

FARGO-MOORHEAD  
METROPOLITAN COUNCIL OF GOVERNMENTS

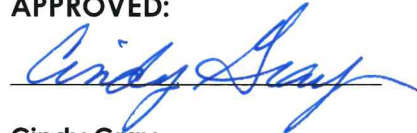
REQUEST FOR PROPOSALS (RFP)

PROJECT NO. 2021-214

***2021-2022 Interstate Operations Analysis  
and  
Plan for Future Improvements***

*February, 2021*

APPROVED:



Cindy Gray  
Metro COG, Executive Director

## REQUEST FOR PROPOSALS (RFP)

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

### **2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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

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 proposals received by **4:30 pm (Central Time) on March 24, 2021** at Metro COG's office will be given equal consideration. Proposals received after 4:30 pm (Central Time) on March 24, 2021 will not be considered. Respondents must submit twelve (12) hard copies and 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-five (25) double sided pages for a total of fifty (50) pages; including any supporting material, charts, or tables.

The digital version (PDF) of 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. Proposal documents and sealed cost proposals shall be shipped to ensure timely delivery to the contact identified below:

Cindy Gray, Executive Director  
Fargo-Moorhead Metropolitan Council of Governments  
One 2nd Street North, Suite 232  
Fargo, ND 58102  
[gray@fmmetrocog.org](mailto:gray@fmmetrocog.org)  
701-532-5103

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 Cindy Gray (phone number and email shown above).**

Note: This document can be made available in alternative formats for persons with disabilities by contacting Savanna Leach, Office Manager at 701.532.5100 or [leach@fmmetrocog.org](mailto:leach@fmmetrocog.org).

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

**TABLE OF CONTENTS**

I. Agency Overview ..... 4

II. Background Information ..... 4

III. Scope of Work and Performance Tasks ..... 7

IV. Implementation Schedule ..... 14

V. Evaluation and Selection Process ..... 15

VI. Proposal Content ..... 16

VII. Submittal Information ..... 17

VIII. General RFP Requirement ..... 17

IX. Contractual Information ..... 18

X. Payments ..... 19

XI. Federal and State Funds ..... 19

XII. Title VI Assurances ..... 19

XIII. Termination Provisions ..... 21

XIV. Limitation on Consultant ..... 22

XV. Conflict of Interest ..... 22

XVI. Insurance ..... 22

XVII. Risk Management ..... 22

Exhibit A – Cost Proposal Form

Exhibit B – Federal Clauses

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

*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 last interstate operations analysis for the FM metropolitan area was completed in 2010-2011. Since that study began in 2010, the metropolitan statistical area (MSA) population has grown nearly 18 percent, from approximately 209,000 to over 246,000. The 2020 MSA population exceeded the 2020 projections that were in use during the last study by approximately 5,000. The 2035 population projections for the MSA, which were used as the basis for the 2011 Interstate Operations Study, were approximately 281,000, whereas the 2035 population projection developed in the Fargo-Moorhead 2016 Demographic Forecast ranged from 309,000 to 317,000. The 2045 projection is 330,000 to 342,000. These higher growth levels, combined with geographical expansion of urbanization are likely to yield significantly different recommendations than those of the 2011 study.

Both MnDOT and NDDOT anticipate reconstruction projects within the next decade, and wish to study the needs of the interstate in light of metropolitan area growth projections and freight usage. Both MnDOT and NDDOT will have significant roles on the Study Review Committee as project partners. Local project partners involved in the project will include Cass and Clay Counties and the Cities of Fargo, Moorhead and West Fargo. Each city has the potential for future interchanges within their jurisdiction, as identified in Metro Grow.

Many of the recommendations of the 2011 study have been implemented or are in the process of being implemented. This study is intended to inform anticipated interstate highway reconstruction projects by looking at the interstate system as a whole, recognizing the collective impact that each interchange has on adjacent interchanges and on through traffic. The study will need to analyze the system based on future (2045) ADT and peak hour volumes, pinch points, weaving issues, potential collector-distributor

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

opportunities, and potential need for, feasibility of, and system impacts of future interchanges. Metro COG is interested in determining how, where and when interstate highway congestion typically manifests and its average duration. One significant area of analysis is the I-94 bridge over the Red River. This bridge will need rehabilitation, and both NDDOT and MnDOT want a determination as to the future capacity needs of the bridge prior to investing significant funds in rehabilitation.

