

FARGO-MOORHEAD
METROPOLITAN COUNCIL OF GOVERNMENTS

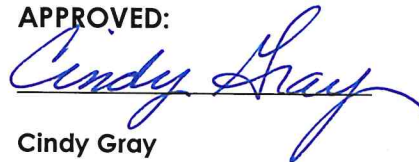
REQUEST FOR PROPOSALS (RFP)

PROJECT NO. 2021-212

*Fargo-Moorhead Metropolitan
Bicycle and Pedestrian Plan Update*

March, 2021

APPROVED:



Cindy Gray
Metro COG, Executive Director

METROCOG
FM REGIONAL TRANSPORTATION PLANNING ORGANIZATION

REQUEST FOR PROPOSALS (RFP)

The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) requests proposals from qualified consultants for the following project:

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Qualifications based selection criteria will be used to analyze proposals from responding consultants. The most qualified candidates may be asked to present a virtually hosted interview. Upon completion of technical ranking and interviews, Metro COG will enter into negotiations with the top ranked firm. **Proposals shall be submitted in PDF format. Sealed cost proposals shall be submitted as a hard copy. Both proposal and cost proposal will be due by the date & time specified below.** The cost proposal of the top ranked firm will be opened during contract negotiations. Those firms not selected for direct negotiations will have their unopened cost proposals returned. Metro COG reserves the right to reject any or all submittals. This project will be funded, in part with federal transportation funds and has a not-to-exceed budget of **\$170,000**.

Interested firms can request a full copy of the RFP by telephoning 701.532.5100, or by e-mail: metrocog@fmmetrocog.org. Copies will be posted on the North Dakota Department of Transportation QBS website (<https://www.dot.nd.gov>) and are also available for download in .pdf format at www.fmmetrocog.org.

All proposals received by **4:30 pm (Central Time) on Wednesday April 14, 2021** will be given equal consideration. Proposals received after 4:30 pm (Central Time) on Wednesday April 14, 2021 will not be considered. Respondents must submit a PDF of the proposal, and one (1) sealed hard copy of the cost proposal. The full length of each proposal shall not exceed twenty (20) double sided pages for a total of forty (40) pages; including any supporting material, charts, or tables.

The proposal may be emailed. The consultant must verify that the email was received with the PDF attachment prior to 4:30 pm on the due date. A hard copy of the cost proposal shall be shipped to ensure timely delivery to the contact identified below:

Dan Farnsworth
Fargo-Moorhead Metropolitan Council of Governments
Case Plaza, Suite 232
One 2nd Street North
Fargo, ND 58102
farnsworth@fmmetrocog.org
701-532-5106

Fax versions will not be accepted as substitutes for the proposals or the sealed cost proposal. Once submitted, the proposals will become property of Metro COG.

Questions must be directed to Dan Farnsworth (phone number and email shown above).

Note: This document can be made available in alternative formats for persons with disabilities by contacting Savanna Leach, Executive Secretary at 701.532.5100 or leach@fmmetrocog.org.

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Exhibit A – Cost Proposal Form

Exhibit B – Federal Clauses

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Note: Throughout this RFP, Metro COG may be referred to as 'Client' and the consulting firm may be referred to as 'Consultant', 'Contractor', or 'Firm'.

I AGENCY OVERVIEW

The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) serves as the Council of Governments (COG) and Metropolitan Planning Organization (MPO) for the greater Fargo, North Dakota – Moorhead, Minnesota Metropolitan Area. As the designated MPO for the Fargo-Moorhead Metropolitan Area, Metro COG is responsible under federal law for maintaining a continuous, comprehensive, and coordinated transportation planning process.

Metro COG is responsible, in cooperation with the North Dakota and Minnesota Departments of Transportation (NDDOT and MnDOT, respectively) and our local planning partners, for carrying out the metropolitan transportation planning process and other planning needs of a regional nature. Metro COG represents eleven cities and two counties that comprise the Metro COG region in these efforts.

II BACKGROUND INFORMATION

The Fargo-Moorhead Metropolitan Area has a rich history of bicycle & pedestrian planning with known bicycle & pedestrian plans dating back to 1975. The F-M Metro Area also has a history of jurisdictional collaboration on bicycle and pedestrian efforts with the Metropolitan Bicycle & Pedestrian Committee meeting 114 times since its inception.

