

Northeast Ohio Areawide Coordinating Agency (NOACA)

Request for Proposals

IR-71 Transportation Planning Study

Vendor Questions and Responses as of June 18, 2024

- 1. Please provide a template Terms and Conditions that NOACA intends to use for this Agreement.**

NOACA has not yet drafted the terms and conditions for this agreement. In lieu, we are providing the base terms and conditions that are typically included in NOACA's vendor agreements, posted as an attachment to this Q/A. Please note that these base terms and conditions are subject to change depending on the type of project that is covered by the agreement or the project proposal submitted by the awarded vendor; as a result of negotiations that occur during the contract drafting process; or due to changes in applicable laws and regulations.

- 2. The wording is a little unclear under Data Sources (page 3): NOACA has the model so will NOACA be providing the forecasting model results? Or is NOACA asking the consultant to take on the task of running their model for the project?**

NOACA will run all the alternative scenarios and outputs will be provided to the consultant.

- 3. Is there a page limit for our proposal response?**

No page limit is imposed for the proposals submitted in response to the RFP, but vendors are encouraged to draft clear and concise proposals in support of an efficient review process.

- 4. Are graphics allowed in the proposal response?**

Yes, graphics are allowed in the proposal response.

- 5. The scope of work for items such as Geotechnical, Environmental, etc., are not defined at this point due to the nature of this project still in the Study phase. These technical items will likely be better defined as the Study progresses. For items without detailed scopes, can NOACA provide an estimated budgeted amount for Consultants to use in our Pricing Form?**

NOACA is currently revisiting the pricing procedures for this procurement and will be posting additional instructions for potential vendors as soon as possible.

- 6. Pricing for the 2nd and 3rd set of Deliverables will be contingent upon the number of conceptual improvements that NOACA chooses to move forward. For Pricing purposes, can NOACA provide an estimated number of conceptual improvements intended to be moved forward in the 2nd and 3rd set of Deliverables?**

NOACA is currently revisiting the pricing procedures for this procurement and will be posting additional instructions for potential vendors as soon as possible.

**SAMPLE CONTRACT BETWEEN
NORTHEAST OHIO AREAWIDE COORDINATING AGENCY AND**

THIS CONTRACT is entered into this _____ day of _____, 2024, by and between _____ (“Consultant”) and the Northeast Ohio Areawide Coordinating Agency (“NOACA”),

WITNESSETH THAT:

WHEREAS, NOACA is the Metropolitan Planning Organization (MPO) for the counties of Cuyahoga, Geauga, Lake, Lorain, Medina, and the City of Cleveland and the areawide water quality management agency for the same region; and

WHEREAS, [insert project specific clause]

WHEREAS, NOACA's procurement policy requires that these consulting services (“Services”) be obtained through a competitive process following all applicable federal, state, and local policies and regulations, which was accomplished through NOACA issuing a [type of procurement]; and

WHEREAS, NOACA evaluated and determined that the proposal of _____ met the criteria contained in the solicitation and provides fair value for the services, cost, and all other factors considered.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Contract with Consultant** NOACA hereby agrees to engage Consultant and Consultant agrees to perform services set forth in Exhibit A - NOACA’s Scope of Services and, to the extent it is consistent with Exhibit A, Exhibit B - Consultant’s Project Approach; and Exhibit C - Consultant’s Table of Deliverables, in conformity with the terms of this Contract and all applicable federal, state and local laws and regulations applicable hereto. Said Exhibits shall become part of this Contract and shall not be altered without prior express written consent of NOACA and Consultant.
2. **Scope of Services**
 - a) Consultant shall perform in accordance with the terms of this Contract the services set forth in the attached Exhibits A, B and C upon receiving proper authorization as defined in this Contract.
 - b) Consultant, at the request of NOACA and at a time mutually agreed to, shall be available to present to NOACA staff, NOACA’s Governing Board, or any of its committees, and at such other public meetings which NOACA may require, all or portions of the services, progress reports, recommendations and any other data produced hereunder.

3. **Data To Be Furnished**

- a) NOACA shall provide Consultant with access to all information, configuration, applications, processes, procedures and other materials as may be reasonably necessary to perform the Services.
- b) Consultant agrees to provide to NOACA all information including files, data, and documentation resulting from performance of the Scope of Services.