The boundaries of the study will include I-29 from 100<sup>th</sup> Avenue S to Argusville (Cass County 4), and I-94 from Cass County 15 (165<sup>th</sup> Ave SE interchange, also known as Exit 340 – Kindred) to MN 336/Clay County Highway 11. Future interchanges should be considered at the section-line arterial roadway alignments of 64<sup>th</sup> and 76<sup>th</sup> Avenues S in Fargo and 55<sup>th</sup> Street in Moorhead. Previous efforts such as the 76<sup>th</sup> Avenue South Corridor Study, the Moorhead GAP/AUAR and the MTP can provide insight into the consideration for new interchanges in recent years.

The need for and potential benefit of a ring route around the perimeter of the metro area will also be studied as part of the interstate operations analysis, to determine the extent to which such a facility has the potential to serve as a reliever to regional interstate routes. Ring route alternatives in Minnesota will include MN 336 and Clay County Highway 11. A ring route alignment in ND does not have a defined route, but past studies such as the Cass County Comprehensive and Transportation Plan (2018) and the alignment of the FM Diversion inform potential route alternatives. Metro Grow, the 2045 MTP (2019), called for additional study of a ring route in North Dakota and a similar facility on the Minnesota side, to provide an efficient alternative route around the metropolitan area for regional traffic as well as creating a more efficient route to make intra-regional trips than the grid arterial network in the FM region. The emphasis of the ring route analysis will be to determine the extent to which a ring route relieves traffic on portions of I-94 or I-29 and if that relief is adequate to prevent or delay the need for capacity expansions through 2045, and to determine if the impacts of a ring route are advantageous or disadvantageous compared to interstate improvements.

This study also needs to identify and document the likely environmental impacts of future interstate expansion projects, such as impacts to right-of-way, adjacent development, traffic noise, low income and minority neighborhoods (i.e. environmental justice), wetlands and stormwater, and winter visibility (snow control and ice management).

The interstate system is a barrier to active transportation in some portions of the metropolitan area. This study will need to identify locations where grade separated crossings are needed to facilitate bicycle and pedestrian modes of travel.

I-94 and I-29 are essential to the efficient movement of freight into, out of, and within the metropolitan area. The needs of truck traffic and the future changes in the volume of truck traffic within and through the metro area will be an important component of the study. The Regional Freight Plan (2017) may provide valuable information and insight.

In the autumn of 2022, Metro COG expects to transition from an MPO into a

## **2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

Transportation Management Area (TMA). Congestion Management Planning will become a more deliberate planning element of all plans and studies, including this interstate operations analysis and plan for future improvements.

Recommendations of the 2011 Interstate Operations Study included Transportation Demand Management (TDM) strategies that reduce peak demand on the Interstate System by five percent. These recommendations have not been accomplished and there is little appetite in the community to form a transportation management organization (TMO) for the metropolitan area in the foreseeable future.

Intelligent Transportation Systems (ITS)/Incident Management strategies that provide improved travel information and coordinated response to emergency situations were also recommended. Features that have been implemented to date include:

- Digital message signs at key locations (12 full and medium sized DMS)
- Completion of the Fargo-Moorhead Alternate Route & Traffic Incident Management Guidebook Project in December of 2017
- I-94 Alternate Route Signing (Minnesota)
- MAST system on the I-94 bridge deck

Since the completion of the 2011 Interstate Operations Analysis, the following improvements have been made:

- Reconstruction of the I-94 and US 75 interchange
- Auxiliary lane additions on I-94 between I-29 and 45<sup>th</sup> Street
- Reconfiguration of the 25<sup>th</sup> Street I-94 interchange to add the EB slip ramp, reconfigure the loop ramp in the SW quadrant to be accessed by SB 25<sup>th</sup> Street only, eliminating NB left turn movements at the south ramp
- 32<sup>nd</sup> Ave S and I-29 interchange improvements, including reallocation of existing lanes on SB I-29 from I-94 to 32<sup>nd</sup> Ave S (improvements included a loop in the SW quadrant rather than the recommended NW loop ramp)
- Reconstruction of the Sheyenne Street Interchange

Since the completion of the 2011 Interstate Operations Analysis, the following improvements are still underway:

- Two-lane I-29/I-94 tri-level ramp (I-29 SB to I-94 EB, with the addition of an auxiliary lane on EB I-94 from the tri-level to 25<sup>th</sup> Street programmed for completion. As part of this project, weather and ice monitoring capabilities on the SB I-29 to EB I-94 ramp have also been completed.