The Fargo-Moorhead Metropolitan Area has a strong bicycle culture with a nationally-recognized bike share system. In addition the Area has been designated twice by The League of American Bicyclists as a Bronze-level Bicycle Friendly Community. The F-M Metro Area continues to grow and connect both the bicycle and pedestrian infrastructure networks. Shared use paths continue to provide connections, bike lanes and wide paved shoulders provide many of the area's on-street bikeway options, and sidewalks accompanying the vast majority of the urban roadways.

Metro COG and its partnering agencies seek to continue to improve upon past planning efforts in order to make a safe, connected, equitable, and welcoming bicycle and pedestrian experience for all users.

III PROJECT OBJECTIVE

Every five years Metro COG updates the Fargo-Moorhead Metropolitan Bicycle & Pedestrian Plan. This plan takes a comprehensive look at the F-M Metro Area's bicycle & pedestrian networks, seeks input from the public and local jurisdictions, and provides recommendations and guidance to meet the needs of the community and improve the bicycle & pedestrian environment for all users. This plan will incorporate 'The Six E's' of bicycle & pedestrian planning – Education, Encouragement, Evaluation & Planning,

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Engineering, Enforcement, and Equity.

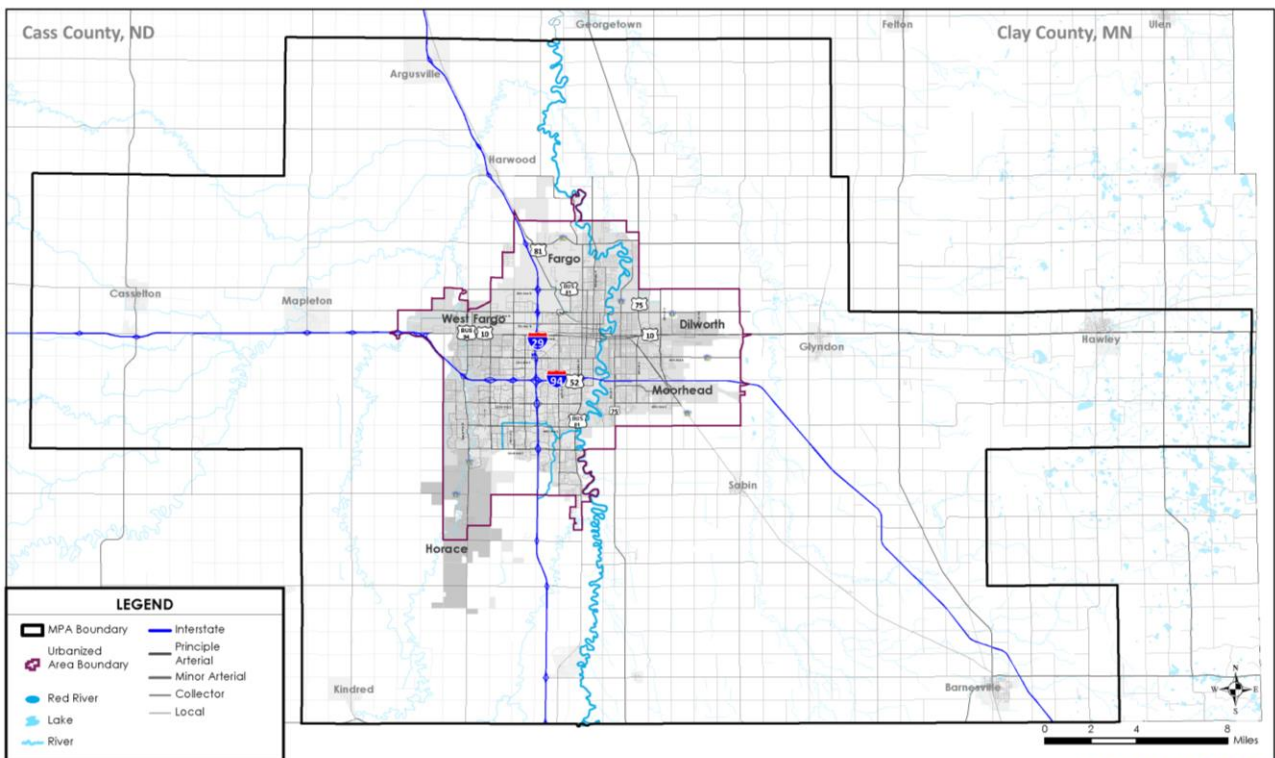
The last Bicycle & Pedestrian Plan was completed in 2016 and was completed in-house by Metro COG staff. Metro COG is seeking a qualified Consultant to develop an update to the 2016 Plan. The goal is for the updated Plan to be more in-depth than the 2016 Plan with extensive public engagement, planning level cost estimates for future projects, and new ideas to make the community more safe and accessible for both pedestrians and bicycle users. The study area for updated Plan will include the entirety of Metro COG's planning area as shown in Figure 1.

