

**FARGO-MOORHEAD  
METROPOLITAN COUNCIL OF GOVERNMENTS**

**REQUEST FOR PROPOSALS (RFP)**

**PROJECT NO. 2024-215**

***Fargo-Moorhead  
Metro Railroad Needs Study***

*June, 2024*

**APPROVED:**



**Ben Griffith  
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:

### Metro Railroad Needs Study

Qualifications based selection criteria will be used to analyze proposals from responding consultants. The most qualified candidates may be invited to present an oral interview. Upon completion of technical ranking and oral interviews, Metro COG will enter into negotiations with the top ranked firm. **Sealed cost proposals shall be submitted with the RFP.** 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 **\$400,000**.

**Proposing consultants will be evaluated on their ability to complete as much work and expend as much of the \$400,000 budget as possible within calendar year 2024. Proposing consultants shall be able to guarantee that the contract can be executed immediately and work can begin without delay.**

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](http://www.fmmetrocog.org).

All applicants must be prequalified with the North Dakota Department of Transportation (NDDOT). If not prequalified with the NDDOT, applicants will be required to submit a completed Standard Form 330 (Exhibit D) with their submittal of information.

All proposals received by **4:30 PM (Central Time) on Wednesday, July 17, 2024** at the Metro COG office will be given equal consideration. Respondents must submit five (5) print copies of the proposal and one (1) PDF copy of the proposal. The full length of each proposal shall not exceed fifteen (15) double sided pages for a

total of thirty (30) pages; including any supporting material, charts, or tables.

Hard copies of technical and/or cost proposals shall be shipped to ensure timely delivery to the contact defined below:

Ben Griffith, Executive Director  
Fargo-Moorhead Metropolitan Council of Governments  
Case Plaza, Suite 232  
One 2<sup>nd</sup> Street North  
Fargo, ND 58102  
[griffith@fmmetrocog.org](mailto:griffith@fmmetrocog.org)  
701-532-5103

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

Note: The document can be made available in alternative formats for persons with disabilities by contacting the Metro COG offices at 701.532.5100 or [metrocof@fmmetrocog.org](mailto:metrocof@fmmetrocog.org).

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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 issues of a regional nature. Metro COG represents eleven cities and two counties that comprise the Metro COG region in these efforts.

## **II PROJECT BACKGROUND AND OBJECTIVE**

At the request of BNSF, metro area representatives met with Metro COG in early 2023 to discuss the potential for a study related to the railroad lines that traverse the metro area. The jurisdictions included Cass and Clay Counties, and the Cities of Dilworth, Fargo, Moorhead and West Fargo. The City of Horace was not included in this conversation since they would no longer have an active railroad track once the connection to the grain elevator is removed.

At the meeting, BNSF indicated they would be willing to provide funding for a study because one of their objectives is to study the potential for closure of the Main Street at-grade crossing in Dilworth to allow for expansion and/or greater flexibility at their Dilworth intermodal facility. They asked the group to consider any aspect about the railroad tracks that would benefit from a planning study.

The following are topics of study that the local jurisdictions indicated could go into a metro-wide rail study.

- **City of Dilworth**

As discussed, a study of the closure of the at-grade crossing at Main Street S in Dilworth should be accompanied by identifying a grade-separated crossing to serve the area south of the tracks. Previous studies have identified this on the alignment of 14<sup>th</sup> Street, but the feasibility or desirability of a grade-separated crossing at this location has not been studied beyond the early conceptual planning level.

- **City of Moorhead**

The City of Moorhead would prefer not to study the at-grade crossing at 14<sup>th</sup> Street, as suggested by BNSF, until the grade separations at 11<sup>th</sup> Street are completed. At that time, more relevant data will be available about traffic volumes and route choices through downtown Moorhead. Generally

speaking, Moorhead does not support closure of additional at-grade crossings due to the number of crossings that were already closed as part of the rail quiet zone improvements.

In Moorhead's growth area, the BNSF Moorhead subdivision rail line parallels the future alignment of 20<sup>th</sup> Street S south of where it currently terminates at 45<sup>th</sup> Avenue S. As Moorhead's growth continues to the south, 20<sup>th</sup> Street S will be extended and existing railroad crossings at 50<sup>th</sup> Avenue S (Clay Co Rd 75) and 60<sup>th</sup> Avenue S (CSAH 12) will need to be improved. The City of Moorhead anticipates the need to begin the process of identifying the future alignment of 20<sup>th</sup> Street S and right-of-way that would be required for rail grade separations of 50<sup>th</sup> Avenue S and 60<sup>th</sup> Avenue S at this rail line.

