

Action Transmittal

Transportation Advisory Board



Committee Meeting Date: September 18, 2024

Date: September 9, 2024

Action Transmittal: 2024-40

Scope Change Policy Update

To: Transportation Advisory Board
From: Technical Advisory Committee
Prepared By: Joe Barbeau, Planning Analyst, 651-602-1750

Requested Action

The Scope Change and Program Year Policy working group requests approval of an updated Scope Change Policy.

Recommended Motion

That the Transportation Advisory Board recommend approval of the updated Scope Change Policy.

Background and Purpose

Projects funded through the Regional Solicitation process are selected based on how well they will address safety, congestion, air quality and other criteria used in the scoring evaluation. TAB wants to ensure that the benefits from any re-scoped projects are essentially intact. Therefore, applicants that want to make changes to a project's scope are subject to the Scope Change Policy, last updated in 2019. That change defined administrative, informal, and formal scope changes.

In recent years, most scope change requests have related to eliminating a part of a project that will be completed as part of a different project. This is beyond the scope of the existing policy, which assumes requests concern on-the-ground changes related to termini, changing needs for bus types, and other changes that occur during project development. In the absence of policy language written to address such changes, many TAB decisions have allowed scope changes with full retention of federal funds, provided the projects are to be completed as applied for when split among multiple contracts. Given this and the routine nature of the requests, a working group of Technical Committee representatives and contracting professionals was formed to suggest key changes to the policy. The working group also addressed the Program Year Policy, which is discussed in action item 2024-41. Members agreed that the primary objective is to do what is in the public's best interest; for example, avoid creating situations in which something that was recently built needs to be torn up to accommodate the next project. Therefore, members favored codifying the ability for parts of projects to be transferred when needed.

A secondary discussion occurred related to the ability to allow for otherwise informal scope changes to remain informal if a small amount of funding was involved. Staff has been hesitant to administratively allow keeping of any federal funds despite the consistent outcome of smaller amounts being to keep them intact.

The attached policy tracks suggested changes. The below bullets summarize these changes:

- Inclusion of several examples of project changes that do not need to go through the formal

process provided the projects are going to be completed as applied for. In other words, these changes would be approved at the staff level.

- Federal funding is retained because the “on-the-ground result would remain intact.
- Exceptions to the above two bullets that would lead to a formal process:
 - The value of the transitioned project elements exceeds the thresholds shown in Table 1.
 - The project absorbing the applicant project is not included in the TIP or, if not federal, in an agency-approved capital program within the next four years.
- If all project elements are retained (i.e., nothing changes on-the-ground), federal funding is retained.
- No scoring analysis is needed for requests that lead to no on-the-ground changes.

Changes not specifically related to moving project elements to other projects include:

- Any federal funding reduction resulting from reduction of project elements determined to be less than \$50,000 will be retained by the applicant. This is meant to address the dilemma of when to reduce federal funding for project elements that are removed. This applies to both formal and informal requests. This solves the issue of staff’s discomfort with allowing for funding retention at an administrative level for minor changes.
- Informal scope changes can have federal reduction of up to \$100,000 completed administratively. Any reduction above that amount would need to be a formal scope change.
- Clarification that changing a transit project from a vehicle purchase to leasing vehicles is not subject to the formal scope change process. This was added following a recent request.

Relationship to Regional Policy

Projects that receive funding through the Regional Solicitation process are subject to policies and scrutiny when sponsors want to change project scopes. When TAB approves a program of projects, it does so with the expectation that projects will be completed as shown in the applications. A scope change policy is needed to ensure that projects are designed and constructed according to the plans and intent described in the original application.

Staff Analysis

Over the past several years, many applications for changes to Regional Solicitation-funded projects have been subject to the formal scope change process resulting in approval with no resistance. The proposed Scope Change Policy enables these requests to be recognized as formalities. Note that moving project elements to other projects would be subject to the formal scope change process if changes to the original scope are proposed. This adjustment also addresses the issue of applicants keeping small funding amounts by allowing for reductions of less than \$50,000 to be retained by the applicant.