Metro COG is seeking a Consultant who can provide original yet feasible solutions to the bicycle and pedestrian needs of the Fargo-Moorhead Area.

For reference the 2016 Fargo-Moorhead Bicycle and Pedestrian Plan can be found on Metro COG's website at the following link:

<http://fmmetrocog.org/resources/planning/bicycle-pedestrian-planning>

Figure 1 – Metro COG Planning Area (MPA)



Fargo-Moorhead Metropolitan Planning Area

Last updated: July 2019

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IV SCOPE OF WORK AND PERFORMANCE TASKS

Outlined below is the scope of work that will guide development of the Fargo-Moorhead Metropolitan Bicycle & Pedestrian Plan Update. Metro COG has included the following scope of work to provide interested Consultants insight into project intent, context, coordination, responsibilities, and other elements to help facilitate proposal development.

This outline is not necessarily all-inclusive. The Consultant may include in the proposal any additional performance tasks or modification of the tasks listed below that will integrate approaches, with special emphasis on the use of innovative techniques, to successfully complete the project.

At minimum, the Consultant is expected to complete the following tasks as part of this project:

Task 1 – Project Management and Coordination

The Consultant will be required to manage the study and coordinate with any subconsultants, as well as bearing responsibility for all documentation and equipment needs. The Consultant will identify a project lead from their team to act as the direct point of contact for Metro COG’s project manager.

The Consultant should expect monthly progress meetings with Metro COG, a summary of the meetings shall be prepared by the Consultant. The Consultant should expect other meetings with Metro COG on an as-needed basis. These meetings with Metro COG can occur via phone or video.

Additionally, the Consultant should expect to prepare monthly progress reports, submit adequate documentation of any and all travel and expense receipts, and prepare and submit invoices on a monthly basis. When submitting progress reports, the Consultant will be required to outline the following:

- Performed work during the reporting period
- Upcoming tasks
- Upcoming milestones
- Status of scope and schedule
- Any issues to be aware of

All invoices, travel and expense receipts, and progress reports, are due to Metro COG’s project manager no later than the 2nd Thursday of each month. This is to ensure invoices are processed in a timely fashion.

Task 2 – Data Collection and Existing Conditions

The Consultant shall gather and analyze relevant existing conditions. Metro COG and its

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local jurisdictions will aid in these efforts by providing relevant datasets where they exist. Any other non-existing datasets necessary to accomplish the goals of the analysis will need to be developed by the Consultant. Existing conditions data should include the following (but not limited to):

- Demographics & Travel Trends – The Consultant should provide a summary of the existing local demographics, local demographic trends, local mode-split, and local travel trends.
- Crash analysis – Metro COG can coordinate with the Consultant and local agencies to obtain bicycle & pedestrian crash data. At a minimum this data should contain crash information for the past five years.
- Bicycle network – Metro COG has shapefiles which show the existing bicycle network which include: shared use paths, bike lanes, wide paved shoulders, etc.
- Sidewalk network – Metro COG has shapefiles which show the most up-to-date sidewalk network.
- Bike share network - Metro COG has shapefiles which show the most up-to-date bike share network.
- Bicycle & pedestrian count data – Metro COG has a program which counts bicycle and pedestrian traffic on a regular basis. This data can be provided to the Consultant as part of the existing conditions and analysis.
- Local ordinances – It is encouraged that the Consultant research existing local ordinances as they relate to bicycle and pedestrian modes. These can range from sidewalk construction ordinances to bicycle rules of the road ordinances.

Task 3 – Community Engagement

Community engagement will be in accordance with Metro COG's Public Participation Plan and will involve the following:

1) Study Review Committee Meetings

Development of the Plan will be guided by a Study Review Committee (SRC), which will provide oversight and input into the development of the Plan. The SRC will likely consist of all members of the Metropolitan Bicycle & Pedestrian Committee and will meet on a regular basis throughout the planning process. Meetings will be held virtually, in-person or a hybrid of both depending on the current COVID-19 health crisis situation.