Moorhead also expressed interest in studying the intersection of 40<sup>th</sup> Avenue S (County Road 76) with the OTV rail line. There was also interest in an underpass at 34<sup>th</sup> Street and Hwy 10 that would connect Moorhead and Dilworth commercial areas.

- **Clay County**

Clay County's interests lie with rail lines along Hwy 52, where rail crossings complicate intersections, and with the growth areas of Moorhead and Dilworth, where roads that are now the county's responsibility may be the subject of a rail study.

- **City of Fargo**

The City of Fargo's primary concern is the railroad grade crossings of 10<sup>th</sup> Street N and North University Drive. The railroad bridges over these roadways, which are designated as US 81, only allow for narrow underpasses with extremely narrow and deteriorating pedestrian facilities. Conditions under the bridges are not well-lit and lane widths are narrow. BNSF owns the bridges over these roadways, and the City is interested in studying what it would take to improve pedestrian, bicycle and vehicular travel at these locations.

Other areas of concern include a future shared-use path grade separation on 19<sup>th</sup> Avenue N, just west of Dakota Drive, on the Hillsboro Subdivision; and a potential future grade separation of 7<sup>th</sup> Avenue N on the Hillsboro/Prosper Subdivision.

Fargo does not support closure of additional at-grade crossings since several were already closed to accommodate the rail quiet zones.

- **City of West Fargo**

The City of West Fargo recently received grant funds for a rail grade separation on 9<sup>th</sup> Street NE, which serves a growing industrial area and links two major east/west corridors – Main Avenue and 12<sup>th</sup> Avenue N.

The City has concerns with the size and condition of the existing railroad bridges over Center Street and 9<sup>th</sup> Street NW. These bridges have relatively low vertical clearance. The bridge over Center Street has been stuck by a vehicle, resulting in the need to further reduce the vehicle height limit to 12' 6".

One of West Fargo's future growth areas is along 26<sup>th</sup> Street NW. This roadway has the potential for an interchange with I-94 and would serve both the north growth area protected by the Red River Diversion, and the decommissioned wastewater lagoons, which are slated for eventual development. Therefore, a rail grade separation of 26<sup>th</sup> Street or 15<sup>th</sup> Street would potentially serve the city into the future.

- **Cass County**

Cass County's primary concerns revolve around past requests from BNSF that are aimed at closure of at-grade crossings on township roads. This issue has arisen along the Prosper Line, for example, northwest of the urban area. Townships have little to no funding at their disposal to address issues such as that, and rural roadway connectivity is extremely important.

- **Northwest Metro Transportation Plan**

<https://fmmetrocog.org/projects-rfps/completed-projects/nwmetro-transportation-plan>

This study addresses the northerly growth of Fargo and West Fargo primarily west of I-29. The future land use plan for the area identifies future industrial land use along the Prosper Line west of 45<sup>th</sup> Street N. Growth has begun to occur in the area along 40<sup>th</sup> Avenue N west of I-29. The intent would be for industries that use rail to locate on the sites adjacent to the tracks.

### **Metro COG's Capacity to Participate in a Study**

Metro COG determined that the agency could program a study in 2024 or 2025, depending on availability of funding. CPG funds may be used for data collection, planning, public and stakeholder engagement, and other planning-related activities, but may not be used for engineering or design. BNSF has indicated it would contribute funding for the local match portion of a metro-wide rail study.

### **III SCOPE OF WORK AND PERFORMANCE TASKS**

Outlined below is the scope of work that will guide development of the Metro Railroad Needs Study. 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.

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

### **Task 1 – Project Management**

This task involves activities required to manage the project including staff, equipment and documentation. It also includes the preparation of monthly progress reports, documenting travel and expense receipts, and preparing and submitting invoices for reimbursement. In addition, this task includes progress meetings with Metro COG. It should be assumed that progress meetings will occur at least monthly and as needed in between.

The Consultant will assign a single person to serve through the life of the contract as Consultant Project Manager ("PM"). The PM must be the person identified in the selected firm's proposal and may not be changed without prior written approval of Metro COG. The PM is responsible for overall project management necessary to ensure the satisfactory completion of the Metro Railroad Needs Study, on-time and on-budget, in accordance with the scope of services. The PM will serve as a single point of contact and will be expected to ensure the consultant team is properly managed, adequate resources are available, submittals are timely, quality control processes are utilized for maximum benefit, and invoices are paid in a timely fashion.

