



January 21, 2025

The Honorable Jon Koznick  
658 Cedar Street  
2<sup>nd</sup> Floor, Centennial Office Building  
Saint Paul, Minnesota 55155

The Honorable Erin Koegel  
658 Cedar Street  
5<sup>th</sup> Floor, Centennial Office Building  
Saint Paul, Minnesota 55155

The Honorable Scott Dibble, Chair  
95 University Ave W  
3107 Minnesota Senate Building  
Saint Paul, Minnesota 55155

The Honorable John Jasinski  
95 University Ave W  
2227 Minnesota Senate Building  
Saint Paul, Minnesota 55155

Re: Met Council Response to MnDOT Oversight Reporting on Light Rail Transit

Dear Legislators,

The Metropolitan Council is pleased to provide this response to MnDOT's report as required by [Minn. Stat. 473.3999](#), which was amended by [Minn. Session Law Ch. 127, Article 3, Section 107](#) during the 2024 Regular Session.

This response details Metropolitan Council response, as required, to MnDOT's recommendations related to the identification of the appropriate delivery method selection of its construction contracts as defined in Subd. 2(a)(1). MnDOT's report was submitted to the Legislature and Metropolitan Council on December 23, 2024.

Please contact me if you have questions or comments about this report at

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles A. Zelle".

Charles A. Zelle  
Chair

cc: Nancy Daubenberger, P.E., Commissioner, MnDOT

## Legislative Request

This report is issued to comply with [Minn. Session Law Ch. 127, Article 3, Section 107.](#)

### **473.3999 LIGHT RAIL TRANSIT CONSTRUCTION; COUNCIL AUTHORITY; STAFF ASSISTANCE; PROJECT MANAGER QUALIFICATIONS.**

#### *Subdivision 1. Powers.*

The council may exercise the powers granted in this chapter and in other applicable law, as necessary, to plan, design, acquire, construct, and equip light rail transit facilities in the metropolitan area as defined in section 473.121, subdivision 2.

#### *Subd. 2. Staff and project assistance required; Department of Transportation.*

(a) Notwithstanding any cooperative agreement between the commissioner of transportation and the council in section 473.3994, subdivision 1a, if the council is the responsible authority, the commissioner of transportation must provide staff and project assistance to the council for review and oversight of the project's development. The council must utilize the Department of Transportation staff and project assistance for:

- (1) the appropriate delivery method selection for the design, planning, acquisition, construction, and equipping of light rail transit projects;
- (2) risk assessment analysis and cost analysis in the planning, designing, and construction of a light rail transit facility or a new light rail transit project, including but not limited to:
  - (i) a critical path schedule for the planning and design phases of a project developed jointly by the council and the commissioner of transportation;
  - (ii) peer reviews or value engineering reviews at various milestones established in the critical path schedule created under item (i); and
  - (iii) council participation in cost estimate reviews by third-party independent cost estimators in conformance with Federal Transit Administration regulations and guidance;
- (3) contractor and subcontractor schedule analysis and contractual requirements, including but not limited to:
  - (i) development and review of requests for proposals and bid documents prior to advertisement and solicitation;
  - (ii) review of bids submitted prior to the award of bids;
  - (iii) review of draft contractual language prior to the execution of project contracts;
  - (iv) review of change orders for major cost items exceeding \$500,000 and schedule delays of more than 30 calendar days prior to the execution of a change order; and
  - (v) participation in any dispute resolution process that may arise to address competing claims or disputes between a contractor and the council;
- (4) light rail transit project cost management and budget analysis for the planning, designing, and construction of a light rail transit facility or new light rail transit project, including but not limited to:

- (i) recommendations to address or manage cost overruns or discrepancies, funding sources, contingency funding sources and availability, and the management of state or county financial resources;
- (ii) recommendations on appropriate contractual enforcement mechanisms and penalties for any council agreement with a contractor for a light rail transit project; and
- (iii) the development of future cost estimates and communication of projected cost for a light rail transit project; and

(5) any other areas of expertise that the Department of Transportation may offer.