Median barriers (either high-tension cable or concrete) have been installed, or are programmed for installation throughout the metro area. These were not a recommendation of the 2011 study.

Ramp metering was recommended, but has not been implemented.

## **2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

Starting in 2021, I-29 bridges and connecting portions of highway south of Fargo will be constructed in a manner that will accommodate the alignment of the FM Diversion. The design of this new segment of highway and bridges will include forms of technology that will be compatible with data collection and connected vehicles.

The 2018 Alternate Route & Traffic Incident Guidebook recommended the development of a regional traffic operations center/transportation management center (TOC/TMC), or the coordination of operations regionally between individual traffic and transportation management centers. This was also recommended in two prior ITS studies and incident management strategies for the region. No action has been taken to move the metro area in this direction, with the exception of sharing information and video feeds between some jurisdictions and entities, including MATBUS, Red River Dispatch Center, ND Highway Patrol, and MN State Patrol. NDDOT is currently seeking funding for a statewide TMC to monitor operations and manage emergency and/or maintenance responses to conditions.

Other studies that have recently examined the potential for changes to existing interchanges or additional interchanges include:

- 13<sup>th</sup> Avenue Corridor Study in West Fargo (2019)
- 76<sup>th</sup> Avenue Corridor Study (2020)
- Northwest Metro Transportation Plan (2020)
- 12<sup>th</sup> Ave S Study – Moorhead (2006)
- Moorhead GAP/AUAR – (2018)

All of these studies, as well as Metro Grow: 2045 MTP, can be found on Metro COG's website. The 2011 Interstate Operations Study will be placed on Metro COG's website after release of the RFP.

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

Below are tasks the Consultant is expected to complete 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 be responsible for all documentation and equipment needs. The Consultant will identify a project manager from their team to act as the direct point of contact for Metro COG's project manager.

The Consultant should expect monthly (or, at times, bi-weekly) progress meetings with Metro COG to discuss the status of the project, seek any guidance, clarification, or information, and discuss any issues or concerns regarding the project. The Consultant should expect additional meetings with Metro COG on an as-needed basis. It's anticipated that these meetings will usually be virtual web-based meetings.

## **2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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 and subconsultant(s), if applicable, will be required to outline the following:

- Performed work during the reporting period,
- Upcoming tasks,
- Upcoming milestones,
- Status of scope and schedule, and
- Any issues that need to be brought to Metro COG's attention.

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

### **Task 2 – Data Collection – Documentation of Existing Conditions**

The following data shall be collected and documented as part of the study. These data components will be used to establish existing conditions, and will be critical to the identification of issues and needs.

Traffic Count Data – The Consultant shall propose a strategy for collecting AM and PM peak hour traffic count data at the following locations:

- Turning movement counts at I-94 and I-29 ramp intersections, including ramp counts at the rest area on eastbound I-94 in Moorhead,
- Eastbound and westbound AM and PM peak hour traffic counts at the following segments of I-94:
  - West of 165<sup>th</sup> Avenue SE (Exit 340 – Kindred)
  - 165<sup>th</sup> Ave SE (Exit 340 – Kindred interchange) to 38<sup>th</sup> St NW (Exit 342 – Raymond Interchange)
  - 38<sup>th</sup> St NW (Exit 342 – Raymond Interchange) to Main Ave (US 10) interchange
  - Main Ave (US 10) to Sheyenne Street
  - Sheyenne Street to Veterans Boulevard
  - Veterans Boulevard to 45<sup>th</sup> Street
  - 45<sup>th</sup> Street to I-29
  - I-29 to 25<sup>th</sup> Street
  - 25<sup>th</sup> Street to University Drive



**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

- University Drive to US 75 (8<sup>th</sup> Street S)
- US 75 (8<sup>th</sup> Street S) to 20<sup>th</sup> Street S
- 20<sup>th</sup> Street S to 34<sup>th</sup> Street S
- 34<sup>th</sup> Street S to MN 336/Clay County Highway 11
- East of MN 336/Clay County Highway 11
- Northbound and Southbound AM and PM peak hour traffic counts at the following segments of I-29:
  - South of 100<sup>th</sup> Avenue S
  - 100<sup>th</sup> Avenue S to 52<sup>nd</sup> Avenue S
  - 52<sup>nd</sup> Avenue S to 32<sup>nd</sup> Avenue S
  - 32<sup>nd</sup> Avenue S to I-94
  - I-94 to 13<sup>th</sup> Avenue S
  - 13<sup>th</sup> Avenue S to Main Avenue
  - Main Avenue to 12<sup>th</sup> Avenue N
  - 12<sup>th</sup> Avenue N to 19<sup>th</sup> Avenue N
  - 19<sup>th</sup> Avenue N to Cass County Highway 20
  - Cass County Highway 20 to Cass County Highway 22
  - Cass County Highway 22 to Cass County Highway 4
  - North of Cass County Highway 4