The PM will submit monthly invoices with documentation acceptable to Metro COG within 30 business days following the end of each month throughout the life of the contract. Invoices must include the monthly progress report, a breakout of activities by task, employee hours for those tasks, and any supportive documentation for expenses. Metro COG reviews and processes all invoices for payment that are received prior to its Policy Board (3<sup>rd</sup> Thursday of each month). Any invoice received after the Wednesday before Policy Board meetings will not be processed until the next Policy Board meeting.

**Several tasks shall be conducted simultaneously in order to complete the majority of this plan's work and expend the majority of the funding in 2024. The Consultant is encouraged to assemble multiple work teams which can work simultaneously on the study's tasks in order to complete work expeditiously.**

**The contract for this project shall be executed immediately upon approval of consultant selection by Metro COG's Policy Board.**

### **Task 2 – Public and Jurisdictional Engagement**

The Consultant will be responsible for developing a strategy for public participation which shall be in accordance with Metro COG's most current Public Participation Plan (PPP). The Consultant should propose how, in its opinion, public participation should be approached. At a minimum, this should include the following:

#### Study Review Committee Meetings

Metro COG will work with the Consultant to arrange a Study Review Committee (SRC). This committee will be tasked with overseeing and directing the planning effort. The consultant shall propose the number and frequency of such meetings as well as their composition. The Consultant will be responsible for scheduling and developing

materials, as well as developing meeting summaries to document the discussions had and decisions made at each meeting.

#### Public & Jurisdictional Engagement

Since one of the purposes of the study is to identify and analyze rail crossings, public and jurisdictional input meetings are necessary to allow residents and elected officials and their professional staff to comment. The Consultant shall propose at least one (1) public meeting in each jurisdiction to gauge the public's and jurisdiction's perceptions of the rail crossings in question. All property owners within the vicinity of the study area shall be notified of the public meeting. The Consultant should also consider other mechanisms that would facilitate public input and engagement in its approach, whether this be virtual or in-person.

The Consultant shall be responsible for developing and providing advertising materials necessary for public participation. The Consultant will be responsible for all aspects pertaining to public participation including mailing notices to the property owners located within the specific study areas.

The Consultant will provide a summary of all public engagement and is responsible for presentation materials at public 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 included in the final report or an appropriate report appendix. The Consultant will provide a contact person for which the public may provide input. The contact person shall be made available by phone, mail, and e-mail.

#### Stakeholder Meetings

The Consultant should take into consideration the need to coordinate with project stakeholders such as adjacent landowners and local jurisdictions. The Consultant should propose any such meetings that it deems are necessary for the development of the study. The Consultant should include in its proposal any such entities that, in its opinion, would have a stake or be impacted by any proposed changes to rail crossings.

### **Task 3 – Existing Conditions**

The Consultant shall be responsible for collecting and/or documenting necessary data to provide insight in the conditions and characteristics of the specific study areas as they currently exist. At a minimum, this should include, but not be limited to the following:

- Current Functional Classification
- Roadways within study areas
- Rail infrastructure within the study areas
- Roadway authority and access management
- AADT counts, movements and speeds within the study areas
- Traffic control and posted speeds
- Utilities identification, location condition and ownership

- Access management for roadways and railroads
- Structures located within study areas, both above and below ground
- Crash history
- Maintenance costs for roadways and railroads
- NDDOT/MnDOT/Metro COG and all other plans & studies relevant to this study

#### **Task 4 – Alternatives Development**

A sufficient number of alternatives should be developed to fully understand the options available to address the current operational issues present in communities related to vehicle-rail conflicts. It is possible that the alternatives may require the development of sub-alternatives. Alternatives should be developed and evaluated so as to follow future potential projects directly into the NEPA phase of project development and design.

#### **Task 5 – Cost-Benefit Analysis**

Given the potentially large investment required to implement potential alternatives, an approved planning/feasibility level cost-benefit analysis shall be initiated between the various alternatives, specifically between new grade separation alternatives and options that may utilize existing grade separations or at-grade crossings.

#### **Task 6 – Alternatives Analysis and Preliminary Environmental Review**

This task shall involve a pre-NEPA level investigation to identify potential environmental issues and community impacts of developed project alternatives. This task shall provide an evaluation of project alternatives to inform future project decisions regarding environmental documentation and permitting. In-depth efforts will include an assessment of community characteristics and impacts of proposed projects to provide insight on consistency with local plans, an assessment of economic development and/or redevelopment opportunities, effects on historic properties, and an evaluation of the proposed project's effects on the greater community. This evaluation should also note potential project impacts on emergency services, public transit, and bicycle/pedestrian connectivity.

