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October 17, 2025

VIA ELECTRONIC MAIL:

Secretary Daniel Johnson
North Carolina Department of Transportation
1 South Wilmington Street
Raleigh, NC 27601
Email: dhjohnson4@ncdot.gov; dmhaberkorn@ncdot.gov;
sebryd3@ncdot.gov

RE: *Request for Confirmation of the DBE Program Pursuant to the U.S. Department of Transportation's Interim Final Rule (90 Fed. Reg. 47969, Oct. 3, 2025)*

Dear Secretary Johnson:

I write on behalf of Contractors for Equal Opportunity (CEO), a coalition of construction contractors and subcontractors committed to nondiscriminatory contracting practices on public infrastructure projects. I serve as Deputy Counsel at the Wisconsin Institute for Law & Liberty (WILL), which represents CEO in legal and regulatory matters. We have filed nationwide lawsuits to enforce non-discrimination in highway contracting, including the landmark case of *Mid-American Milling, Inc. (MAMCO) v. USDOT*, No. 3:23-CV-00072-GFVT, 2024 WL 4635430 (E.D. Ky. Oct. 31, 2024) (granting injunction against the DBE program).

We respectfully request formal written confirmation of the current status of the North Carolina Department of Transportation's Disadvantaged Business Enterprise (DBE) Program following the U.S. Department of Transportation's Interim Final Rule (IFR) published in the Federal Register on October 3, 2025 (Docket No. DOT-OST-2025-0897; RIN 2105-AF33).

As you are aware, the Interim Final Rule removes all race- and sex-based presumptions of social and economic disadvantage from the federal DBE and Airport Concession DBE programs, finding those provisions unconstitutional. The IFR further mandates that each Unified Certification Program (UCP) reevaluate all currently certified DBEs under the new individualized standards. Importantly, the new 49 C.F.R. § 26.111 provides that, until such reevaluations are complete, state and local recipients may not set DBE contract goals, count DBE participation

toward such goals, or enforce any compliance provisions related to DBE participation.

We are particularly concerned regarding your October 6, 2025, letter entitled “DBE Interim Final Rule Implementation.” In that letter, you contend that it is the official policy of NCDOT to continue to enforce DBE contract provisions on “awarded” and “executed” contracts as of October 3, 2025. This position has no basis in the IFR or the law. There are no DBEs as of today, and so there is no way to enforce DBE goals or contract provisions. More importantly, USDOT specifically stated in its guidance as follows:

The Interim Final Rule provides that until a UCP completes the reevaluation process outlined above, each recipient covered by that UCP may not: (1) include DBE contract goals or concession specific ACDBE goals; or (2) count any participation toward overall DBE or ACDBE goals. These requirements will ensure that existing DBEs and ACDBEs do not continue to receive any benefits as a result of their certification under the old standards. The Interim Final Rule provides that until a UCP completes the reevaluation process, no recipient covered by that UCP shall be subject to the compliance provisions of 49 CFR § 23.57 or 49 CFR § 26.47. Recipients will also not be required to update their overall goals during this process.

Other states, such as [Arkansas](#), have clearly stated that the IFR applies to awarded and existing contracts.

As far as I can tell, North Carolina is the only state in America that has taken this bold position that existing and awarded contracts may still contain DBE goals. **Again, this is completely at odds with the IFR because there are no DBEs that could meet the goals on awarded or existing contracts.** Moreover, no contractor or subcontractor is required to report DBE data or fulfill other compliance provisions, so it is unclear how your position could actually work in the real world. Please confirm that this is not your position, or we will be forced to take appropriate action to protect the interests of our clients.

Accordingly, on behalf of our member contractors, we request that NCDOT confirm in writing:

1. That NCDOT’s DBE program has been suspended effective October 3, 2025, in accordance with the Interim Final Rule; and
2. That contractors working under existing NCDOT contracts containing DBE participation goals are no longer required to submit DBE-related documents, reports, or other compliance materials during the reevaluation period established by 49 C.F.R. § 26.111.

This confirmation will provide essential clarity to contractors seeking to remain in full compliance with both federal and state law during this transition period.

We appreciate your prompt attention to this matter and look forward to your written response. Please do not hesitate to contact me at (414) 727-9455 or dan@will-law.org with any questions.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY INC.



Daniel P. Lennington
Managing Vice President & Deputy Counsel

On behalf of Contractors for Equal Opportunity

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