



The Case for An FTA Mobility on Demand Regulatory Framework

For urban areas, FTA assistance is focused primarily on capital assistance. FTA grant programs, protocols, and policies are based upon capital procurement. FTA assistance can include acquisition of technology, however, there is currently no existing model for FTA funds to directly subsidize trips. The relationship between public agencies and mobility on demand providers presents a great opportunity to enhance our existing transportation networks and expand options for commuters, however, it also creates a variety of statutory and regulatory questions which need to be answered in order to provide a clear path forward for agencies and organizations looking to implement new programs and services. Now, with the launch of the MoD Sandbox program, ACT has received inquiries from its members asking questions on how Federal Transit funds may be used to support mobility on demand. The purpose of this white paper is to analyze some of the most obvious issues related to use of Federal Transit funds.

ISSUE #1: SUBSIDY LEVEL, FARES, AND COSTS

Mobility on demand projects are very different from general service contracts because many of the business models employed by MoD providers are very different than any other service model. It should be noted up front that those new business models are part of the reason for the success and popularity of these new services and changing those models to meet traditional service models employed by transit agencies would be unwise.

Service provision contracts are generally based of an agreement on the cost of service, for example:

- For demand response, the most commonly used model looks at the X# of vehicles, multiplied by Y# of hours, multiplied by the hourly rate.

In this scenario, the cost of the service provided remains generally the same if one trip or one hundred trips are provided. Under this model, fares are generally flat regardless of time or distance travelled.

- For vanpools (another form of transit that uses this model) the cost of providing the service is identified and the subsidy is set using the Capital Cost of Contracting policy

In this scenario, the subsidy per van is set, and fares for riders vary based on the number of people sharing the vanpool. If there are 10 people in a vanpool group where the cost of the van for the group is \$1,000/month than the monthly fare is \$100/month. If that same van is shared by 8 people than the cost is \$125/month. Regardless of the number of people in the van, the subsidy remains the same.

There are three key factors here that make MoD service contracts different from traditional service contracts:

- 1) **MoD programs are often based on service consumed rather than a set rate** – Under both of the above models, the amount of subsidy provided is set. MoD is based not on an hourly rate, nor by a capital cost, rather it's based around the amount of service consumed. The amount expended by an agency will largely be determined by the amount of service provided. This presents a challenge in the sense that an agency will either have to discontinue the subsidy after the budgeted amount has been expended, thus ending a potentially successful service or they

must make budgetary adjustments that allocate for the unknown and adjust subsidy levels accordingly.

- 2) **Cost & Fare Structures are Different** – In each of the cases above, the capital consumed is a definitive number that can be clearly identified in advance. MoD providers often (but not always) set rates based on an algorithm that takes into account trip distance and demand, amongst other factors. The costs of the service provided vary from trip to trip where as in other service models, they are a constant.

This challenge presents three options:

- **An agency subsidizes to a fare** – under this model, an agency would use FTA funds to subsidize a trip down to a specific fare for the commuter (i.e. \$3). However, the total cost will vary based on how far a trip may be and the conditions. A trip on Monday that might have a total cost of \$7 may cost \$8 on Tuesday. Some of the variables can be limited by creating geo-fences that reduce the amount total costs may fluctuate, but that would generally only pertain to first mile/last mile projects and would be tough to implement for any type of demand-response or guaranteed ride home program.
 - **An agency sets a subsidy amount** – Under this model, a transit agency says that it will subsidize a set amount (\$2.50) for trips provided to and from a transit hub, thus placing the burden of covering the variability of the total cost on the rider. In addition to creating pricing instability that would scare away potential users, it also limits the ability of low-income users to be able to utilize the service because it could price out many users or present the possibility of pricing out some users on some days, which would make the service unreliable for individuals on a tight budget.
 - **Agencies, in partnership with MoD providers create a set price for providing the service** – Under this model, the public agency and private provider would set a scope of work and agree on both the subsidy provided as well as the fare and total cost of trip provided. However, under this model, TNC drivers may be unwilling to provide the service at a lower price because higher 'fares' may be available through core business options. The core business model of TNCs provide a lot of freedoms for their subcontracted providers (private citizens). A policy that would force drivers to take certain fares would counter this model and would likely not be welcome or successful.
- 3) **Private sector exposed to greater risk** – Some MoD service models follow a more traditional service model whereby they provide or subcontract for service on a per hour/per vehicle rate. When MoD entities provide this service on their own, they are able to dictate service terms that allow them to select where and how to provide service and at what scale and what rate. These are important factors in making sure the service is profitable. When a public agency is looking to partner with a MoD provider, it loses some control of those items, especially if FTA funds are involved.

As such, a traditionally profitable service may not be profitable under conditions in which service and fare structures are imposed. This is part of the justification for the subsidy, however, in a turn-key model, the financial risks fall squarely on the shoulders of the private sector provider. If money is lost, the private provider will be likely to cancel the contract leaving a significant hole in an agencies service provision.