#### **Task 7 – Implementation Plan**

The Consultant shall prepare an Implementation Plan that clearly delineates roles and responsibilities, as well as establishing a timeframe for each phase necessary to implement the findings of the study. At a minimum, this should include:

- Funding sources to be used for the construction of proposed improvements
- Timeline of when applications for funding would need to be submitted (for each funding source)
- Desired year individual projects should be implemented
- Timeline for actions needed to implement the findings of the study

### **Task 8 – Draft Report**

Upon completion of the above-mentioned tasks, the Consultant shall provide a draft report for review by the SRC. The report shall include, but not be limited to: existing conditions, intersection alternatives analysis, summary of public and stakeholder engagement, proposed/conceptual crossing layouts, cost estimates, and pertinent maps and graphics.

### **Task 9 – Final Report and Adoption**

The Consultant shall provide seven (7) hard copies and a PDF version of the final report. The final report should detail the findings of all the project tasks and should employ high quality graphical methods, where applicable, to convey information in a manner that is easily understood by decision-makers and members of the public.

At a minimum, the Consultant shall be required to present the findings of the study to Metro COG's TTC and Policy Board, as well as the Cities of Dilworth, Moorhead, Fargo, West Fargo and Horace, and to Clay and Cass Counties. The order in which these presentations are made shall be determined by consensus of the SRC, Metro COG staff and the Consultant.

## **IV Task 7 - IMPLEMENTATION SCHEDULE**

### **1) Consultant Selection**

Advertise for Consultant Proposals	approximately 6/26/2024
Due Date for Proposal Submittals (by 4:30 PM)	7/17/2024
Review Proposals/Identify Finalists	7/18/2024 and 7/19/2024
Interview Finalists	7/25/2024
Metro COG Board Approval/Consultant Notice	7/29/2024
Contract Negotiations	(week of) 7/29/2024
Finalize and Sign Contract	Immediately after Board Approval/Notice
Notice to Proceed*	Immediately after QBS Approval

**\*Notice to Proceed shall not be issued until the consultant has provided all materials required for contracting, including, but not limited to, the Proposed Sub-Consultant Request form (SFN 60232 (9-2016) and Prime Consultant Request to Sublet form (SFN 60233 (9-2019) form, if applicable, and the Qualifications Based Selection documentation has been fully compiled by Metro COG and submitted to and approved by the North Dakota Department of Transportation.**

## **V EVALUATION AND SELECTION PROCESS.**

**Selection Committee.** The Client will establish a multijurisdictional selection committee to select a Consultant. The committee will potentially consist of Metro COG staff, local jurisdictions, and state Department(s) of Transportation.

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

- 20% - Understanding of study objectives and local/regional issues
- 20% - Proposed approach, work plan, and management techniques
- 20% - Experience with similar projects
- 20% - Expertise of the technical and professional staff assigned to the project
- 15% - Current workload and ability to meet deadlines
- 5% - The Consultant or Subconsultant is documented as a Disadvantaged Business Enterprise (DBE)

The Selection Committee, at the discretion of the Client and under the guidance of NDDOT policy, will entertain formal oral presentations for the top candidates to provide additional information for the evaluation process. The oral 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 could be selected on July 29, 2024 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.

## **VI 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.

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, 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 firms, 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) 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

Exhibit C – SFN 60232: Proposed Sub-Consultant Request

## **VII Submittal Information**

Hard copies of technical and cost proposals should be shipped to ensure timely delivery to the contact as defined below:

Ben Griffith, Executive Director  
 Fargo-Moorhead Metropolitan Council of Governments  
 Case Plaza, Suite 232  
 One 2<sup>nd</sup> Street North  
 Fargo, ND 58102-4807  
[griffith@fmmetrocog.org](mailto:griffith@fmmetrocog.org)

All proposals received by 4:30 PM on Wednesday, July 17, 2024 at Metro COG's office will be given equal consideration. Minority, women-owned and disadvantaged business enterprises are encouraged to apply. Respondents must submit five (5) print copies of the proposal and one (1) PDF copy of the proposal. The full length of each proposal should not exceed thirty (30) pages; including any supporting material, charts, or tables.

The consultant may ask for clarifications of the content within the RFP by contacting the Metro COG project manager identified above. The project manager will attempt to answer reasonable questions regarding the project purpose and intent providing that they are submitted in a timely manner. If you wish to meet with Metro COG regarding the RFP, please work with the project manager to schedule a time. Metro COG will not discuss specific approaches or desired outcomes of the study, rather will explain the background, purpose, and intent of the project. The project manager will not share the composition of the selection committee or knowledge of any other firms which have inquired about the project.