4. **Personnel**

- a) Consultant represents that it has or will secure at its own expense all personnel required to perform the Services under this Contract. Such personnel shall not be employees of or have any contractual relationship with NOACA. Such personnel shall not be former employees of NOACA unless approval is received from NOACA prior to the assignment of any work under this Contract to such former employee.
- b) All Services required will be performed by Consultant or under its supervision and all personnel engaged in the Services shall be fully qualified to perform such Services.

5. **Term of the Contract** The term of this Contract shall commence on _____, 2024, and end on or before _____, 202_, unless extended by agreement of the parties. Failure to perform in a timely manner shall entitle NOACA to terminate this Contract after notice and opportunity to cure. Consultant shall not be considered in default of this Contract for delays in performance caused by circumstances beyond the reasonable anticipation and control of consultant.

6. **Compensation** Under the authority of NOACA Governing Board Resolution 202_-0__ (Exhibit E), NOACA agrees to pay Consultant for all services performed in accordance with this Contract in an amount no greater than \$_____, as outlined in Exhibit D – Price. Consultant is advised that funding for this Contract is contingent on continued federal/State funding to NOACA. No changes to the amount or allocation of fees set forth in Exhibit D shall be made without NOACA's prior approval.

7. **Method of Payment**

- a) All invoices shall be taken from the books of account kept by Consultant and Consultant shall have available copies of payroll distribution, receipted bills or other documents reasonably required by NOACA. Invoices should be submitted using the form of invoice that is acceptable to NOACA. This will be provided to the Consultant by NOACA in an editable file format.

- b) Consultant shall submit an invoice upon completion of each task as defined in Exhibit C – Deliverables, and NOACA shall use its best efforts to pay each invoice within thirty (30) days of receipt and approval of each invoice. NOACA shall give prompt written notice to Consultant of any disputed amount and shall pay the remaining amount.
- c) Consultant shall not bill any time or work to NOACA that has been billed to any third party or other of Consultant's clients, during the period of performance of this Contract.

8. **Establishment and Maintenance of Accounts**

- a) Consultant shall establish and maintain a separate set of accounts, or within the framework of an established accounting system, accounts for the Contract in a manner consistent with applicable Federal regulations. All checks, payrolls, invoices, contracts, vouchers, or other accounting documents pertaining in whole or in part to the Contract, shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of the final payment, and other pending matters are closed under this contract.
- b) All costs charged to the Contract, including any approved services contributed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, and/or vouchers evidencing in detail the nature and propriety of the charges.

9. **Termination of Contract for Cause**

- a) If through any cause, except for cause beyond the reasonable anticipation and control of Consultant, Consultant fails to produce at the time set forth in the Scope of Services and Schedule, time being of the essence, or fails to fulfill in timely and proper manner its obligations under this Contract or if Consultant violates any of the covenants, agreements or stipulations of this Contract, NOACA shall have the right to terminate this Contract by giving written notice to Consultant of such termination and specifying the effective date, which may be immediate; provided, however, Consultant shall have 14 days from receipt of the notice of termination to cure or submit a plan for cure acceptable to NOACA. In any event, all finished or unfinished documents, data, database files, studies, surveys, drawings, maps, models, photographs and reports prepared by Consultant under this Contract shall become NOACA's property and Consultant shall be entitled to receive such compensation for any services performed and work completed on such documents and other materials as determined by mutual agreement of the parties. Consultant shall not be responsible for the accuracy, completeness

or workability of the documents prepared by Consultant if used, changed or completed by the NOACA or by another party.