Committee Comments and Action

At its August 7, 2024, meeting, the TAC Funding and Programming Committee voted unanimously to recommend the approval of the updated Scope Change Policy. The committee discussed the merits of specifying that movement from an off-road to on-road trail does not fit a “slight change of trail alignment” noted as an informal change. Because “changing designs from an off-road trail to on-road bicycle route” is listed as an example of a formal request, members decided that no change was needed. However, following that discussion, staff recommends adding “or eliminating/reducing separation or protection from roadways” to the formal request example (see yellow-highlighted change on page 3 of the attached policy), as a shift from an on-road trail to an off-road trail is not a broad enough example of a potential diminishment to a trail.



At its September 4, 2024, meeting, the Technical Advisory Committee voted unanimously to recommend the approval of the updated Scope Change Policy. This included a staff recommendation for additional clarification regarding changes from off-road to on-road trails that the elimination or reduction of separation or protection from roadways be added as an example of a formal scope change request.

Routing

To	Action Requested	Date Completed (Date Scheduled)
TAC Funding & Programming Committee	Review & Recommend	August 15, 2024
Technical Advisory Committee	Review & Recommend	September 4, 2024
Transportation Advisory Board	Review & Adopt	September 18, 2024



SCOPE CHANGE POLICY

Projects awarded federal funds by the Transportation Advisory Board (TAB) as part of the Regional Solicitation or Highway Safety Improvement Program (HSIP) are often concepts that are further developed in the period from project application to implementation. Project sponsors work on activities after funds are awarded such as preliminary and final design, environmental studies, and public involvement. Sometimes during this project development process, the project sponsor wants to make changes to the scope of the project. Changes to a project's scope could affect its benefits to the region. It is important to the TAB that any change in a project's scope does not substantially reduce these benefits.

Scope Changes

A scope change is any revision that changes the physical characteristics of the project and has the potential to add to or detract from the project's benefits to the region. The project description in the original funding application serves as the project's scope for the purpose of determining whether a scope change is needed.

Three Levels of Scope Changes

There are three types of scope changes described below. The TAB Coordinator, the MnDOT Metro District Federal Aid Program Coordinator (for Federal Highway Administration-administered projects), and the Transit Federal Grants Manager (for Federal Transit Administration-administered projects) will determine the type of scope change.

Administrative scope changes:

Minor changes that typically occur when projects move into detailed design or minor additions such as project amenities or aesthetic items do not need TAB Coordinator/Metropolitan Council staff review. The MnDOT Metro District Federal Aid Program Coordinator or Metropolitan Council Transit Federal Grants Manager can review and approve minor changes including, but not limited to:

- Removing or adding of minor items, such as benches, waste receptacles, signage, etc.
- Changing the design of aesthetic items, such as lighting, railings, benches, etc.
- Adding items due to normal detailed design of a project such as noise walls, retaining walls, storm sewers, bike racks, wi-fi, etc.
- Adding new project elements/improvements funded through another source (e.g., a change to a more fuel-efficient bus) or combining a TAB-funded project with one or more separate non-TAB funded projects to improve efficiency and reduce construction impacts (e.g., combining a roadway project with an adjacent mill and overlay project). These changes should not detract from the original scope.
- Changing the width of a bike path (must still meet standards).

Informal scope changes:

Scope changes that exceed the standards of administrative scope changes are brought for a consultation between the TAB Coordinator; the MnDOT Metro District Federal Aid Program Coordinator or Metropolitan Council Transit Federal Grants Manager; and Council staff. The consultation will determine if the scope change can be approved through an informal process

or if a formal scope change request is needed due to the potential negative impacts of the changes. An informal scope change may include, but is not limited to:

- Slightly changing a bike or pedestrian trail route alignment while still making the major connections.
- Combining two separate TAB-funded projects, provided this does not threaten to negatively impact either project.
- Changing the termini of a project, provided this does not threaten to negatively impact the project.
- Changing a pedestrian overpass to an underpass; or an underpass to an overpass.
- Changing an intersection treatment (e.g., a traffic signal to a roundabout) or an interchange design.
- Changing bus length, fuel source, type, or number, provided there is no resulting decrease in transit service.
- Changing transit project from purchasing vehicle to leasing vehicles.
- Reversion to the original scope (or a previously approved scope change). Note that any federal funds taken away in a previous scope change cannot be returned; the entire scope would need to be completed with the reduced federal contribution.
- Moving elements such as a trail, sidewalk, pedestrian bridge, traffic signal, transit stop, transit vehicle, etc., to another project, provided that the on-the-ground result does not change and the federal value being removed is less than the thresholds shown in Table 1. The project absorbing these project elements must be included in the existing Transportation Improvement Program (TIP) or in the case of non-federal projects, an agency-approved capital program within the next four years. A letter of commitment from the recipient project sponsor is also required. Because the entire applied-for project is being completed, federal funds will be fully retained. Any resulting projects must meet the federally required minimum non-federal match.

Table 1 – Value removal thresholds for requests in the above bullet to be moved to the formal process

<u>Federal Project Value*</u>	<u>Removal Threshold</u>
<u>\$0 - \$1,000,000</u>	<u>20%</u>
<u>\$1,000,001 +</u>	<u>10%</u>

*Based on total project cost in original application.

Some informal changes lead to project cost reductions. Any scope change request that a) otherwise meets the definition of informal and b) does not move all removed elements to another project and includes a cost reduction¹ above \$100,000 is a formal scope change.

Formal scope changes:

Any change that may significantly alter the estimated benefits to the region (particularly if altered to the degree where the revised scope may not have justified its original selection) must go through the formal committee process and be approved by TAB. A formal scope change request process is likely to be needed in instances including, but not limited to:

¹ Cost reduction is calculated by estimating the value, at the time of application, of any project elements being removed. While project elements may be allowed to be added to the scope, their costs do not offset the costs of removed elements.

- Removing significant elements such as a trail, sidewalk, pedestrian bridge, traffic signal, transit stop, transit vehicle, etc.
- Adding elements that detract from the value or intent of the original application.
- Removing proposed access closures, if the closures are described in the project description and used to score points in the application.
- Reducing the frequency or hours of transit service.
- Reducing the number of parking spaces in a park-and-ride facility.
- Changing the number of travel lanes.
- Shifting from a bridge replacement project to a bridge rehabilitation project.
- Changing designs from an off-road trail to on-road bicycle route or eliminating/reducing separation or protection from roadways.

Ineligible Requests

The TAB Coordinator may inform the project sponsor that the proposed revisions exceed the limits of a scope change and that the proposed change constitutes a new project. Such requests will not be processed through the TAC and TAB and that the original project should either be completed or withdrawn. If the project is to be withdrawn, the project sponsor should submit a formal letter to the TAB Coordinator stating that the project is being withdrawn and federal funds are being returned to the region for reallocation. A proposed change will be considered a new project and therefore not eligible for a scope change if it is:

- Relocating the project away from the defined problem, need, or location, such as switching transit start-up service from one market area to another
- Moving funding from one project to another, such as moving funds awarded to a project on County Road A to the same, similar, or different work on County Road Z.
- Eliminating the primary improvement proposed in the project description (e.g., a bridge will not be improved for a project submitted in the bridge application category or a trail will not be improved in the multiuse trails application category).

Steps and Requirements to Determine Scope Change Type and Request a Formal Scope Change

The following steps must be followed to determine a scope change type and whether the proposed change needs to go through the formal scope change request process. It should be noted that once a MnDOT Metro District State Aid project has been authorized, the project scope cannot change.

1. The project sponsor informs the TAB Coordinator and the MnDOT Metro District Federal Aid Program Coordinator or the Metropolitan Council Transit Grants Manager that it wants to change a project. At this time, the MnDOT Metro District Federal Aid Program Coordinator or the Metropolitan Council Transit Federal Grants Manager may determine that the change is minor in scope and no further action is needed. If the requested change is more substantial, the project sponsor will be asked to provide a written description of the proposed scope change and a map or schematics showing how the proposed scope change affects the project.