The Consultant should propose the quantity, timing, and content of these meetings. The Consultant will be responsible for coordinating, scheduling, and developing agendas for the SRC meetings. This should be done in coordination with Metro COG's project manager. The Consultant will be expected to distribute materials to the SRC in a timely manner, no less than three business days prior to the meetings. The Consultant is also responsible for the recording of meeting

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minutes, which should be submitted to Metro COG's project manager and will serve as documentation of the SRC's guidance and decisions.

2) Public Involvement

Public involvement opportunities will be held to obtain input from the community. It is important that public input be gathered from all facets of the Fargo-Moorhead Metropolitan community including but not limited to: all geographical areas, individuals of all ages, genders, races, and income levels. It will be also important to gather input from individuals with disabilities. In addition, this plan should not only be shaped by bicycle or pedestrian advocates, but by the Fargo-Moorhead Metropolitan community as a whole. Extra effort may be necessary to gather input from populations who are not typically represented in bicycle & pedestrian planning efforts.

The Consultant should propose engagement methods they think would be most successful. The Consultant will facilitate all public engagement activities, and should propose the number, type, and strategy for each public involvement effort.

At a minimum, public involvement should include:

- a) Website, Social Media, and Online Survey – Metro COG will host a project website for this study. Metro COG will work with the Consultant in obtaining materials to display on the project website.

As a way to increase public participation, the Consultant should develop online surveys which can be hosted on Metro COG's project webpage and shared via the local jurisdictions', social media, etc.

- b) Public Input Meetings – Whether virtual, in-person, or a hybrid of both, the Consultant should propose an approach to public input meetings during the course of the Plan.

The Consultant will be responsible for providing advertising materials including PDF flyers, media release write-up, and an advertisement for the public notice to be published in the newspaper. All public notice costs will be the responsibility of the Consultant and should be accounted for as part of the project budget.

The Consultant will provide a summary of all public input meetings and, if meetings are held in-person, is responsible for providing materials at the meetings, including but not limited to, sign-in sheets, comment forms, handouts, roll drawings, meeting display boards, and meeting presentations. All public comments received shall be recorded, summarized in the final report or considered for display in the final report's appendix. The Consultant will provide a contact person for

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which the public to provide input. The contact person shall be made available by phone, mail and e-mail.

Task 4 – Needs, Vision, and Goals

The Consultant shall work with the SRC and the public in identifying the community's bicycle & pedestrian needs. The Consultant shall then develop a vision and set of goals for meeting the needs. The vision and goals should include 'The Six E's' of bicycle & pedestrian planning – Education, Encouragement, Evaluation & Planning, Engineering, Enforcement, and Equity.

Recommendations from adopted plans should be researched and considered when developing the needs, vision, and goals. These plans should include but not be limited to:

- Minnesota Statewide Pedestrian System Plan (2021)
- FM Greenway Recreation Master Plan (2020)
- Fargo Safe Routes to School Plan (2020)
- Fargo-Moorhead Metro Bikeways Gap Analysis (2019)
- ND Moves – Statewide Active and Public Transportation Plan (2019)
- Fargo Downtown InFocus plan (2018)
- West Fargo Comprehensive Plan - West Fargo 2.0 (2018)
- Minnesota Statewide Bicycle System Plan (2016)
- 2016 Fargo-Moorhead Metropolitan Bicycle & Pedestrian Plan
- Moorhead River Corridor Master Plan (2014)

Task 5 – Recommendations

Based on the needs, vision, and goals as identified in Task 4, the Consultant shall provide a list of recommendations. The recommendations should span 'The Six E's' of bicycle & pedestrian planning and should be vetted by the SRC. The recommendations should be comprehensive and implementable.

Task 6 – Implementation

Per the recommendations outlined in Task 5, an implementation plan shall be developed by the Consultant as a blueprint to meet the needs and achieve the vision and goals. The implementation plan should include prioritization of policies and projects as well as proposed timeframes. In addition, the Consultant should expect to provide planning level cost estimates for, at a minimum, the highest priority projects.

Task 7 - Draft Report

Upon completion of the previous tasks, the Consultant shall provide a draft report for review by the SRC and the public. The report shall include the resulting efforts of Tasks 2 through 6. The draft report should be easy to understand by the public while providing useful information for local decision-makers. Tables, maps, and graphics are encouraged to make the report informative and attractive to users.

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The report shall include an executive summary summarizing the key contents in the report. Also, the report shall include an appendix. All meeting summaries, public engagement details, and technical analysis shall be included in the appendix of the report.