Recommendation: *It is important that FTA, through the MoD Sandbox, provide regulatory relief for agencies to subsidize as needed, even if it's above the regulatory caps, in order to gauge the amount of subsidy that is needed without exposing the private sector to an unknown risk through a pilot.*

ISSUE #2: WHAT ARE WE SUBSIDIZING & THE CAPITAL COST OF CONTRACTING (CC OF C) MODEL

The second major issue that needs to be evaluated is what are we subsidizing, as referenced earlier, FTA assistance is focused primarily on capital assistance. However, most of the partnerships that have taken place to date (without using FTA funds) provide a passenger subsidy and are not a capital subsidy. The difference is more than just semantics. FTA needs to examine its current regulatory guidance and consider providing new guidance on what and how FTA funds can be used to subsidize MoD service within existing statutory guides.

Capital Cost of Contracting Model – A starting point for MoD

The capital cost of contracting policy is generally what transit agencies employ when using FTA funds to contract for services. Under this policy, a portion of contracted services are considered eligible as a capital expense by the FTA based on the types of service performed. This regulatory structure could be a model by which FTA uses to provide guidance on subsidizing MoD grants. However, issues need to be addressed. In addition to those identified in the previous section, we have identified the following issues:

Lack of CC of C Model for MoD

The capital cost of contracting policy does not include a category that truly takes into account mobility on demand (MoD) service models. The closest category under existing policy would be the 'turn-key model', which allows half of the contract cost to count as a capital expense on an 80/20 basis. However, the breakdown of capital versus operating expenses for MoD projects is different from that of traditional service contracts and is tough to gauge based on the simple fact that so many of the costs are variable, so a new model must be created

Different Partnership Arrangements

Additionally, the capital cost of contracting model is based off a direct relationship between the public agency and service provider:

- Public Agency X contracts with Private Provider Y to perform services in the shoes of Agency X.

The relationship between public agencies and MoD providers is slightly different:

- Agency X contracts with Private Provider Y which in turn subcontracts to a private citizen; or,
- Agency X contracts with Private Provider Y which in turn subcontracts to a vendor which provides the service

Recommendation: *The Capital Cost of Contracting model presents a regulatory anchor that additional models to support MoD can be built from, however, we strongly urge FTA to consider analyzing the amount of subsidy needed and clarifying how the policy would work under the new arrangements.*

ISSUE #3: NTD DATA REPORTING & ALLOCATION

Many agencies are looking to include MoD providers as a way to expand the reach of public transportation and to create better access and options for commuters. However, agencies are losing out on the ability to receive federal funds for these efforts as they are currently unable to report the miles served on these services to the National Transportation Database, which could discourage some agencies from pursuing these opportunities.

FTA should review the models of service being provided and look to create guidance on what qualifies as a transit service and how it can be included in a region's NTD report. The guidance should retain the sanctity of the intent of public and mass transportation, but also recognize the new models of service.

Recommendation: *We believe that following this program, FTA should look to incorporate MoD service into NTD data reports and allow this data to count towards a regional allocation. In a sense, MoD services are much like traditional demand response services, however, the service provided by MoD providers include general population. Limitations on what qualifies and can be reported need to be established. We encourage FTA to begin a rule making process which looks at what services qualify and under what conditions.*

CONCLUSIONS:

ACT, in our mission to improve the quality of life of commuters and livability of communities through the development and expansion of programs and policies that enhance commuting options, is excited about the direction that FTA is heading in regards to supporting mobility on demand. However, we encourage FTA to consider the recommendations that we have made and urge FTA to further consider the following items for MoD Sandbox Requests...

We urge FTA to consider the following items for MoD Sandbox Requests:

- 1) Provide relief and waivers to those MoD Sandbox projects that are based off of per-trip subsidy rather than a capital subsidy and allow MoD projects to directly subsidize the service provided.**
- 2) Provide relief and waivers for those MoD projects which may subsidize above the capital cost based on traditional models.**
- 3) Analyze the amount of subsidy and models in which its provided and develop guidance and best practices following the MoD sandbox on how to create subsidy level.**

In addition, following the MoD Sandbox program:

- 1) FTA should analyze MoD partnership and subsidy models in order to create a new regulatory framework or build off existing framework including:**
 - a. Best business model practices that look at:
 - i. Cost Models
 - ii. Subsidy Models
 - iii. Fare Models

- b. New regulatory framework that takes into account ways to subsidize services based on service provided, and/or,
 - c. Create a new regulatory framework within the capital cost of contracting policy that allows agencies to contract for MoD services. It is critical that the regulatory framework takes into account new cost, subsidy, and fare models as well as minimizes financial risk for private providers.
- 2) **FTA should look to incorporate MoD service into NTD data reports and allow this data to count towards a regional allocation** – We urge FTA to begin with a pilot project following the MoD Sandbox. The pilot project should look to identify limitations on what qualifies and how those miles should be reported and under what conditions.

The Association for Commuter Transportation is the nation’s leading advocate for commuter transportation programs and transportation demand management strategies that aim to improve the quality of life of commuters, livability of communities, and economic competitiveness of businesses. Our membership includes Fortune 500 employers, universities, hospitals, metropolitan planning organizations, regional transit authorities, departments of transportation, transportation management associations, and other consultants and vendors working to advance transportation options.

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