- b) This Contract may be terminated by Consultant upon written notice in the event of substantial failure by NOACA to perform in accordance with the terms of this Contract; provided, however, NOACA shall have 14 days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the Consultant.
10. **Termination for Convenience of NOACA** NOACA may terminate this Contract at any time by giving written notice to Consultant of such termination and specifying the effective date, which may be immediate. In that event, all finished or unfinished documents and other materials created pursuant to this Contract shall become NOACA's property. If the Contract is terminated by NOACA, Consultant will be paid for all services satisfactorily performed up to that time, and any costs reasonably incurred in connection with such termination. The sum so paid shall constitute a full, complete and final release by Consultant of NOACA and Consultant shall not be entitled to any further payments nor will NOACA be liable for any further payments for the Services. Notwithstanding the fact that NOACA terminates this Contract, Consultant must comply with all conditions to be eligible for reimbursement for that portion of the Services which are performed prior to termination.
 11. **Changes and Amendments** NOACA may from time-to-time request changes in the Scope of Services to be performed by Consultant. Such changes, including any increase or decrease in the amount of Consultant's compensation or schedule, which are mutually agreed upon by and between NOACA and Consultant, shall be incorporated in written amendments to this Contract.
 12. **Assignability** Consultant shall not subcontract, assign any interest in this Contract, or transfer any interest or funds payable under the Contract without NOACA's prior written consent. All subcontracts, third-party contracts or other like arrangements shall be approved in writing in advance by NOACA or no payment shall be made for services. Any subcontracts or third-party contracts included in Consultant's proposal as accepted by NOACA shall be deemed to be so approved.
 13. **Interest of Consultant** Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any firm, company, corporation, entity, person, public or quasi-public body or agency which conflicts in any manner or degree with performance of services required to be performed under this Contract. Consultant further covenants that in performance of this Contract no person shall be employed having any such interest.
 14. **Findings Confidential** Any reports, information and data given to or prepared or assembled by Consultant under this Contract shall not be made available to

any individual or organization by Consultant without prior approval of NOACA. Confidential information does not apply to: (a) information which was known to the Consultant prior to the time of its disclosure by the NOACA, as shown by the Consultant's prior written records; or (b) information which is disclosed to the Consultant by a third party without violation of any rights of the NOACA; or (c) information which was publicly available at the time of the disclosure; or (d) information which becomes publicly available through no fault of the Consultant; or (e) information that is independently derived by the Consultant; or (f) information that is required under law to be disclosed. All news releases or other public information relating to NOACA or contents of the Scope of Services contained in this Contract must have prior approval of NOACA; except to the extent that Consultant shall have the right to use the information for the limited purpose of marketing, portfolio, and internal purposes.

Contractor acknowledges that NOACA is a public entity subject to the requirements of the Ohio Revised Code, including but not limited to Ohio Public Records Act (ORC Section 149.43) and documents prepared by Contractor may be subject to public disclosure thereunder. Contractor shall clearly identify any documents prepared by it in connection with this contract which it believes to be excluded from disclosure under ORC 149.43. NOACA will not recognize or withhold from disclosure any documents so marked in a general or indiscriminate fashion or containing information which is patently subject to disclosure under ORC 149.43. Should Contractor request NOACA to exclude documents from disclosure, and should the failure to disclose be challenged, Contractor shall be solely responsible for defending such withholding, and shall indemnify NOACA and hold it harmless for any costs incurred thereby, including but not limited to any penalties imposed on NOACA as the result of such non-disclosure.

15. **Responsibility of Consultant** Consultant shall be responsible for professional quality, technical accuracy and coordination of all services furnished by Consultant under this Contract, using the same degree of care, skill, and diligence exercised by a member of the same profession, currently practicing under similar circumstances. Consultant shall correct or revise, without additional compensation, any negligent errors or deficiencies that occur in its Services. Consultant shall be and remain liable to NOACA in accordance with applicable law for all damages to NOACA caused by Consultant's negligent or improper performance of any Services furnished under this Contract.
16. **Publication, Reproduction and Use of Materials**
 - a) The term "subject data" means recorded information, whether or not copyrighted, that is delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts,

computer discs and diskettes; and information retained in computer memory. Examples include, but are not limited to, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information. The term does not include financial reports, cost analysis and similar information incidental to contract administration.