Task 8 - Final Report

Once comments on the draft report have been received and addressed, the Consultant shall assemble the final report. The final report shall be in PDF format.

Task 9 – Adoption Process

As part of the study's adoption process, presentations will be made to local boards and committees. The Consultant should budget for up to four presentations of the final study to local boards and committees.

Task 10 – Data Deliverables

Data collected and GIS files developed as part of this Plan shall be provided to Metro COG upon completion of the Plan. Of key importance to Metro COG and Metro COG's local jurisdictions would be GIS file(s) showing recommended bicycle/pedestrian network improvements.

V IMPLEMENTATION SCHEDULE**1) Consultant Selection**

Advertise for Consultant Proposals	approximately 3/19/2021
Due Date for Proposal Submittals (by 4:30pm)	4/14/2021
Review Proposals/Identify Finalists	4/15/2021 – 4/22/2021
Interview Finalists	between 4/27/2021 – 5/5/2021
Metro COG Board Approval/Consultant Notice	5/20/2021
Contract Negotiations	5/21/2021 – 5/28/2021
Signed Contract	Immediately after contract negotiations
Notice to Proceed	One day following a signed contract

2) Project Development (Major Milestones)

Project Kick-off	June, 2021
Plan Development	June, 2021 - March, 2022
Final Draft of Study	April, 2022
Final Completion of Study	May, 2022
Presentations to committees and boards	June, 2022 – July, 2022
All invoices for project to be received by Metro COG	July, 2022

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VI EVALUATION AND SELECTION PROCESS

Selection Committee. The Client will establish a selection committee to select a Consultant. The committee will likely consist of a portion of the members from the Metropolitan Bicycle & Pedestrian Committee, which represents local jurisdictions, health organizations, the public, and more.

The Consultant selection process will be administered under the following criteria:

- 25% - Understanding of study objectives and local/regional issues
- 25% - Proposed approach, work plan, and management techniques
- 25% - Experience with similar projects
- 25% - Expertise of the technical and professional staff assigned to the project

The Selection Committee, at the discretion of the Client and under the guidance of NDDOT policy, will entertain virtually-hosted presentations for the top candidates to provide additional information for the evaluation process. The presentations will be followed by a question and answer period during which the committee may question the prospective Consultants about their proposed approaches.

A Consultant will be selected on **May 20th, 2021** based on an evaluation of the proposals submitted, the recommendation of the Selection Committee and approval by the Metro COG Policy Board.

The Client reserves the right to reject any or all proposals or to waive minor irregularities in said proposal, and reserves the right to negotiate minor deviations to the proposal with the successful Consultant. The Client reserves the right to award a contract to the firm or individual that presents the proposal, which, in the sole judgement of the Client, best accomplishes the desired results.

The RFP does not commit the Client to award a contract, to pay any costs incurred in the preparation of the contract in response to this request or to procure or contract for services or supplies. The Client reserves the right to withdraw this RFP at any time without prior notice.

All proposals, whether selected or rejected, shall become the property of the Client.

VII PROPOSAL CONTENT

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the Consultant seeking to provide comprehensive services specified herein for the Client, in conformity with the requirements of the RFP. The proposal should demonstrate qualifications of the firm and its staff to undertake this project. It should also specify the proposed approach that best meets the RFP requirements. The proposal must address each of the service specifications under the Scope of Work and Performance Tasks.

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The Client is asking the Consultant to supply the following information. Please include all requested information in the proposal to the fullest extent practical.

- 1) Contact Information.** Name, telephone number, email address, mailing address and other contact information for the Consultant's Project Manager.
- 2) Introduction and Executive Summary.** This section shall document the Consultant name, business address (including telephone, FAX, email address(es)), year established, type of ownership and parent company (if any), project manager name and qualifications, and any major facts, features, recommendations or conclusions that may differentiate this proposal from others, if any.
- 3) Work Plan and Project Methodology.** Proposals shall include the following, at minimum:
 - a) A detailed work plan identifying the major tasks to be accomplished relative to the requested study tasks and expected product as outlined in this RFP;
 - b) A timeline for completion of the requested services, including all public participation opportunities and stakeholder meetings, identifying milestones for development of the project and completion of individual tasks.
 - c) List of projects with similar size, scope, type, and complexity that the proposed project team has successfully completed in the past.
 - d) List of the proposed principal(s) who will be responsible for the work, proposed Project Manager and project team members (with resumes).
 - e) A breakout of hours for each member of the team by major task area, and an overall indication of the level of effort (percentage of overall project team hours) allocated to each task. Note that specific budget information is to be submitted in a sealed cost proposal as described below in Section VIII. General Proposal Requirements.
 - f) A list of any subcontracted agencies, the tasks they will be assigned, the percent of work to be performed, and the staff that will be assigned.
 - g) List of client references for similar projects described within the RFP.
 - h) Documented approach for considering Disadvantaged Business Enterprise (DBE) as part of the project.
 - i) Ability of firm to meet required time schedules based on current and known future workload of the staff assigned to the project.
- 4) Signature.** Proposals shall be signed by an authorized member of the firm/project team.
- 5) Attachments.** Review, complete, and submit the completed versions of the following RFP Attachments with the proposal:

Exhibit A - Cost Proposal Form (as identified in VIII 1)

Exhibit B – Federal Clauses

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VIII Submittal Information

Proposals shall be submitted in PDF format. Sealed cost proposals shall be submitted as a hard copy. Both proposal and cost proposal will be due by the date & time specified below. Cost proposals should be shipped to ensure timely delivery to the contact as defined below:

Dan Farnsworth
Transportation Planner
Fargo-Moorhead Metropolitan Council of Governments
Case Plaza, Suite 232
One 2nd Street North
Fargo, ND 58102-4807
farnsworth@fmmetrocog.org

Proposals shall be received by **4:30 pm (Central Time) on Wednesday April 14, 2021**. Minority, women-owned and disadvantaged business enterprises are encouraged to participate. Respondents must submit one (1) Adobe Acrobat (.pdf) copy of the proposal. The full length of each proposal should not exceed twenty (20) double sided pages for a total of forty (40) pages; including any supporting material, charts or tables.

IX GENERAL RFP REQUIREMENTS

- 1) Sealed Cost Proposal.** All proposals must be clearly identified and marked with the appropriate project name; inclusive of a separately sealed cost proposal per the requirements of this RFP. Cost proposals shall be based on an hourly "not to exceed" amount and shall follow the general format as provided within Exhibit A of this RFP. Metro COG may decide, in its sole discretion, to negotiate a price for the project after the selection committee completes its final ranking. Negotiation will begin with the Consultant identified as the most qualified per requirements of this RFP, as determined in the evaluation/selection process. If Metro COG is unable to negotiate a contract for services negotiations will be terminated and negotiations will begin with the next most qualified Consultant. This process will continue until a satisfactory contract has been negotiated.

- 2) Consultant Annual Audit Information for Indirect Cost.** Consulting firms proposing to do work for Metro COG must have a current audit rate no older than 15 months from the close of the firm's Fiscal Year. Documentation of this audit rate must be provided with the sealed cost proposal. Firms that do not meet this requirement will not qualify to propose or contract for Metro COG projects until the requirement is met. Firms that have submitted all the necessary information to Metro COG and are waiting for the completion of the audit will be qualified to submit proposals for work. Information submitted by a firm that is incomplete will not qualify. Firms that do not have a current cognizant Federal Acquisition Regulations (FARs) audit of indirect cost rates must provide this audit prior to the interview. **This documentation**

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should be attached with the sealed cost proposal.

- 3) Respondent Qualifications.** Respondents must submit evidence that they have relevant past experience and have previously delivered services similar to the requested services within this RFP. Each respondent may also be required to show that similar work has been performed in a satisfactory manner and that no claims of any kind are pending against such work. No proposal will be accepted from a respondent whom is engaged in any work that would impair his or her ability to perform or finance this work.
- 4) Disadvantaged Business Enterprise (DBE).** Pursuant to Department of Transportation policy and 49 CFR Part 23, Metro COG supports the participation of DBE businesses in the performance of contracts financed with federal funds under this RFP. Consultants shall document their efforts in considering DBE businesses in this project. If the Consultant is a DBE, a statement indicating that the business is certified DBE in North Dakota or Minnesota shall be included within the proposal. If the Consultant intends to utilize a DBE to complete a portion of this work, a statement of the Subconsultant's certification shall be included. The percent of the total proposed cost to be completed by the DBE shall be shown within the proposal.
- 5) US DOT Policy Statement on Bicycle and Pedestrian Accommodations.** Consultants are advised to review and consider the *US DOT Policy Statement on Bicycle and Pedestrian Accommodation* issued in March of 2010 when developing written proposals.
- 6) North Dakota Department of Transportation Consultant Administration Services Procedure Manual.** Applicants to this Request for Proposal are required to follow procedures contained in the *NDDOT Consultant Administration Services Procedure Manual*, which includes prequalification of Consultants. Copies of the Manual may be found on the Metro COG website www.fmmetrocog.org or the NDDOT website at www.dot.nd.gov.