Metro COG and NDDOT will be conducting ADT traffic counts in the spring through fall of 2021. ADT count data from the traffic count project may be used in this study. Metro COG will work with NDDOT to determine when data will be available. Metro COG's data will be available roughly two weeks after each count is taken (between May 15<sup>th</sup> 2021 and October 31<sup>st</sup> 2021, depending on the location).

Automatic traffic recording equipment exists along I-94 at the Red River Bridge and on I-29 north of 12<sup>th</sup> Avenue N. Data can be provided by NDDOT, and the most recent report can be found here:

[https://www.dot.nd.gov/business/docs/trafficreports/e\\_report\\_July2020.pdf](https://www.dot.nd.gov/business/docs/trafficreports/e_report_July2020.pdf).

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

Counts must be taken on weekdays, generally Monday through Thursday. Consultants shall work with Metro COG staff to identify any events during which counts should be avoided.

Peak Travel Times – Traffic count data shall be analyzed to identify the peak travel times during the AM and PM Peak hours and any other time of day when volumes peak for various roadway segments or interchanges.

Origin and Destination – Metro COG has access to StreetLight data. Using this data, the consultant shall determine the origin and destination of traffic using I-94 and I-29.

Safety Data – Crash data shall be gathered for the past five years and a crash analysis will be required for all interstate segments, ramps and ramp intersections. Data such as numbers of crashes, crash rates, and types of crashes shall be analyzed to identify trends and issues.

Weaving Lengths – Length of merge and weave portions of the highways between interchanges, particularly in areas where crash data warrants this review or peak hour congestion occurs frequently.

Right of Way – Interstate right of way shall be documented for the entire interstate highway system in the metro area.

Pavement and Capacity – Existing pavement width and lane configurations shall be documented for ramps and ramp intersections and for each segment of the two corridors, including shoulder width.

Traffic Control Measures – at all ramp intersections.

Committed Projects – Projects which are already programmed shall be documented.

Active Transportation Components – The locations of pedestrian grade separations and other pedestrian connections across the interstate highways shall be documented.

Environmental Justice Areas – Low income and minority areas, using Metro COG's Title VI criteria for identification of these areas, shall be identified and documented as they relate to the interstate corridors as well as any ring route alternatives. This analysis should also consider the equity considerations identified in the MnDOT District 4 Equity Study.

Pavement and Bridge Condition Data – for the purpose of identifying priority maintenance or reconstruction projects.

Land Use along Interstate Highway Corridors (existing and future) – for the purpose of identifying the potential for noise impacts due to future capacity expansions.

Freight Volumes and Peak Travel Times – the percentage of traffic volume that consists of freight vehicles, identification of times of day when freight movements are more

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

prevalent, and origin/destination patterns of freight trips. MnDOT District 4's Freight Plan will be developed during the same time as this study. New warehouse facilities, such as Amazon's facility, which is currently under construction, need to be considered.

Rest Area Usage – average daily usage of the rest area / travel information facility on eastbound I-94 in Moorhead, and percentage of trucks. This task should also document and consider the distance to/from other facilities that truck drivers can use for rest purposes.

Snow Control and Ice Control – document issues and measures taken by MnDOT and NDDOT for roadways and bridges.

Lighting – Document existing lighting conditions in preparation for identifying future areas of need.

Travel Time and Speed – free flow vs. peak hour travel times and speeds through the metro area on I-94 and I-29

Other features that impact interstate improvements – such as pipelines, railroad tracks, power lines, rivers, legal drains and other water features, FM Diversion, Sheyenne Diversion, etc.

**Task 3 – Public Engagement**

The Consultant will propose an approach to stakeholder and public engagement which shall ultimately be placed in a public engagement plan, to be reviewed and approved by the Study Review Committee (SRC). Most engagement shall be virtual in nature, with the potential for in-person engagement in 2022. Currently Metro COG has a virtual only public engagement policy until such time as public health officials deem public gatherings acceptable. This may occur during the duration of the planning effort. The consultant should propose how it would handle both virtual and in-person meetings, and virtual opportunities should be available even after in-person meetings are deemed acceptable.

