

ACTION TRANSMITTAL No. 2021-48

DATE: November 5, 2021

TO: Transportation Advisory Board

FROM: Technical Advisory Committee

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SUBJECT: Distribution of \$5,044,400 in Unused CMAQ Funding

REQUESTED ACTION: MTS staff requests that TAB award \$5,044,400 in CMAQ funding recently made available.

RECOMMENDED MOTION: That the Transportation Advisory Board move roughly \$5,044,400 in CMAQ funding to the 2022 Regional Solicitation and to refer the Federal Funds Reallocation Policy to the Funding & Programming Committee for discussion on possible revision related to past funds.

On November 11, 2020, Metro Transit sent a letter to TAB Chair Hovland that the I-94 park-and-ride lot at Manning Avenue is no longer needed and that it will be returning \$4.5M to 5M of CMAQ funding to the region for redistribution. This occurred during the closing weeks of TAB's decision on awarding the over \$200 million Regional Solicitation program, leading TAB to vote to delay any decisions on distribution of these funds after the 2020 Regional Solicitation process was finalized. At its October 6, 2021, meeting, the Technical Advisory Committee recommended to the Transportation Advisory Board that Metro Transit return \$5,044,400 from its 2009 award.

By federal rule, CMAQ funds are to be spent on projects that directly lead to emissions reduction. The funding the region receives for CMAQ tends to be used on transit projects, travel demand management (TDM), and traffic management technology projects. This returned CMAQ funding comes from a transit expansion project. That said, the attached Federal Funds Reallocation Policy favors spending funds within the same mode.

BACKGROUND AND PURPOSE OF ACTION: The Federal Funds Reallocation Policy provides a process for redistribution, dividing into processes for funds slated for the current program year and funds slated for future program years. Funds that are awarded to Federal Transportation Administration (FTA) projects are far more flexible than Federal Highway Administration (FHWA) funds in terms of year-of-programming (though less flexible in that advance construction is not an option). Therefore, staff recommends that the funds be treated as future year funds. The below excerpt from the policy shows the first priority as spending funds in a "future TAB solicitation process if at all possible."

“The first priority for use of future-year funds will be to include the funds in a future TAB solicitation process if at all possible. When not possible, TAB should first consider items 1-3 and 5 from the above list. It can also consider other options such as selecting an unfunded project from the most recent solicitation that could be delivered within the required timeframe. Other options could include setting up a special solicitation, depending on the amount of funds and time available, or other measures as TAB deems appropriate to address unique opportunities. TAB will consider the established “Guiding Principles” in making its decisions.”

It is possible to move the funds to the 2022 Regional Solicitation. Therefore, a rigid interpretation of the policy would point in that direction. Following that preference, options include using items 1-3 and 5 in the attached policy. Items 1-3 are not ideal for transit projects, as there are no projects known to need timing changes. Item 5 (providing funding to projects with federal capacity) is an option.

However, the policy also states that TAB “can also consider other options such as selecting an unfunded project from the most recent Regional Solicitation that could be delivered within the required timeframe. Given that these funds are from a project awarded several years ago, and that this solution is still easily manageable, staff suggests consideration of using this funding on a 2020 Regional Solicitation Project. Tables 1 and 2 show the high-scoring transit projects from the 2020 Regional Solicitation. From the perspective of interpreting the rules, there are three rules at play:

1. First priority for future year funds is to use future solicitation. Possible interpretations:
 - a. Applies (Funding would be moved to the 2022 Regional Solicitation).
 - b. Doesn't apply because while staff is treating this like future-year (as opposed to present-year) funds, these are past year funds. Or “it can also consider other options such as selecting an unfunded project from the most recent solicitation that could be delivered within the required timeframe” provides flexibility (2020 project(s) could be funded).
 - c. Defer to FTA's preference to use funds sooner. (Fund 2020 project(s))
2. (Assuming the funding is not moved to the 2022 Regional Solicitation) In the 2020 Regional Solicitation only \$32M can be spent on bus rapid transit projects (this amount was reached in 2020). Possible interpretations:
 - a. Limit applies to this money. (Could only fund the bottom project in Table 1 or 2)
 - b. Limit does not apply to new/past money (could fund any of the unfunded projects in Table 1 or 2)
3. (Assuming the funding is not moved to the 2022 Regional Solicitation) In the 2020 Regional Solicitation, any transit corridor can only receive on project. Possible interpretations:
 - a. Limit applies to this money. (Could only fund one of the two Red Line projects and/or one of the bottom projects in Table 1 or 2)
 - b. Limit does not apply to new/past money (could fund any of the unfunded projects in Table 1 or 2)

Table 1: Transit Expansion Projects

Rank	Applicant	Project Name	Funded?	Fed Request	Match	Total Cost	Score
1	Washington Co	I-494 Park & Ride in Woodbury	-	\$7,000,000	\$8,170,946	\$15,170,946	852
2	Metro Transit	Route 17 Service	Funded	\$2,511,123	\$627,781	\$3,138,904	607
3	Metro Transit	Route 54 Service	Funded	\$1,762,070	\$440,518	\$2,202,588	589
4	Metro Transit	New Route 757	Funded	\$4,669,486	\$1,167,372	\$5,836,858	566
5	SouthWest Transit	I-494 N SW Prime Service	-	\$5,600,000	\$1,400,000	\$7,000,000	555

Table 2: Transit Modernization Projects

Rank	Applicant	Project Name	Funded?	Fed Request	Match	Total Cost	Score
1	Metro Transit	Gold Line DT St Paul	Funded	\$7,000,000	\$3,500,000	\$10,500,000	721
2	Metro Transit	Farebox Upgrade	Funded	\$7,000,000	\$1,750,000	\$8,750,000	637
3	Dakota Co	140th Red Line Ped/Bike Overpass	-	\$2,400,000	\$600,000	\$3,000,000	610
4	MVTA	Bus Garage	Funded	\$2,800,000	\$700,000	\$3,500,000	604
5	Apple Valley	Red Line BRT 147th St Station Skyway	-	\$3,810,400	\$952,600	\$4,763,000	602
6	SouthWest Transit	Signal Prioritization at East Creek P/R	Funded	\$443,520	\$110,800	\$554,320	582
7	SouthWest Transit	Solar Array at SouthWest Village	-	\$4,840,000	\$1,210,000	\$6,050,000	436

Staff provides the following options for use of this funding:

1. Moving the \$5,044,400 to the 2022 Regional Solicitation, increasing the midpoint of the transit amount by that amount.
2. Providing funding to existing Regional Solicitation Projects with capacity to accept federal funding. The recently approved TIP shows three transit projects with a total capacity of \$2.7M (non-transit CMAQ projects could also accept funds).
3. Funding a project(s) from the 2020 Regional Solicitation.
 - i) Providing the entire amount to the Washington County I-494 parking structure in Woodbury. This project was easily the top-rated project in the Transit Expansion funding category, scoring 245 more points than the second-ranked project. It was not funded because the top-rated project in the Transit Modernization category was on the same corridor (the Gold Line). Solicitation rules dictate that two projects along the same transitway corridor cannot be funded. The rules also do not allow more than \$7M along BRT corridors (beyond the F-Line), which had been met. It could be interpreted that these rules do not apply to this reallocation funding, as this money was not part of the 2020 Regional Solicitation and was originally awarded in 2009.
 - ii) Proportionally fund the top transit projects in each category that were skipped. Assuming \$5,044,400 available, this approach would fund just over 50% of each request. It would result in funding the top transit expansion project, the Washington County parking structure, at \$3.76M award (\$7M requested) and the Dakota County 140th Street Red Line Pedestrian/Bicycle Overpass in Apple Valley at \$1.29M (\$2.4M requested). The Dakota County project was the third-highest scoring transit modernization project and was also skipped over due to the rule limiting awarding to BRT projects. This approach would also provide funding to Dakota County, where

- only 4% of the total Regional Solicitation funding was provided, while 14% of the region's population resides there.
- iii) Fully fund the Dakota County project (#3 on Table 2). The remaining \$2,644,400 could be allocated either to the Washington County project (#1 on Table 1) or the Apple Valley project (#5 on Table 2)
 - iv) Provide the entire amount to the fifth-ranked Transit Expansion project, the SouthWest Transit's I-494 Prime Service project, which requested \$5.6M. This option treats this funding as a continuation of the 2020 Regional Solicitation, retaining the rule of a maximum of \$7M for BRT corridors (i.e., the top-ranked project in Transit Expansion should continue to be skipped over for funding as a result).

COMMITTEE COMMENTS AND ACTION: At its October 21, 2021, meeting, the TAC Funding & Programming Committee voted 15-3 to recommend providing the funding to the Washington County I-494 parking structure in Woodbury. There were two points of contention. First, some members felt that funding from the previous Regional Solicitation should carry through the rules that limit total funding to bus rapid transit projects (which would eliminate all projects listed above except for the Southwest Transit project) along with funding multiple projects on the same corridor (which would eliminate the Washington County and Apple Valley projects). Second, some members felt that the policy clearly states that the funding should be moved to the next Regional Solicitation. There was disagreement with this based on staff's report that FTA prefer the funds be spent by 2025 and by the fact that these are not future year funds; they are past-year funds and the statement favoring using the next Regional Solicitation relates to future-year funds.

At its November 3, 2021, meeting, the Technical Advisory Committee voted unanimously (with three abstentions) to recommend moving roughly \$5,044,400 in CMAQ funding to the 2022 Regional Solicitation and to refer the Federal Funds Reallocation Policy to the Funding & Programming Committee for discussion on possible revision related to past funds. This followed a failed motion (9 to 9 with four abstentions) to recommend providing the funding to the Washington County I-494 parking structure in Woodbury.

The rationale for the successful motion was based on the Federal Funds Reallocation Policy statement about future-years, "the first priority for use of future-year funds will be to include the funds in a future TAB solicitation process if at all possible." Dissent was related to the fact that the funds, while treated by staff as "future year" are actually past year funds that have been obligated, rendering this a unique case. Further, the Federal Transit Administration (FTA) prefers funds to be used sooner rather than later.

Members also expressed concern with the Federal Funds Reallocation Policy, which some viewed as vague regarding special circumstances.

ROUTING

TO	ACTION REQUESTED	DATE SCHEDULED/COMPLETED
TAC Funding & Programming Committee	Review & Recommend	10/21/2021
Technical Advisory Committee	Review & Recommend	11/3/2021
Transportation Advisory Board	Review & Approve	11/17/2021

Federal Funds Reallocation Policy

Projects awarded federal funds by the Transportation Advisory Board (TAB) as part of the Regional Solicitation or Highway Safety Improvement Program (HSIP) can be advanced or deferred based on TAB policy, project deliverability and funding availability, provided fiscal balance is maintained. The process assumes some projects will be deferred, withdrawn, or advanced. This process establishes policy and priority in assigning alternative uses for federal transportation funds when TAB-selected projects in the Transportation Improvement Program (TIP) are deferred, withdrawn, or advanced. This process also addresses the distribution of the limited amount of federal funds available to the region at the end of the fiscal year, known as “August Redistribution.” This process does **not** address how to distribute new federal dollars available through larger, specific programs. TAB will make separate decisions specific to those kinds of programs and timing.

Current Program Year Funds

For funding that is available due to project deferrals or withdrawals, the funds shall be reallocated as shown in the below priority order. When there is insufficient time to go through the TAB committee process, TAB authorizes staff (Minnesota Department of Transportation (MnDOT) Metro District State Aid or Metropolitan Council Grants Department, as appropriate), working with the TAB Coordinator, to reallocate funds to projects that have been selected through the regional solicitation per the below priorities on TAB’s behalf.

Reallocation priorities¹ for available funding programmed for the current fiscal year:

1. Regionally selected projects in the same mode slated for advanced construction/advanced construction authority (AC/ACA)² payback that have already advanced because sponsors were able to complete them sooner. If more than one project is slated for AC/ACA payback, the projects using the smallest amount of federal funding will be funded first. Partial AC/ACA payback can be paid on a project up to available levels of funds.
2. Projects in the same mode slated for AC/ACA payback that have been moved due to previous deferrals. If more than one project is slated for AC/ACA payback, the projects using the smallest amount of federal funding will be funded first. Partial AC/ACA payback can be paid on a project up to available levels of funds.
3. Regionally selected projects in the same mode that are able to be advanced.
4. Regionally-selected project(s) from another mode to pay back or advance using steps 1-3 above. Should this action be used, TAB shall consider the amount when addressing modal distribution in programming the next regional solicitation.
5. Regionally-selected projects programmed in the current program year in the same mode up to the federally allowed maximum. If more than one project can accept additional federal funds, the project needing the smallest amount of funds to achieve full federal participation³ based on the latest engineer’s estimate will be funded first up to the federal

¹ Regional Solicitation and HSIP funds should be considered separately for purposes of this policy.

² Note: Advanced construction (AC) is used for Federal Highway Administration-funded projects. Federal Transit Administration-funded projects use advanced construction authority (ACA).

³ Up to 80% of eligible project costs paid for with the federal funds, except in the case of HSIP, which funds up to 90% of eligible costs with federal funds.

maximum, followed by the project needing the second smallest amount of federal funds, and so on.

Future Program Year Funds

While history shows that most deferrals and withdrawals will be in the current program year, even current year withdrawals can affect future year funding by advancing a project from a future year into the current year. For future-year funds, the TAB Coordinator will work with MnDOT Metro State Aid and/or Metro Transit Grants staff, Metropolitan Council staff and project sponsors to provide a set of options to be considered by the Technical Advisory Committee (TAC) Funding & Programming Committee, TAC, and TAB.

The first priority for use of future-year funds will be to include the funds in a future TAB solicitation process if at all possible. When not possible, TAB should first consider items 1-3 and 5 from the above list. It can also consider other options such as selecting an unfunded project from the most recent solicitation⁴ that could be delivered within the required timeframe. Other options could include setting up a special solicitation, depending on the amount of funds and time available, or other measures as TAB deems appropriate to address unique opportunities. TAB will consider the established “Guiding Principles” in making its decisions.

⁴ Note that projects must be selected prior to December 1 of the program year.