## **VIII 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. The sealed cost proposal is required to include the following documentation:
  - a. **Documentation from the ND Secretary of State detailing the prime consultant is in good standing and is licensed to do business in the State of North Dakota**
  - b. **Documentation that the prime consultant is registered with the ND Board of Registration**
  - c. **Documentation showing registration with the federal System for Award Management (SAM.gov) that the prime consultant has not been suspended, debarred, voluntarily excluded, or deterred ineligible**
- 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 should be attached with the sealed cost proposal. The submitted Indirect Rate MUST match the Indirect Rate on all invoicing.**
- 3) **Debarment of Suspension Certification and Certification of Restriction on Lobbying.** See Exhibit B, Federal Clauses regarding Debarment of Suspension and Restriction on Lobbying.
- 4) **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.

- 5) **Disadvantaged Business Enterprise.** Pursuant to Department of Transportation policy and 49 CFR Part 23, Metro COG supports the participation of DBE/MBE businesses in the performance of contracts financed with federal funds under this RFP. It is encouraged that Consultants make an effort to involve DBE/MBE businesses in this project. If the Consultant is a DBE/MBE, a statement indicating that the business is certified DBE/MBE in North Dakota or Minnesota shall be included within the proposal. If the Consultant intends to utilize a DBE/MBE 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/MBE shall be shown within the proposal.
- 6) **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.
- 7) **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](http://www.fmmetrocog.org) or the NDDOT website at [www.dot.nd.gov](http://www.dot.nd.gov).

## **IX 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 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.
- 7) The Consultant agrees to not start any work on the project until the Qualifications Based Selection requirements have been satisfied and approved by the NDDOT, and Metro COG has provided the consultant with a notice to proceed.**

## **X 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.

## **XI 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.

## **XII 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 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 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.

### **XIII 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.

### **XIV 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.

### **XV 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.

## **XVI INSURANCE**

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

## **XVII 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 \$500,000 per person and \$2,000,000 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.
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.

### 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
				<b>Subtotal</b>	=	0.00	0.00
2.	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>					0.00	0.00
3.	<b>Subconsultant Costs</b>					0.00	0.00
4.	<b>Materials and Supplies Costs</b>					0.00	0.00
5.	<b>Travel Costs</b>					0.00	0.00
6.	<b>Fixed Fee</b>					0.00	0.00
7.	<b>Miscellaneous Costs</b>					0.00	0.00
<b>Total Cost</b>					=	0.00	0.00

## **Exhibit B - 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 the nondiscrimination clause.
  - (2) The contract will, in all solicitations or advertisements for employees placed by or no behalf of the contractor, state that all qualified applicants will receive considerations 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 affected and the basis for settlement.

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

- (F) Right 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 of 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.

**Exhibit C – SFN 60232: Proposed Sub-Consultant Request**

# PROPOSED SUB-CONSULTANT REQUEST

North Dakota Department of Transportation, Environmental & Transportation Services  
SFN 60232 (9-2016)

Sub-Consultant firms that have been contacted and agree to be listed on a Prime Consultants Project Proposal for work with NDDOT must submit original form and one copy to be attached to the Prime Consultants Proposal. This form is used for informational purposes only.

NDDOT Project Number		NDDOT Project Control Number		Prime Consultant Company Name	
Company Name		Owner			
Address		City		State	ZIP Code
Company Telephone Number	Fax Number		Email Address		

## Type of Work to be Subcontracted

<input type="checkbox"/> Appraisals	<input type="checkbox"/> Environmental	<input type="checkbox"/> Planning	<input type="checkbox"/> Structural Design
<input type="checkbox"/> Architecture	<input type="checkbox"/> Geotechnical	<input type="checkbox"/> Public Involvement	<input type="checkbox"/> Survey
<input type="checkbox"/> Bridge Inspection	<input type="checkbox"/> Materials Testing	<input type="checkbox"/> Roadway Design	<input type="checkbox"/> Traffic Operations
<input type="checkbox"/> Construction Engineering	<input type="checkbox"/> Partnering Facilitation	<input type="checkbox"/> Soil Contamination	<input type="checkbox"/> Wetlands Delineation
<input type="checkbox"/> Cultural Resources	<input type="checkbox"/> Photogrammetry	<input type="checkbox"/> Steel Fabrication	<input type="checkbox"/> Other

The undersigned declares that all statements listed above are true.

Firm Name
Print Name
Title

Signature	Date
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Is Firm Currently NDDOT Certified as a DBE?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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