SRC membership should be recommended, along with the role of the SRC and the number of meetings.

Focus groups should be recommended by the consultant team, particularly for users such as the ND Highway Patrol and MN State Patrol, emergency responders, state highway maintenance crews, and freight users. In addition, focus groups should include local officials who make decisions affecting interstate highway usage, such as local planning department officials, Greater Fargo Moorhead Economic Development Corporation (GFMEDC), and Metro Area Transit (MATBUS) (relative to possible future closed-door transit service on the interstate highways).

Input from the general public is also important to this project, and consultants need to present an approach to gathering input from the public.

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

Please note that all public notices, mailings, and social media boosts, etc. shall be paid for out of the project budget. Metro COG's website will be used to host the project website, and Metro COG staff will work with the consultant to keep the website up-to-date with content provided by the consultant team.

Please anticipate periodic updates (i.e. quarterly or at key project milestones) to Metro COG's Transportation Technical Committee and Policy Board.

**Task 4 – Future Traffic Projections**

The consultant shall work with NDSU's Advanced Traffic Analysis Center (ATAC) to determine the 2045 ADT projections. The most recent socioeconomic (SE) data used in the travel demand model was developed recently for the Veterans Boulevard Corridor Extension Study. If local jurisdictions identify changes to the projected SE data used in the model, Metro COG staff will work with ATAC and the local jurisdictions to update relevant traffic analysis zones.

Metro COG recently worked with ATAC to develop a dynamic traffic assignment model. This model is a tool that could be used to test certain scenarios on I-94 and I-29.

**Task 5 – Traffic Operations Analysis**

Based on projected traffic volumes, a traffic operations analysis shall be completed that uses a method of traffic simulation that will serve as a tool for evaluating future interstate operations and future improvement alternatives. The initial analysis should focus on future issues and identify the relative level of severity of those issues from a level of service (LOS) perspective. Beyond LOS, it will be important to identify and analyze areas where traffic operations are causing traffic to slow down and become congested - areas where traffic volumes would not otherwise indicate reduced speeds or a poor LOS. From that point, working with the SRC, the consultant should propose an iterative approach that uses alternatives to address those issues.

The consultant team shall approach this task iteratively with input from the SRC. After identifying issues with the functionality of the existing plus committed interstate system, the consultants' proposals should describe how they would work with the SRC to

- a. identify future scenarios for evaluation (i.e. future interchanges, collector-distributor alternatives, lane configurations, etc.),
- b. identify TSMO and ITS strategies that improve safety and help manage interstate travel, and determine if any of those strategies have the potential to delay or eliminate the need for capacity expansion,
- c. identify infrastructure components that will facilitate the transition to connected and autonomous vehicles (CAV),
- d. analyze agreed upon scenarios,

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

- e. report and demonstrate the results of the analyses to the SRC, and
- f. refine and repeat the above in response to concerns and questions posed by the SRC.

Phases and priorities for improvements should be part of the recommended approach. The potential for impacts to the adjacent land uses, the environment, and environmental justice will be reviewed and analyzed at a planning level and reported on in the analysis of alternatives.

**Task 6 – Ring Route Analysis**

Consultants should present an approach to evaluating ring routes in their proposal. Conceptual ring route alignment alternatives should be developed and evaluated based on their potential to relieve future congestion on I-29 and I-94, if applicable. This should include the use of the metro area travel demand model. In addition, ring routes should be evaluated based on their ability to serve as alternate routes during incidents or other times when normal interstate capacity is unavailable. The analysis should help answer questions regarding the pros and cons of having a ring route, and compare the size of the FM area with other metropolitan areas that have planned for and constructed highways that serve as alternatives to the interstate highway system's original route. A vision for the roadway, such as level of access, capacity, and features should be prepared as part of the analysis. Recommendations should include roadway ownership and responsibilities for both day-to-day maintenance and repair/rehab/reconstruction. A preliminary ADT level analysis is desired, followed by a system-wide analysis that will identify the extent to which the ring route will affect future interstate highway traffic volumes.

