal — 49 CFR Part 26.47(c)**

Another addition to the Federal DBE Program made under the Final Rule effective February 28, 2011 requires agencies to take the following actions if their DBE participation for a particular fiscal year is less than their overall goals for that year:

- Analyze in detail the reasons for the difference; and
- Establish specific steps and milestones to address the difference and enable the agency to meet the goal in the next fiscal year.

**Need for separate accounting for participation of potential DBEs.** In accordance with guidance in the Federal DBE Program, Keen Independent's analysis of the overall DBE goal in this study is based on DBEs that are currently certified and on MBE/WBEs that could *potentially* be DBE-certified (i.e., potential DBEs). One of the reasons that NDOT has not met its overall DBE goal in past years, and might not meet it in the future, is that its measurement of DBE participation only includes businesses that are DBE-certified. Non-DBE-certified MBE/WBEs that were utilized on NDOT work during the study period or that are potentially available for NDOT work are counted when determining the overall DBE goal but are not counted in NDOT's participation reports that are used to measure whether NDOT has met the overall DBE goal.

Based on verbal communication with USDOT in Washington, D.C. in 2011, agencies can explore whether one reason why they have not met their overall DBE goal is because they are not counting the participation of uncertified MBE/WBEs that could be DBE-certified. USDOT might then expect an agency to explore ways to further encourage potential DBEs to become DBE-certified as one way of closing the gap between reported DBE participation and its overall DBE goal. In order to have the information to explore that possibility, NDOT should consider:

- Developing a system to collect information on the race/ethnicity and gender of the owners of all businesses — not just certified DBEs — participating as prime contractors or subcontractors, for both NDOT and LPA Program contracts;
- Developing internal participation reports for MBEs and WBEs (by race/ethnicity and gender) and for businesses currently and potentially DBE-certified (based on race/ethnicity and gender of ownership; annual revenue; and other factors such as whether the business has been denied DBE certification in the past), for both NDOT and LPA Program contracts; and
- Continuing to track participation of certified DBEs on FHWA-funded NDOT and LPA Program contracts, per USDOT reporting requirements.

**Other steps to evaluate how NDOT might better meet the overall annual goal.** Analyzing the utilization of non-DBE-certified MBE/WBEs that could be certified is one step among many that NDOT might consider taking when examining any differences between DBE utilization and its overall annual DBE goal. Based on its comprehensive review, NDOT must establish specific steps and milestones to correct the problems it identifies in its analysis and to enable it to better meet its overall DBE goal in the future, per 49 CFR Part 26.47(c)(2).

#### **Maximum Feasible Portion of Goal Met through Neutral Programs — 49 CFR Part 26.51(a)**

As discussed in Chapter 11, NDOT must meet the maximum feasible portion of its overall annual DBE goal through the use of race- and gender-neutral means of facilitating DBE participation. NDOT must project the portion of its overall annual DBE goal that could be achieved through such means. The agency should consider the information and analytical approaches presented in Chapter 11 when making such projections.

#### **Use of DBE Contract Goals— 49 CFR Part 26.51(d)**

The Federal DBE Program requires agencies to establish contract goals to meet any portion of their overall DBE goals that they do not project being able to meet using race- and gender-neutral means, as noted in 49 CFR Part 26.51(d). NDOT should assess whether the use of DBE contract goals is necessary to meet any portion of its overall annual DBE goal, based on information from the disparity study and other available information.

**USDOT guidance on DBE contract goals.** USDOT guidelines on the use of DBE contract goals, which are presented in 49 CFR Part 26.51(e), include the following guidance:

- Contract goals may only be used on contracts that have subcontracting possibilities;
- Agencies are not required to set a contract goal on every FHWA-funded contract;
- Over the period covered by the overall DBE goal, an agency must set contract goals so that they will cumulatively result in meeting the portion of the overall goal that the agency projects being unable to meet through race- and gender-neutral means;
- An agency's contract goals must provide for participation by all DBE groups eligible for race- and gender-conscious measures and must not be subdivided into group-specific goals; and
- An agency must maintain and report data on DBE utilization separately for contracts that include and that do not include DBE goals.

If NDOT determines that it needs to continue the use of DBE contract goals, then it should also evaluate which DBE groups should be considered eligible to participate in any goals that may apply to FHWA-funded contracts (or other USDOT-funded contracts). If NDOT decides to include specific DBE groups (e.g., groups classified as underutilized DBEs) but not other groups in a contract goals program, it must submit a waiver request to FHWA.