X CONTRACTUAL INFORMATION

- 1) The Client reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within forty-five (45) days after the award of the proposal. The Client will not pay for any information contained in proposals obtained from participating firms.
- 2) The Client reserves the right to request clarification on any information submitted and additionally reserves the right to request additional information of one (1) or more applicants.
- 3) Any proposal may be withdrawn up until the proposal submission deadline. Any proposals not withdrawn shall constitute an irrevocable offer for services set forth

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within the RFP for a period of ninety (90) days or until one or more of the proposals have been approved by the Metro COG Policy Board.

- 4) If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations agreed to, the Client shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least ninety (90) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.
- 5) Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the Client and shall contain, as a minimum, applicable provisions of the Request for Proposals. The Client reserves the right to reject any agreement that does not conform to the Request for Proposal and any Metro COG requirements for agreements and contracts.
- 6) The Consultant shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of Metro COG.

XI PAYMENTS

The selected Consultant will submit invoices for work completed to the Client. Payments shall be made to the Consultant by the Client in accordance with the contract after all required services, and items identified in the scope of work and performance tasks, have been completed to the satisfaction of the Client.

XII FEDERAL AND STATE FUNDS

The services requested within this RFP will be partially funded with funds from the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). As such, the services requested by this RFP will be subject to federal and state requirements and regulations.

The services performed under any resulting agreement shall comply with all applicable federal, state, and local laws and regulations. In addition, this contract will be subject to the relevant requirements of 2 CFR 200.

XIII TITLE VI ASSURANCES

Prospective Consultants should be aware of the following contractual ("Contractor") requirements regarding compliance with Title VI should they be selected pursuant to this RFP:

- 1) **Compliance with Regulations.** The Consultant shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be

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amended from time to time (hereinafter referred to as the Regulations).

- 2) **Nondiscrimination.** The Consultant, with regard to the work performed by it, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of Subconsultants, including procurements of materials and leases of equipment. The Consultant shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations to Metro COG and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**.
- 4) **Information and Reports.** The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Metro COG or the North Dakota Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to Metro COG, or the North Dakota Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance.** In the event of the Consultant's noncompliance with the nondiscrimination provisions as outlined herein, the Client and the North Dakota Department of Transportation shall impose such sanctions as it or the Federal Highway Administration / Federal Transit Administration may determine to be appropriate, including but not limited to:
 - 6) Withholding of payments to the Consultant under the contract until the Consultant complies; or
 - 7) Cancellation, termination, or suspension of the contract, in whole or in part.
- 8) **Incorporation of Title VI Provisions.** The Consultant shall include the provisions of Section XII, paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Consultant shall take such action with respect to any subcontract or procurement as

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Metro COG or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation by a Subconsultant or supplier as a result of such direction, the Consultant may request Metro COG enter into such litigation to protect the interests of Metro COG; and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

** The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.

XIV TERMINATION PROVISIONS

The Client reserves the right to cancel any contract for cause upon written notice to the Consultant. Cause for cancellation will be documented failure(s) of the Consultant to provide services in the quantity or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Consultant without additional harm to the participants or the Client.

The Client may cancel or reduce the amount of service to be rendered if there is, in the opinion of the Client, a significant increase in local costs; or if there is insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the Client will notify the Consultant in writing ninety (90) days in advance of the date such actions are to be implemented.

In the event of any termination, the Client shall pay the agreed rate only for services delivered up to the date of termination. The Client has no obligation to the Consultant, of any kind, after the date of termination. Consultant shall deliver all records, equipment and materials to the Client within 24 hours of the date of termination.

XV LIMITATION ON CONSULTANT

All reports and pertinent data or materials are the sole property of the Client and its state and federal planning partners and may not be used, reproduced or released in any form without the explicit, written permission of the Client.

The Consultant should expect to have access only to the public reports and public files of local governmental agencies and the Client in preparing the proposal or reports. No compilation, tabulation or analysis of data, definition of opinion, etc., should be anticipated by the Consultant from the agencies, unless volunteered by a responsible official in those agencies.