**Task 7 – Development of Planning Level Cost Estimates**

Planning level cost estimates are expected for up to three system-wide futures scenarios for interstate improvements and up to two ring route alternatives on both the MN and ND side. Cost estimates should account for design, predesign, right of way, contract administration, construction (including Risk) along with a percentage for work orders/change orders, and provide consideration for inflation to the year of construction.

**Task 8 – Development of Draft and Final Report**

Proposals should discuss the consultant team's approach to the development of the draft and final report, and the presentation of the information in a format that can be understood and digested by the public and policy-makers. Detailed data collection and traffic analyses should be presented in appendices.

**Task 9 – Adoption Process**

The consultant is expected to take the project through the adoption process with assistance of Metro COG staff, NDDOT and MnDOT engineers, and the engineering and planning staff of the respective local jurisdictions. This will include:

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

- a. Presentation to NDDOT Management Team
- b. Presentation to MnDOT District Leadership
- c. Presentations to Planning Commissions and City/County Commissions/Councils, and
- d. Presentations to Metro COG's Transportation Technical Committee and Policy Board.

Presentations to NDDOT Management Team and MnDOT District Leadership should take place toward the end of alternative analyses, and while the draft report is still in development to allow time and scope for carrying out additional analyses if requested by the DOTs. Metro COG's TTC and Policy Board, as well as the local Planning Commissions only meet one time per month on a pre-determined schedule. Elected bodies generally meet more frequently, such as bi-weekly.

**IV IMPLEMENTATION SCHEDULE****1) Consultant Selection**

Advertise for Consultant Proposals	2/19/2021
Due Date for Proposal Submittals (by 4:30pm)	3/24/2021
Review Proposals/Identify Finalists	3/25/2021 – 3/31/2021
Interview Finalists	between 4/1/2021 and 4/6/2021
Metro COG Board Approval/Consultant Notice	4/15/2021
Contract Negotiations	4/7/2021 – 4/20/2021
Signed Contract	Immediately after contract negotiations
Notice to Proceed	One day following a signed contract

**2) Project Development**

Begin project	5/1/2021
Begin Alternatives Analysis	11/1/2021
Complete Preliminary Ring Route Analysis	12/31/2021
Draft Study/Plan	8/1/2022
Final Draft Study/Plan	9/15/2022
Approval Process	October, 2022
Metro COG TTC and Policy Board Approval	November, 2022
Receipt of final adopted Study/Plan	December 15, 2022
Final project invoice	December, 2022

Variations on this project development schedule may be proposed by consultant teams, provided the approval process remains in the fall of 2022, with adoption

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

and submittal of the final report by year-end.

**V EVALUATION AND SELECTION PROCESS**

**Selection Committee.** The Client will establish a selection committee to select a Consultant. The committee will likely consist of Metro COG staff as well as staff from NDDOT, MnDOT and local jurisdictions.

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

- 20% - Understanding of project objectives
- 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
- 20% - Current workload and ability to meet deadlines

The Selection Committee, at the discretion of the Client and under the guidance of NDDOT policy, will entertain virtual 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 **April 15<sup>th</sup>, 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.

**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

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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, 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, 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) Required Disadvantaged Business Enterprise (DBE) and/or Minority Business Enterprise (MBE) Firms participation documentation, if applicable.
  - i) Ability of firm to meet required time schedules based on current and known future workload of the staff assigned to the project.
  - j) The nature of the counting equipment proposed and details of the reliability and proven capability of the equipment to gather accurate, reliable data.
- 4) Signature.** Proposals shall be signed in ink 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:



**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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

Exhibit B – Federal Clauses

**VII Submittal Information**

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

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

Proposals shall be received by **4:30 pm (Central Time) on March 24, 2021** at the Metro COG office. Minority, women-owned and disadvantaged business enterprises are encouraged to participate. Respondents must submit twelve (12) hard copies and one Adobe Acrobat (.pdf) copy of the proposal. The full length of each proposal should not exceed twenty-five (25) double sided pages for a total of fifty (50) pages; including any supporting material, charts or tables.

**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.
  
- 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

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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.**

- 3) Debarment of Suspension Certification and Certification of Restriction on Lobbying.** See Exhibit B, Federal Clauses.
- 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. Consultants shall 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. Respondents should substantiate (within proposal) efforts made to include DBE/MBE businesses.
- 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.

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

- 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.

**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")

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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.

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

- 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

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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 \$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

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

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.

**2021-2022 Interstate Operations Analysis and Plan for Future Improvements****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



**2021-2022 Interstate Operations Analysis and Plan for Future Improvements**

**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.