



2024 REGIONAL SOLICITATION ACTIVE TRANSPORTATION PROJECTS GRANT REQUIREMENTS

8/29/2024

Project Grant Requirements Background

In the 2024 Regional Solicitation the TAB approved awarding new regional sales tax funding for active transportation project applications. The TAB approved awarding \$18.7 million for 19 projects throughout the region.

Typically, Regional Solicitation projects are awarded by the TAB and concurred by the Metropolitan Council. These projects must adhere to both TAB policy and federal requirements but the grants themselves are managed by MnDOT through their State Aid office.

The new Active Transportation Regional Sales Tax projects are not going to be managed by MnDOT State Aid, nor do they need to follow federal regulations, as this funding is generated locally. Due to this, it is necessary for the TAB to consider and establish key grant administration requirements for grant recipients of these new funds. The 2024 selected projects are being considered a pilot opportunity for the Council to learn the best strategies to monitor and administer successful projects by aiding local partners in implementation and ensuring high quality projects that meet TAB and regional goals. Council staff will monitor and report to the TAB on the progress of these key requirements through the pilot process.

Through research and correspondence with current grant managers at MnDOT and for other Council grant programs, staff narrowed the key items that rise to the policy level of TAB direction for grant requirements. These items are as follows:

- **Program Year:** Program year policy details when a project must identify a date when a project is expected to begin. This requirement is important for grant administrators to be able to plan budgets to ensure adequate funds are available for projects when they begin to receive funding and to ensure projects are started in a timely manner.
- **Grant Funding Disbursements:** Grant funding disbursements policy deals with how funds are distributed to grant recipients for awarded projects.
- **Eligible Project Costs:** Eligible costs policy covers what a grant recipient can or cannot use the awarded funds on for their projects.
- **Disadvantaged Business Firm Equity Programs:** This policy area covers all different programs designed to remedy ongoing discrimination and the continuing effects of discrimination in transportation contracting. These programs are distinct at different agencies and level of government and have different goals and requirements.
- **Project Plan Documentation and Submittals:** Documentation and submittal requirements are important to ensure that projects are built as intended when funded and meet basic design standards. This requirement sets to what detail and standards that project plans need to be reviewed and approved prior to construction to ensure that projects are built as was approved when they were funded.
- **Project Scope Change Review:** Scope change policy covers the process that needs to be followed to approve a potential change in a selected project. If a project does need to change from when it was approved and funded, the change in scope for that project will need to be reviewed and approved.

- **Right-of-Way Acquisition Process:** Documentation and certification requirements for when a project needs to acquire land are established to ensure that land needed to construct a project is in the hands of the implementing agency to ensure projects can be implemented in a timely manner and avoid any potential costly litigation. For federal projects this standard of review and certification are typically higher as certain federal laws must be followed.
- **Environmental Review:** Environmental reviews are typically required to be conducted for large scale projects which may have significant impacts to either the natural environment or surrounding community. Federally funded projects must follow a detailed process to determine if a full environmental review is required. Typically, environmental reviews are required for large scale projects, but smaller scale projects which are anticipated to include significant impacts may also need to perform environmental reviews as well.

A major desire from regional partners and from TAB members with these new local funds is to create a simpler process to allow for local governments to implement projects quicker with less resources to do so. In order to get a greater understanding of the requirements for different types of funding, MTS staff met with grant administrators for federal grants (through the Regional Solicitation), state grants (through the MnDOT Active Transportation grant program) and Council grants (various grant programs). A summary of the recommendations from staff on how best to manage the pilot grants will be provided below. These recommendations for the pilot program will take elements from each of these processes to ensure that the selected projects advance TAB and Council goals, meet the vision of projects as was outlined in the project applications and are completed in a timely and efficient manner for both grantees and the Council.

Recommendations for Project Grant Requirements

Program Year:

Projects do not need to have a project year identified as with the current Regional Solicitation process. The difference between the Regional Solicitation funding and this new AT funding makes the requirement of a program year not needed. As AT revenues are already accruing and will be in an account for grant recipients to draw out of, there is not the need to consider future expected revenues as is a key consideration of the program year policy.

Projects will be required to begin the construction process by the end of the 2026. What this means is that the local agency needs to have initiated project bidding by the end of 2026.

- It is recommended that grant recipients do not need to identify a specific program year for projects but must adhere to the following;
 1. Projects will be given a project number for Council tracking purposes.
 2. Projects will need to identify a “grant agreement period” when executing grant agreement which will cover from the time the grant agreement is executed to the expected completion of the project.
 3. Within this period, projects must initiate project bidding to construct the project by the end of 2026.
 4. If the implementing agency does not believe that a project will be able to be started by the end of 2026.
 - a. Project staff will report the status of grant projects at the end of 2026.
 - i. Implementing agencies will need to submit project progress report to Council staff annually.
 - b. Project start date may be extended beyond 2026 with TAB approval.

Grant Funding Disbursements

For Regional Solicitation projects and all MnDOT grant projects, applicants receive their awarded funding through a reimbursement process. This process requires the implementing agency to submit invoices and other documentation to be review and approved prior to funds being disbursed. However, this process can keep smaller agencies and organizations from applying to grant funds as they would

need to front any project costs before being reimbursed. This issue is most acute when projects are starting up, as up-front costs can be a barrier for smaller agencies in constructing projects and maintaining cash flow through the construction process.

The 2024 Regional Solicitation selected projects are being considered a pilot to help the TAB and Council learn more about what works best for the Active Transportation program as it is designed over the next 2 years. The Active Transportation funds will be locally sourced funds to support building out networks in areas which traditionally have not had the means or access to do so in the past. Providing up-front grant funding will widen the pool of applicants who may consider applying for these funds in the future. Also, as these funds are already accrued and not to be received at a later date, there is little risk of overdrawing the funding account with up-front disbursements.

- Due to these considerations, for the pilot program, it is recommended that grant funding be disbursed in a hybrid manner, with some of the funding be disbursed up front and the rest being reimbursed as the project progresses.
 1. The first 50% of the funding will be provided to grantees up-front when they enter into a construction contract,
 2. The Council will receive documentation of spending for the 50% of award grant funds and the required local match.
 3. The remainder would be reimbursed as costs are incurred up to the total grant award. Any cost overruns on the project would need to be covered by the local implementing agency.

Eligible Project Costs:

Typically, eligible costs for infrastructure grants only cover project expenses which go towards directly constructing the awarded facility – materials and contracted labor. The Regional Solicitation already has clear guidelines set by TAB for eligible costs for grant recipients that all applicants understood when applying for funds. It is more difficult to experiment with eligible costs for the pilot as all applicants understood eligible costs when producing cost estimates and expectations for the 2024 Regional Solicitation.

- It is recommended that eligible costs for the pilot projects remain the same as for typical Regional Solicitation projects. Future solicitations could consider different project costs that could be covered, such as planning, project design, engineering, right-of-way acquisition, or other soft costs, but it is not recommended to change this for the 2024 selected projects.

Labor Force and Business Firm Equity Initiatives:

Different labor and business programs exist to ensure that disadvantaged businesses can have opportunities to bid and contract for public infrastructure work. For different types of funds there are different programs:

- federally funded projects must follow the Disadvantaged Business Enterprise (DBE) program which requires projects set goals around certain performance contracting with DBE businesses as identified by FHWA and MnDOT State Aid. Any project that uses any federal funds must adhere to the requirements of the federal program.
- For state funded projects, some require or recommend grant recipients work with the Targeted Group, Economically Disadvantaged, Veteran-Owned Small Business (TGB) program which aid small businesses which are owned by someone from a targeted group (women, racial minority, or physical disability), located within an economically disadvantaged area or veteran-owned.
- The Council also has its own program called the Metropolitan Council Underutilized Business (MCUB) program. This program combines the DBE and TGB programs among others to provide a comprehensive database of eligible business. This program works with grant recipients to establish targets and aid to connect with disadvantaged business.

The Active Transportation Sales Tax revenue is completely locally sourced and spent, and as such does not need to utilize the federal or state programs. However, ensuring an equitable contracting

process for Council projects would meet regional goals established in the Transportation Policy Plan and other regional plans. It is recommended that TAB consider options for ensuring equitable outcomes for selected AT projects.

- Recommended Option: Require that grant recipients work with the Council's MCUB program to set goals for contracted work for projects receiving more than \$750,000 grant. If a receiving local agency already has a DBE or equivalent program in place, this requirement could be deferred to local program.
- Alternative Option: Encourage the use of MCUB eligible business for contracting firms, Council staff will provide best practices and technical assistance to grant recipients and require reporting of this activity to be submitted to the Council for tracking purposes. There would be no requirement for the setting of goals for contracting with MCUB eligible firms.

Project Plan Documentation and Submittals:

Grant recipients are required to submit project plans and other forms of documentation prior to funds being released for many different grants. As these grants are infrastructure grants, some plan check should be performed prior to grant funds being released to ensure that the project that will be constructed meets the project description of when funds were applied for and selected, and also to ensure minimum design standards (Bicycle and Pedestrian Facilities, ADA) are being adhered to.

For federal grants, many plan requirements exist which require grantees to produce detailed plan sheets, certifications and other documents prior to any project being approved to bid for construction. These are also required to be reviewed and signed off on by certified engineers at MnDOT State Aid. For the purposes of the Council pilot program, we would be most interested in ensuring that the constructed project is substantially the same as what was approved for funding and that minimum design standards such as MnDOT Facility Design Guides and ADA standards are being met by local partners.

- It is recommended that grant recipients provide final plan sheets prior to project bidding so Council staff can ensure final project plans meet the project description as was approved by TAB, that the projects meet the minimum design guidance from the MnDOT Facility Design Guide and that ADA standards are met. The local agency will be responsible for engineering sign-off of all project plan sheets.

Project Scope Change Review:

The project scope change process is another project-based requirement which already has a TAB approved policy which applies to Regional Solicitation projects. Other scope change processes generally are more informal and conducted by administrative staff. The TAB scope change policy does allow for minor changes to be approved administratively as well, however it also includes a detailed process for larger changes to projects to allow for robust discussion and informed approval of any major changes to ensure that any change still meets the intent of the original project funding approval. This policy has also been in place since it was adopted in 2019, meaning project applicants already understand it and do not need to alter expectations or processes to meet it.

- It is recommended that the existing TAB Regional Solicitation Scope Change Policy remain in effect for the AT sales tax funded projects. The full policy can be found [here](#).

Right-of-Way Acquisition Process:

Right-of-Way acquisition can be a challenging and drawn-out process for infrastructure projects both small and large. Federal regulations require projects to adhere to a process to meet federal laws and for this process to be reviewed and certified by FHWA before a grantee can solicit bids to construct the project. As the AT funds are generated and spent locally, following federal laws and regulations around ROW acquisition is not required. Federal ROW review and certification takes time and additional resources to document and be approved. At the state level, MnDOT's AT infrastructure program does

not require certification of the ROW process before a project can bid for construction, but does require that all applicable state laws be followed if ROW is needed to be acquired for an awarded project.

- It is recommended that the TAB AT grant funded projects do not need to have ROW acquisition certified prior to release of funds, however documentation which shows that land rights are under control for the entire project extent and any necessary agreements are in place will be required to be submitted prior to project bidding. Project sponsors must follow all applicable state standards concerning ROW acquisition.

Environmental Review:

Projects which receive federal funding must comply with federal environmental regulations. The process is known as the National Environmental Protection Act (NEPA). These requirements range from requiring projects to complete extensive environmental review with an EIS to completing shorter form project memorandums to document that a project is categorically exempt from further environmental review (most projects fall within this second requirement, including nearly all pedestrian and bicycling projects). Whatever form is required, additional work and federal approval is needed to document impacts or complete forms to not need to go through the extensive process.

MnDOT does not require documentation to be submitted to them specific to environmental review for active transportation projects as these projects are typically small in scale and lack any potential significant impacts to the surrounding environment. However, Minnesota has enacted its own environmental review legislation, know as the Minnesota Environmental Protection Act (MEPA). MnDOT AT projects are still required to adhere to MEPA, but documentation of this is not required to be submitted to MnDOT before projects commence construction.

- In order to streamline the process to aid in active transportation projects being completed, it is recommended that the program require grant recipients to comply with relevant state requirements, but not require any submission to or certification of these documents by Council staff prior to releasing funds for construction.