**Reported abuse of the DBE contract goals program.** In-depth interviews with owners and managers of MBE/WBEs and majority-owned companies, as well as information from trade associations, indicated frequent abuse of DBE contract goals programs in Nevada (NDOT's program as well as other agencies operating similar programs).

- Some individuals participating in in-depth interviews indicated that prime contractors develop time and energy to documenting that they have made good faith efforts to contact DBEs for subcontracting opportunities, but very little effort actually trying to ensure DBE participation on a contract. One interviewee referred to prime contractors' good faith efforts as "lip service."
- Some prime contractors explained that if they try to meet a DBE contract goal, which might raise their costs, they are at a disadvantage competing against another prime contractor that has no intention of meeting a goal and will only show good faith efforts.
- Other interviewees said that the DBE contract goals program was being abused through improper use of DBE trucking firms. Several interviewees said that prime contractors overuse trucking to meet goals and that you see DBEs that have a few trucks registered show up with eight or fifteen trucks on a job.
- Several interviewees said that use of DBE suppliers is abused. They reported that DBE goals create an artificial market for a company that does not actually provide any useful service and just acts as a pass-through.

- Several prime contractors said that it was difficult to find DBEs for certain types of work. They indicated that this made it hard to meet a high DBE goal on a contract. Several interviewees said that they resented that prime contractors were using DBEs from out of state to meet the goals.
- One interviewee said that she has heard of DBEs telling primes to go ahead and do the work that the DBE was intended to do, and that the DBE would bill them for it so the prime would get credit.
- One interviewee said that prime contractors will name a DBE as a subcontractor, but then abuse the subcontractor prior to executing the subcontract to the point that the subcontractor bows out of the contract. The prime contractor can then self-perform the work or use the subcontractor they want. He said that NDOT too easily approves substitutions on contracts and that it is complicit in the “theft” of work from DBEs. Another interviewee said that prime consultants do the same thing to her firm, squeezing her work to a point that she won’t be able to complete the work to be done.
- Some interviewees said that prime contractors would list DBEs on contracts, but then they would never get any work.

**Operation of DBE contract goals program for engineering-related contracts.** Some representatives of engineering firms said that they did not know much about DBE contract goals since they are never set on NDOT engineering contracts. Others said that NDOT engineering staff members were not knowledgeable about how to include DBE participation on NDOT contracts. Some interviewees said that DBE contract goals were against the engineering code of ethics, and that work should go to the most competent firms. In sum, there appeared to be a lack of knowledge and experience, or outright resistance, to incorporation of the Federal DBE Program into NDOT consulting work.

NDOT might review such concerns further when evaluating ways to improve its current operation of the Federal DBE Program.

### **Flexible Use of any Race- and Gender-conscious Measures — 49 CFR Part 26.51(f)**

State and local agencies must exercise flexibility in any use of race- and gender-conscious measures such as DBE contract goals. For example, if NDOT determines that its DBE utilization is exceeding its overall DBE goal in a particular fiscal year, it must reduce its use of DBE contract goals to the extent necessary. If it determines that it will fall short of the overall DBE goal in a particular fiscal year, then it must make appropriate modifications in the use of race- and gender-neutral and race- and gender-conscious measures to allow it to meet the overall goal.

## **Good Faith Effort Procedures — 49 CFR Part 26.53**

USDOT has provided guidance for agencies to review good faith efforts, including materials in Appendix A of 49 CFR Part 26. NDOT's current implementation of the Federal DBE Program outlines the good faith efforts process that it uses for DBE contract goals. The Final Rule effective February 28, 2011 updated requirements for good faith efforts when agencies use DBE contract goals.

**Use of good faith efforts.** When federally-funded contracts have a DBE Program goal greater than 0 percent, prime contractors are required to submit the DBE commitment form (052-050) at the time of bid submittal. This form must list all of the certified DBE firms that will participate on the contract. Each DBE must submit on the DBE firm's letterhead a written confirmation letter stating they will perform the work listed for the amount listed.