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XVI CONFLICT OF INTEREST

No Consultant, Subconsultant, or member of any firm proposed to be employed in the preparation of this proposal shall have a past, ongoing, or potential involvement which could be deemed a conflict of interest under North Dakota Century Code or other law. During the term of this Agreement, the Consultant shall not accept any employment or engage in any consulting work that would create a conflict of interest with the Client or in any way compromise the services to be performed under this agreement. The Consultant shall immediately notify the Client of any and all potential violations of this paragraph upon becoming aware of the potential violation.

XVII INSURANCE

The Consultant shall provide evidence of insurance as stated in the contract prior to execution of the contract.

XVIII RISK MANAGEMENT

The Consultant agrees to defend, indemnify, and hold harmless the Client and the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the Client and the State or its agents, but not against claims based on the Client's and the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Consultant to the Client and the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Client and the State is necessary. Consultant also agrees to defend, indemnify, and hold the Client and the State harmless for all costs, expenses and attorneys' fees incurred if the Client or the State prevails in an action against Consultant in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

The Consultant shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

1. Commercial general liability and automobile liability insurance - minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence.
2. Workforce Safety insurance meeting all statutory limits.
3. The Client and the State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an additional insured on the commercial general liability and automobile liability policies.
4. Said endorsements shall contain a "Waiver of Subrogation" in favor of the Client and the state of North Dakota.

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5. The policies and endorsements may not be canceled or modified without thirty (30) days prior written notice to the undersigned Client and the State Risk Management Department.

The Consultant shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the Client prior to commencement of this agreement.

The Client and the State reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08.

When a portion of the work under the Agreement is sublet, the Consultant shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Consultant, the Client and the State as a result of work undertaken by the Subconsultant. In addition, the Consultant shall ensure that any and all parties performing work under the Agreement are covered by public liability insurance as outlined above. All Subconsultants performing work under the Agreement are required to maintain the same scope of insurance required of the Consultant. The Consultant shall be held responsible for ensuring compliance with those requirements by all Subconsultants.

Consultant's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Client or State. Any insurance, self-insurance or self-retention maintained by the Client or the State shall be excess of the Consultant's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured Consultant shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Consultant from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the Consultant. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Client and the State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Consultant in excess of the minimum requirements set forth above.

Fargo-Moorhead Metropolitan Bicycle & Pedestrian Plan Update**Exhibit A – Cost Proposal Form**

Cost Proposal Form – Include completed cost form (see below) in a separate sealed envelope – labeled “**Sealed Cost Form – Vendor Name**” and submit with concurrently with the technical proposal as part of the overall RFP response. The cost estimate should be based on a not to exceed basis and may be further negotiated by Metro COG upon identification of the most qualified Consultant. Changes in the final contract amount and contract extensions are not anticipated.

REQUIRED BUDGET FORMAT

Summary of Estimated Project Cost

1.	Direct Labor	Hours	x	Rate	=	Project Cost	Total
	Name, Title, Function	0.00	x	0.00	=	0.00	0.00
			x		=	0.00	0.00
			x		=	0.00	0.00
				Subtotal	=	0.00	0.00
2.	Overhead/Indirect Cost (expressed as indirect rate x direct labor)					0.00	0.00
3.	Subconsultant Costs					0.00	0.00
4.	Materials and Supplies Costs					0.00	0.00
5.	Travel Costs					0.00	0.00
6.	Fixed Fee					0.00	0.00
7.	Miscellaneous Costs					0.00	0.00
Total Cost					=	0.00	0.00

Exhibit B

Federal Clauses

Federal Clauses

Equal Employment Opportunity Clause – 41 CFR 60-1.4(a) and 2 CFR Part 200 Appendix II (C)

41 CFR 60-1.4(a)

- (a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract): during the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the secretary of labor.
 - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the secretary of labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the secretary of labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the secretary of labor, or as otherwise provided by law.

- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the secretary of labor as a means of enforcing such provisions including sanctions for noncompliance: *provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the united states to enter into such litigation to protect the interests of the United States.

2 CFR Part 200 Appendix II (C)

- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Sanctions and Penalties for Breach of Contract – 2 CFR Part 200 Appendix II (A)

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Termination for Cause and Convenience – 2 CFR Part 200 Appendix II (B)

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Rights to Inventions Made Under a Contract or Agreement – 2 CFR Part 200 Appendix II (F)

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and

Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Debarment and Suspension - 2 CFR Part 200 Appendix II (I)

- (I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Byrd Anti-Lobbying Amendment - 2 CFR Part 200 Appendix II (J)

- (J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.