- b) All "subject data" first produced as a deliverable in performance of this Contract for the sole benefit of NOACA shall be sole property of NOACA. Consultant agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in the subject data. Consultant shall not publish or reproduce subject data in whole or in part, or in any manner or form, nor authorize others to do so, without consent of NOACA until NOACA has released its subject data to the public.
- c) To the extent necessary to use the subject data as intended, Consultant hereby grants to NOACA and to its officers, agents, and employees acting within the scope of their official duties, a limited, royalty-free, non-exclusive and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use and dispose of, in any manner, any and all subject data not first produced or composed in performance of this Contract but which are incorporated in the subject data furnished under this Contract; and (2) to authorize others to do so. Notwithstanding anything to the contrary contained herein, any tools, systems or information used by the Consultant to provide the Services hereunder, including computer software (object code and source code), know-how, methodologies, equipment or processes and the intellectual property inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.
- d) Except to the extent of any materials provided by NOACA, Consultant shall indemnify and save and hold harmless NOACA, its respective officers, agents and employees acting within the scope of their official duties against any liability, including cost and expenses, resulting from any willful, intentional or negligent violation by Consultant of proprietary rights, copyrights, or rights of privacy arising out of publication, translation, reproduction, delivery, performance, use or disposition of data furnished under this Contract by Consultant not in accordance with this Contract. NOACA hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by NOACA to Consultant. If NOACA does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to Consultant, NOACA shall obtain a license or right to use, including the right to sublicense to Consultant. NOACA hereby grants Consultant the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. NOACA represents that Consultant's use of such documents will not infringe upon

any third parties rights and NOACA will indemnify and protect the Consultant from any infringement claims arising from Consultant's use of any plans, documents or other materials provided to Consultant in the performance of its Services hereunder.

- e) In the event that the project which is the subject of this Contract is not completed for any reason whatsoever, all data generated under that project shall become "subject data" as defined in the Rights in Data clause in this Contract and shall be delivered as NOACA may direct. This clause shall be included in all third-party contracts or subcontracts under the project.
 - f) All subject data, including, but not limited to, plans, drawings, and specifications prepared the by Consultant as deliverables pursuant to the Scope of Services are instruments of service in respect to the project. They are not intended or represented to be suitable for reuse by NOACA or others on modifications or extensions of the project or on any other project. Any use except for the specific purpose intended by this Contract will be at the user's sole risk and without liability or legal exposure to Consultant.
 - g) Contractor shall, in all advertisements or other publicity in any medium mentioning this project, acknowledge NOACA as the owner or sponsor of the project. Such advertisements or publicity shall not contain any documents, photographs or other media which are owned by NOACA, whether protected by copyright or otherwise, without NOACA's prior written permission. Contractor will not alter or modify NOACA's logo or any other materials provided by NOACA to Contractor under this Agreement without NOACA's written consent. NOACA retains the right to require Contractor to remove or cease using any logos or materials that do not conform to NOACA's brand standards.
17. **Insurance** During the Contract term, Consultant, at its sole expense, will provide commercial insurance as may be specified herein or as may be reasonably required to protect the interest of NOACA hereunder, naming NOACA as an additional insured. Such insurance shall have no less than the following coverages and limits:
- a) Commercial General Liability (CGL) Insurance in the amount of \$2,000,000 combined single limit each occurrence for bodily injury and/or property damage and with a \$1,000,000 annual aggregate.
 - b) Business Automobile Liability (BAL) Insurance in the amount of \$2,000,000 combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
 - c) Statutory Workers' Compensation Coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor

under the terms of this contract and under the control of the Contractor. Employers' Liability coverage in the amount of \$1,000,000 per accident / \$1,000,000 per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In addition, for work in Ohio, Consultant shall provide a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.

- d) If the Contract involves the provision of any professional services to NOACA (e.g., design, professional consulting/analysis) or receipt of confidential or personally identifiable information, Professional Liability / Errors & Omissions Insurance is required in the amount of \$2 million per claim. The definition of wrongful acts must be applicable to the work performed hereunder.
 - i. If the Contract involves receipt of personally identifiable information or other confidential information, Contractor's professional liability insurance must include cyber risk coverage, including network and internet security liability coverage, privacy liability coverage, and media coverage.
 - ii. To the extent that any subcontractor provides professional services, Contractor is responsible for ensuring that subcontractor has obtained adequate coverage, as required herein.
- e) If the Contract involves work within fifty feet of any active transit or railroad tracks, Railroad Protective Liability Insurance is required naming the transit agency or railroad, as applicable as an insured and having limits of no less than \$2 million per occurrence and \$6 million in the aggregate to cover bodily injury liability, property damage liability and physical damage to property. When this insurance is required, there must also be an endorsement to the Commercial General Liability Insurance Policy which amends the definition of an Insured Contract by deleting the exclusion for work within fifty feet of a railroad.