2. Upon this submittal, the TAB Coordinator will consult with the MnDOT Metro District Federal Aid Program Coordinator or the Metropolitan Council Grants Manager to discuss the extent of the changes and whether the scope change will require a formal scope change request. The TAB Coordinator will contact the project sponsor and inform them whether the proposed modification can be accomplished administratively or whether it will trigger a formal scope change request and/or TIP amendment² request.
3. For a formal scope change request, the project sponsor must provide data on the revised project scope to the TAB Coordinator, including a complete project description; location map; project layout, sketches, or schematics; and a discussion of project benefits being retained, gained, or lost. Applicants must provide a cost breakdown of the TAB-eligible items proposed for removal and addition (in the year of costs used in the original application) using the attached project cost worksheet. Failure to do so can result in the request not being included on the TAC Funding & Programming Committee's agenda.
4. Council staff and will conduct an analysis of the requested change, including the background information provided by the project sponsor for consideration by the TAC Funding & Programming Committee. The Committee will discuss the staff analysis and recommend one the following to TAC and TAB (see detailed sections below and on the following page about determining scope change and federal funding amount recommendations):
 - Approval of the scope change as requested;
 - Approval of the scope change request with modifications to the scope and/or a recommended reduction of federal funds; or
 - Denial of the requested change

Determining the Scope Change Approval Recommendation

To determine whether the scope change request should be approved, the TAC Funding & Programming Committee will discuss the merits of the proposed changes and weigh the overall benefits or reduction of benefits to the region. Council staff will provide a written analysis regarding the potential impacts of the proposed changes. The affected scoring measures, except for cost-effectiveness (any cost increases are paid for by the local agency and not federal funds), will be analyzed by Council staff to determine if each sub-score would have likely increased, decreased, or stayed the same with the scope change (a precise rescoring of the application is not possible since applications were scored against each other at a specific moment in time). Council staff will then evaluate whether the total score would have likely increased, decreased, or stayed roughly the same based on the summation of the sub-score changes. This relative change in the total score will be compared to the scoring gap between the project's original score and the highest unfunded project in the same application category. The TAC Funding & Programming Committee may consider recommending denial of the scope change request if it is clear that the project would have

² A TIP amendment request is only required to accompany a scope change request if the project is in the current fiscal year and either the project description changes in the TIP, the project termini change by 0.3-mile or greater, or the funding amount changes enough to meet federal TIP amendment thresholds.

scored fewer points than the highest-scoring unfunded project (i.e., the project would have been undoubtedly below the funding line). Council staff may confirm their findings with the original scorer of the measure and/or request additional information of the applicant, if necessary. Project sponsor must attend TAC Funding & Programming, TAC, and TAB meetings, where the item is on the agenda.

NOTE: for project requests that result in the on-the-ground project not changing (i.e., project elements being moved directly to another project), this analysis is not necessary.

Determining the Federal Funding Amount Recommendation

To determine whether federal funds should be recommended to be removed from a project, Council staff will assess the project elements being reduced or removed and provide this information to the TAC Funding & Programming Committee. While adding eligible project elements is permitted, federal funds cannot be shifted away from any removed elements to new project elements unless the removed elements are being done as part of some other programmed project. Federal funds cannot be added to a project beyond the original award as part of a scope change.

Applicants must provide a revised cost estimate including a cost breakdown of the items proposed for removal using the attached project cost worksheet. Any removed or added items should use the costs in the year requested in the original application instead of the year of construction costs. Regional Solicitation projects must continue to maintain at least a 20% non-federal match, while HSIP projects must continue to maintain at least a 10% non-federal match.

Staff may recommend federal funding reduction options, if applicable, based on the federal share of the cost of the project elements being removed or the proportionate reduction of project benefits in cases in which that is discernable (e.g., number of parking spaces or length of sidewalk) and/or another method developed by staff or the TAC Funding & Programming Committee. Any federal funding reduction determined to be less than \$50,000 will be retained by the applicant. A recommendation will move from TAC Funding & Programming Committee to the TAC and TAB for approval. If applicable, a TIP amendment request will also be moved for approval through the Metropolitan Council.

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HSIP Solicitation?	Yes No
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