A prime contractor who cannot meet the DBE goal assigned to the contract must provide Good Faith Effort (GFE) documents describing the efforts they made to meet the DBE goal. These forms must be submitted by 5:00 pm on the next working day after bid opening. The GFE documents will be evaluated by a NDOT External Civil Rights staff member, who will either accept or reject the bidder's explanation. The details are spelled out in the NDOT Disadvantaged Business Enterprise Program.

## **Counting DBE and MBE/WBE Participation — 49 CFR Part 26.55**

Section 26.55 of 49 CFR describes how agencies should count DBE participation and evaluate whether bidders have met DBE contract goals. Federal regulations also give specific guidance for counting the participation of different types of DBE suppliers and trucking companies. Section 26.11 discusses the Uniform Report of DBE Awards or Commitments and Payments.

**Potential abuse of trucking and suppliers in meeting contract goals.** Chapter 8 indicated that about 40 percent of the use of DBEs on NDOT and LPA Program contracts from 2011 through June 2012 was as truckers. As explained elsewhere in Chapter 12, in-depth interviews with individuals knowledgeable about the industry indicated abuse of how DBE trucking firms and suppliers were counted toward DBE contract goals.

- NDOT may need to explore changes to how it credits work by DBE truckers, perhaps eliminating or further limiting use of leased or borrowed trucks. (See 49 CFR 26.55 (4) and (5).)
- NDOT might also further explore whether certain suppliers are actually regular dealers rather than brokers. (See 49 CFR 26.55(e).)

**Ongoing data collection, tracking, analysis and reporting.** As discussed above, Keen Independent recommends that NDOT should consider developing procedures and databases to consistently track participation of all firms, including MBE/WBEs and potential DBEs, in FHWA- and state-funded contracts that NDOT and local agencies award. Such measures will help NDOT track the effectiveness of race- and gender-neutral programs in encouraging MBE/WBE/DBE participation. If applicable, NDOT should also consider collecting important information regarding any shortfalls

in annual DBE participation, including preparing utilization reports for all MBE/WBEs (not just those that are DBE-certified).<sup>6</sup>

NDOT should work with B2GNow to establish comprehensive information collection, entry and tracking procedures for NDOT and LPA Program contracts and agreements, including ongoing contracts. This must not be limited to large construction contracts, but should capture District construction contracts and engineering agreements as well.

### **DBE certification — 49 CFR Part 26 Subpart D**

NDOT is one certifying agency in Nevada. It has designed its DBE certification process to comply with 49 CFR Part 26 Subpart D.

Interviewees had a variety of opinions on the ease of becoming DBE-certified through NDOT.

- A number of interviewees said that the DBE certification process was reasonable and some reported that it was relatively easy.
- Many interviewees reported difficulties with the DBE certification process. Some interviewees reported that the process was so difficult as to be detrimental to legitimate DBEs. A few interviewees reported extreme dissatisfaction with their experiences attempting to be DBE certified with NDOT.
- A few interviewees said that they knew of front companies. They often reported that husbands and wives, siblings or other family members would set up a business where a male would control the business but it would be set up as a woman-owned company. One interviewee complained about companies that would have 51 percent minority ownership and 49 percent ownership from a wealthy non-minority.
- Other interviewees said it was not worth the effort to become certified, or that there would be a negative stigma to DBE certification.

Appendix J provides perceptions of business owners that have considered DBE certification or that have gone through the certification process, as well as those who reported existence of front companies and that the certification process had been abused.

NDOT might consider more effectively communicating information about the Federal DBE Program, particularly information about the benefits of DBE certification. Although NDOT appears to follow federal regulations concerning DBE certification, which requires collecting and reviewing considerable information from program applicants, the agency might research other ways to make the certification process easier for potential DBEs.

Even so, the potential abuse of DBE certification by front companies requires substantial research into actual control of an applicant business.

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<sup>6</sup> Including self-identified MBE/WBEs.

### **Monitoring Changes to the Federal DBE Program**

Federal regulations related to the Federal DBE Program change periodically, and USDOT also issues new guidance concerning implementation of the program. NDOT should continue to monitor such developments. Other transportation agencies' operation of the Federal DBE Program is under review in federal district courts. NDOT should continue to monitor court decisions in those and other relevant cases.

### **NDOT's State-funded Contracts**

In 2013, the State of Nevada authorized NDOT to operate a DBE Program for its state-funded contracts. Improvements to NDOT's implementation of the Federal DBE Program will also be incorporated into NDOT's operation of the program for state-funded contracts.