18. **Indemnification** Consultant agrees to indemnify and hold harmless NOACA, its agents, employees and officers against any and all damages, judgments, liabilities, costs, suits or expenses to the extent such are caused by any intentional misconduct or negligent acts, errors, or omissions by Consultant or its employees in connection with Consultant's performance of the Services.

19. **Audits and Inspection**

- a) Consultant and all subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the costs incurred pursuant to generally accepted accounting practices during the term of this Contract and for three (3) years after final payment and other pending matters are closed under this contract.
- b) Notwithstanding anything to the contrary in this Contract, should the Services under this Contract include products or services that are commercially priced by Consultant, such amounts shall be invoiced to NOACA at the catalog price(s) offered by Consultant and are not subject to audit on the basis of costs incurred.
- c) At any time upon advance notice, during normal business hours and as often as NOACA or its auditor may deem necessary, Consultant and its subcontractors shall make available to the Secretary of the U.S. Department of Transportation and the Comptroller General of the United States, the State of Ohio, NOACA, and any other entity providing funding for this Contract or any of their duly authorized representatives, for examination, all work, materials, payrolls, books, documents, papers, and other data and records directly pertinent to this contract, for the purpose of making audit, examination, excerpts, and transcriptions.

20. **Independent Contractor Status** Consultant acknowledges that it is an independent contractor and shall indemnify and hold NOACA harmless from all costs, liability or expenses incurred by NOACA which are the responsibility of Consultant or the result of Consultant's actions related to payments, obligations and reports covering Social Security, Unemployment Insurance, Workers Compensation, Income Tax and other reports and deductions required by any applicable state, federal or local law, for its employees. Contractor's employees are not public employees of NOACA under the Ohio Public Employees Retirement System.

21. **Equal Employment Opportunity** Consultant agrees to abide by any and all applicable equal employment opportunity laws, whether state or federal. Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, age, creed, gender, sexual orientation or national origin, and agrees to take affirmative action so that applicants are employed and that employees are treated during employment without regard for their race, color, religion, age, creed, gender, sexual orientation 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. Consultant further agrees that it will insert the foregoing provision in all of its

subcontracts in connection with services provided. Consultant further agrees to comply with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., 49 C.F.R. Part 21.

22. **[If applicable] Disadvantaged Business Enterprises** [vendor] has committed to attain ___% Disadvantaged Business Enterprise (DBE) participation under this Agreement. Upon completion of its services hereunder and at such other times as NOACA may require, AECOM shall provide to NOACA appropriate documentation verifying the services performed by DBEs hereunder and the amounts paid to them. AECOM shall fully conform to the applicable requirements of 49 CFR Part 26 in its recruitment and employment of DBE firms hereunder. Failure to comply with the requirements of this section shall be grounds for termination for default.
23. **Reliance by NOACA on Prior Submissions** The parties acknowledge that NOACA, in executing this Contract, is relying upon accuracy and truthfulness of information submitted to NOACA by Consultant in its proposal or as requested by NOACA and supplied by Consultant, and such information is included by reference in this Contract.
24. **Notices to the Parties.** Notices, reports, invoices, and other communications required under this Contract shall be sent to the following representatives of the parties:

NOACA
[insert project manager]

Finance Director
1299 Superior Ave
Cleveland, Ohio 44114
216-241-2414
finance@mpo.noaca.org

[COMPANY NAME]

[consultant point of contact name, title, address, phone, email]

25. **Conflict of Terms; Disputes** Should there be a conflict in the terms of the Contract and any attachments hereto, the terms of this Contract shall prevail. In the event of any dispute, the laws of the State of Ohio shall prevail and remedy, if any, shall be pursued in Cuyahoga County, Ohio.
26. **Required Provisions Deemed Inserted** Each and every clause required by Federal or State statute or regulation to be inserted into this Contract to be inserted herein and this Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be amended to make such insertion or correction.

IN WITNESS WHEREOF, the Consultant and NOACA have executed this Contract as and for the date first above written.

NORTHEAST OHIO AREAWIDE COORDINATING AGENCY	
By:	By:
Legal Counsel	Executive Director & CEO
Date:	Date:
[company name]	
By:	By:
Legal Counsel	[title]
Date:	Date: