

Action Transmittal

Transportation Advisory Board



Committee Meeting Date: June 7, 2023

Date: May 31, 2023

Action Transmittal: 2023-32

Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) funding allocation options for FY 2025-2027

To: Technical Advisory Committee
From: TAC Funding and Programming Committee
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Requested Action

Distribute \$14,518,800 of regional Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) funding for fiscal years (FY) 2025 through 2027.

Recommended Motion

That the Technical Advisory Committee recommend distribution of \$14,518,800 of PROTECT funding for fiscal years 2025 through 2027 along with \$2,481,200 in 2026 STP funding to fully fund the federal requests for the Highway 5 Carver County Lake Minnewashta & Arboretum and Washington County CR 19A/100th Street projects from the 2022 Regional Solicitation cycle.

Background and Purpose

The 2021 Infrastructure Investment and Jobs Act (IIJA) established the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) funding program to help make surface transportation more resilient to natural hazards, including climate change, flooding, and extreme weather events through support of resilience improvements. MnDOT provided 30 percent of formula PROTECT funds for regional distribution, including the funds to the Met Council and TAB shown in Table 1. MnDOT anticipates that this funding program will continue beyond the end of IIJA with funding levels for 2028 and beyond being similar to 2027 levels (approximately \$3.5M per year).

Table 1: PROTECT Funding Allocations to the Metropolitan Council and TAB

Year	PROTECT Funding
2024	\$6,278,400
2025	\$6,278,400
2026	\$4,708,800
2027	\$3,531,600
2028-2029	2024 Regional Solicitation Cycle
2023-2031	2026 Regional Solicitation Cycle

Unlike the other federal funding programs that are used in the Regional Solicitation, PROTECT typically funds specific elements within a larger project instead of the entire project. PROTECT has strict and narrow eligibility that includes, but is not limited to, storm sewer, ponding, erosion control, retaining walls, and lifting/realigning transportation infrastructure out of floodplains.

Due to the short deadlines and narrow eligibility, the 2024 allocation was applied to eligible elements within existing projects selected in past Regional Solicitation cycles. This action focuses on the \$14,518,800 of PROTECT funds available for 2025-2027.

For 2028 and 2029 PROTECT funds, additional language has been added to the draft 2024 Regional Solicitation application materials for project sponsors to identify PROTECT-eligible items. The 2028 and 2029 PROTECT funding years will line up with the years for the other federal programs making PROTECT funds easier to utilize.

As part of the Regional Solicitation Evaluation, the selected consultant will identify the best and most appropriate way to use the PROTECT funds, including changes to the 2026 Regional Solicitation cycle (program years 2030 and 2031). Potential changes may include the creation of a separate application category for projects that address resiliency, for example. The Regional Solicitation Evaluation, which begins in August, will be the best opportunity to focus on what the region wants to do with the new funding source.

Relationship to Regional Policy

The Transportation Advisory Board manages the annual program of projects programmed by the Regional Solicitation.

Staff Analysis

PROTECT is a new federal funding program created by IJJA. MnDOT is providing a portion of the state's formula PROTECT funds to the Metropolitan Council for distribution. With PROTECT's strict and narrow eligibility, there are challenges with spending the money in the near-term, especially in the first four years (2024-2027). For the 2024 funding allocation, funding was applied to eligible elements within already programmed projects and inserted into the draft 2024-2027 TIP.

Based on PROTECT program constraints, Council staff have developed options for the Funding and Programming committee to consider and provide recommendations to TAC and TAB. The total PROTECT funds available for 2025-2027 is \$14,518,800.

Option 1: Use on existing projects/reduce overprogramming

Similar to the approach for 2024, use the PROTECT funding on eligible project elements within recently selected Regional Solicitation projects.

Table 2: Option 1: Use on Existing Projects/Reduce Overprogramming

	2025	2026*	2027*
Overall Regional Solicitation Starting Balance by Year	(\$11,077,234)	(\$15,233,627)	(\$19,442,095)
PROTECT Funding by Year: Total of \$14,518,800 Total over Three Years	\$6,278,400	\$4,708,800	\$3,531,600
Use PROTECT on Eligible 2022 Project Elements Reduces Overprogramming: End Regional Solicitation Balance by Year:	(\$4,798,834)	(\$10,524,827)	(\$15,920,495)

**There is also \$8M of Carbon Reduction Program funds in 2026 and \$6.5M in 2027 that have not been programmed.*



TAC Funding & Programming recommended approval of both program year shifts (i.e., 2023-30 and 2023-31), thereby making Option 1 less viable. The impact of the program year shifts would create additional funding available in both 2025 and 2026, so there would be no overprogramming to pay down. Available funding of \$2.2M in 2025 and \$8.4M in 2026 would result with Option 1. If the program year shifts are approved, then new projects/spending is needed in 2025 and 2026.

Option 2: Use on new projects

At the March 16, 2023, meeting, the TAC Funding and Programming Committee requested options that could utilize the 2025 through 2027 PROTECT funds by selecting unfunded projects from the last Regional Solicitation. Council staff identified that the next unfunded project from two of the 12 application categories in the 2022 Regional Solicitation had eligible PROTECT elements and were also interested in this funding source (i.e., Hennepin County staff indicated at TAC F&P that their potential Spot Mobility and Safety project was not a good fit for the PROTECT program). These next two unfunded projects are shown in Table 3.

Table 3: 2022 Regional Solicitation Next Unfunded Projects List from Each of the Two Application Categories with Eligible Project Elements and Interest in the Funds

Application Category	Project	Eligible Elements	PROTECT Eligible Costs	Total Federal Request
Strategic Capacity	Carver County Highway 5 Lake Minnewashta and Arboretum Access and Mobility Project	Raising roadway out of the floodplain & reconnecting aquatic habitats	\$10,000,000	\$10,000,000
Roadway Reconstruction	Washington County CR 19A/100 th Street Realignment	Storm sewer	\$7,000,000	\$7,000,000
Totals				\$17,000,000

If the two program year shifts are approved, this creates a surplus of \$3,669,013 in 2026 after shifting out the Highway 252 projects and paying down overprogramming (see Table 4). These remaining funds would be considered “Future Program Year Funds” in TAB’s Federal Funds Reallocation Policy (see attached). Options include:

- Selecting 2026 program year projects in the 2024 Regional Solicitation cycle. While this is the first option in the policy, the policy suggests moving to other options when not feasible to push to a future solicitation. MTS staff believe the lack of time to develop new federal projects necessitates moving to other options in the policy. The 2024 Regional Solicitation cycle, which will not be finalized until the 2025 program year, will prevent many projects from being able to deliver a 2026 federal project.
- Moving already selected projects forward from 2027 to 2026 (to date, no project sponsors were interested in moving up from 2027 to 2026 when recently asked), or
- Selecting an unfunded project from the most recent Regional Solicitation (i.e., the 2022 Regional Solicitation) that could be delivered within the required timeframe. One advantage of reallocating the funds now to unfunded projects from the 2022 cycle is that it provides project sponsors enough time to develop a new project in the federal process.

When combining the \$14,518,800 of PROTECT with the \$3,669,013 of surplus funding in 2026, then there is up to \$18,187,813 available. There is enough funding available to fund both project requests in Table 3 (i.e., Carver County and Washington County), which requested a total of \$17,000,000. The addition of two new roadway projects would slightly shift the modal balance of



the 2022 funding cycle upwards for roadways by about one to two percent from 53 percent to 54 or 55 percent with a proportionate percentage decrease for the other modes.

If the committee would like to push the \$3,669,013 funds to the next solicitation, it would leave up to \$14,518,000 of PROTECT that could be distributed to projects in Table 3. Carver County’s entire \$10M project request and Washington County’s \$7,000,000 request can both be funded with PROTECT given their eligibility. However, only \$14,500,000 would be available for \$17,000,000 of requests for these two projects.

Table 4: Option 2 Use on New Projects

	2025	2026	2027
Overall Regional Solicitation Starting Balance by Year	(\$11,077,234)	(\$15,233,627)	(\$19,442,095)
Impact of Program Year Shifts, if they are both Approved	+\$7,000,000	\$(7,000,000) +\$25,902,640	No Changes
Overall Regional Solicitation Starting Balance After Program Year Shifts	(4,077,234)	\$3,669,013	\$(19,442,095)
PROTECT Funding by Year: Total of \$14,518,800 Available	\$6,278,400	\$4,708,800	\$3,531,600
Use PROTECT on New Projects and \$2,481,200 of STP in 2026: End Regional Solicitation Balance by Year	(4,077,234)	\$1,187,813 if use surplus on 2 new projects	\$(19,442,095)

**There is also \$8M of Carbon Reduction Program funds in 2026 and \$6.5M in 2027 that have not been programmed.*

Committee Comments and Actions

At its May 18, 2023, meeting, the TAC Funding & Programming Committee recommended providing the \$14,518,800 of PROTECT funding to the Carver County and Washington County projects along with \$2,481,200 of available 2026 STP funding. This combination of funds will fully fund the federal requests for these two projects, which total \$17M.

Discussion included that the Federal Funds Reallocation Policy favors providing funding to a future Regional Solicitation for the available 2026 STP funds created with the program year shifts. However, since the next Solicitation will be awarded in fiscal year 2025, the use of 2026 funds is a major timing concern that will limit options and the number of project sponsors able to deliver a new project within the federal process.

Given the limited amount of project development time for 2026 funds, staff suggest investing the remaining \$1,187,813 of STP funds as part of this action. One option for TAC to consider is to fully fund the next multiuse trail project federal request from the 2022 funding cycle, which is a Three Rivers Park District Shingle Creek Regional Trail: Noble Parkway in Brooklyn Park. This project sponsor requested \$1,254,000. One of the four Highway 252 projects that created the available funds in 2026 was a multiuse trail project, so providing some of this funding to this modal area makes sense.



Routing

To	Action Requested	Date Scheduled/ Completed
TAC Funding & Programming Committee	Review & Recommend	May 18, 2023
Technical Advisory Committee	Review & Recommend	<i>June 7, 2023</i>
Transportation Advisory Board	Review & Approve	<i>June 21, 2023</i>
Transportation Committee	Review & Recommend	<i>July 17, 2023</i>
Met Council	Review & Concur	<i>July 26, 2023</i>



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

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.

up to the federal 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.