(b) The council must provide the commissioner of transportation all relevant information required by this section.

(c) Staff from the Department of Transportation providing project assistance to the council must report to the commissioner of transportation. Staff assistance from the Department of Transportation must include at least one licensed professional engineer.

**(d) If the commissioner of transportation provides the council with staff and project assistance for the development of a light rail transit project as provided under this section, the commissioner must submit and detail all recommendations made to the council to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation policy and finance within 30 days of submitting its recommendations to the council.**

**(e) The council must give strong consideration to utilizing input or recommendations developed by the commissioner of transportation. If the council decides against utilizing input or recommendations from the department, the council must reconcile significant deviations to the extent practicable and that portion of the project cannot move forward from the critical path schedule's milestone until the recommendation is reconciled. If the council has sufficient reasoning to justify not utilizing input or recommendations from the department, the council must, within 30 business days, provide written notice and documentation of the decision to the department and the chairs and ranking minority members of the legislative committees with jurisdiction over transportation policy and finance. The notice and documentation must provide the reasons why the council is not utilizing the input or recommendations provided by the department.**

### *Subd. 3. Project costs.*

The project budget is responsible for costs incurred by the commissioner of transportation for duties required in this section. The council must only use direct appropriations in law or federal sources to pay its portion of light rail transit capital construction costs.

### *Subd. 4. Project manager; qualifications.*

If the Metropolitan Council is the responsible authority, the council must select a qualified project manager and lead project engineer with at least ten years' transportation industry experience to lead the planning, design, acquisition, construction, or equipping of a new light rail transit project.

### ***EFFECTIVE DATE; APPLICATION.***

This section is effective the day following final enactment. Subdivision 2 does not apply to the Southwest light rail transit (Green Line Extension) project. This section applies in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

## MnDOT Recommendations Report #1 and Metropolitan Council Responses

| MnDOT Recommendation   | Metropolitan Council Response  |
|--|--|
| <p>1. <i>MnDOT supports the continued development of the best value (BV) approach. While specific details about the evaluation criteria are not available at this stage of the project, MnDOT would like to see the Council’s plan for using the BV delivery method to attract additional bidders and solicit constructability feedback. <b>MnDOT recommends the development of BV criteria that are structured to increase bidder participation and solicit constructability feedback.</b></i></p>  | <p>The Met Council agrees with this recommendation. Evaluation criteria are critical components of Best Value procurement. The Met Council, along with MnDOT and Hennepin County will be developing these criteria in 2025.</p>  |
| <p>2. <i>MnDOT sees potential staffing gaps that may affect the execution of any intended procurement strategies and the achievement of goals. The implementation of a potential BV strategy or a future CMAR project will require the development of programs with processes, documents, and resources in place and the capability of delivering on those potential strategies. This will take time and resources to develop. <b>MnDOT recommends the Council increase its staffing capability and expertise in the roles related to contract delivery.</b></i></p> | <p>The Council agrees with this recommendation and already is working to address the potential for staffing gaps. The Council’s Office of General Counsel and the Procurement Department each are working with MnDOT, Trauner, and other industry consultants to develop appropriate documents and processes for BV project delivery and to augment the Council’s existing expertise in these areas.</p>           |
| <p>3. BLE would benefit from the combination of early contractor input and owner-controlled design that alternative delivery methods can provide, particularly with regards to its large-scale civil contracts. Benefits would include early and direct input into constructability, value engineering and potential risks. <b>MnDOT recommends Council seek additional alternative delivery authority for horizontal construction in a future legislative session.</b></p>  | <p>The Met Council supports with this recommendation for expanded authority, including CMAR for procuring construction contracts in the future. Industry responses to the BLE RFIF demonstrate a strong preference in the marketplace for CMAR and similar delivery methods. The Council does not currently have this authority for LRT or BRT projects, although it is authorized for other Council projects.</p> |