

Bridge Investment Credit (BIC) Draft Office Bulletin

Comments and questions from Districts and Local Agencies

Attachment 3

Questions from District 3

There was some confusion by one of our county agencies regarding the need to program extra, earned BICs on a project. They thought this meant the BIC was reimbursed at only a 50 cents to the dollar (50% ratio). I explained the need to program additional BIC funds to a project, over and above the estimate, was to be able to cover any unanticipated cost increases. I also explained any BIC's not used on the project would be returned to the County's BIC balance, being available for use on other projects. If it's not too late, will you please add some clarification to this point in your BIC memo?

Response

Your answer is correct. We will clarify.

Questions from San Louis Obispo County

- 1) The draft bulletin states "up to 100%" of eligible work is credited.
* Are all phases of the project including initial planning, design, mitigation, etc. covered? And what about an agencies indirect costs are these covered as well?

- 2) The draft bulletin states "minimum AASHTO Design Standards with CA Amendments."
* Does this mean a rehabilitation project must bring all deficient elements that exist on the bridge up to current AASHTO standards, the same as a federally funded HBP rehab project? Does it mean just enough to make the SR>80 and it no longer FO or SD?--I had heard that this rating system would be changed in future.

Response

1. Everything currently eligible under HBP would be eligible under BIC.

2. Rating system will be changing. For example FO projects will no longer be eligible for HBP. Again the key answer to the second question is to think that you are doing a HBP project except you doing it with local funds. All the eligibility requirements are the same. What is different, is that the project is not federalized and does not need to follow Federal procedures.

Questions from Santa Barbara County

This sure sounds pretty interesting to me, especially if there is a bridge that needs immediate work and for some reason we would find the NEPA process more cumbersome than CEQA alone. I do not know if we have financial capacity to do any major replacement projects with

this, but for rehabilitation or retrofit strategies, this could be a boon. Does this apply to scour protection projects, as well, on HBP eligible bridges? If we already have a project programmed through HBP, and want to use this BIC process, would we have to deprogram that project or otherwise return received reimbursement in order to qualify the project under this program?

Response

Yes it applies to scour protection...basically everything currently eligible under HBP except for low water crossings.

For existing programmed projects (projects with no federal authorization) local agencies would be able to fund the project with local funds and bank the funds for future HBP match. Projects that are in PE phase and they have federal authorization may also close out the federal project number return all the federal funds spent and proceed with local funds to complete the project and bank it for future HBP match.

Questions from District 3

1. May an agency use BIC on a bridge project that was authorized but not yet invoiced, if they de-obligate all the authorized funds?
2. On a related note, may an agency use BIC on a project that was authorized and invoiced, if they de-obligate all the authorized funds and repay all the federal funds invoiced back to the state?
3. The draft office bulletin states it's not recommended an agency use a project with federal dollars already authorized on any one phase of work to bank BIC on the projects other phases of work, and rightly so. However, if an agency insists on doing this would we prohibit it or just give them our strong recommendation against doing it?

Response

As you know this program has not been approved, so I do not recommend de-obligating any projects already authorized.

If I assume that BIC was approved as it was presented in the draft form, then answer to your first and second question would be yes, they can de-obligate and return all funds expended on the project and close the federal project number and do the project with local funds banking the credit.

On your question number three, the answer is, if an agency insist on doing construction with 100% local funds after they have done PE with federal fund they can do that (in theory) as long as they follow all the federal requirements for all the phases. As you know putting just one dollar of federal funds on any phase of a project will federalizes all the phases. I do not see any benefit doing this scenario for any local agency and with complications it may cause, I do not recommend allowing it.

Questions from District 11

- a. Once the program is implemented, how far back can the Local Agency go to apply for obtain BIC?
- b. Is BIC allowed on for current open phase (e.g. retroactive)? Or, is BIC only allowed on future (i.e. phase not yet authorized)?
- c. Is there expiration on banked BIC?

Response

This is for future projects only.
No expiration on banked credit.

Questions from Fresno County

1. If actual project costs for the locally funded project are higher, we only get credit for the amount we originally estimated, correct?
2. For typical BPMP projects, Caltrans will only fund items of work mentioned in the BIR. Would this be the same for locally funded projects under the BIC? (Could we get credit for items of work performed but not mentioned in the BIR?)
3. Is there any issue with the locally funded BPMP projects being performed under a Job Order Contract?
4. Order Contract?

Response

1. When construction is completed Caltrans will approve the credit as it was originally requested or as shown in the final project cost whichever is lower. Upward cost adjustment is not allowed.
2. Work completed that is not identified in a BIR is not HBP eligible. Credits are only created from HBP eligible costs.
3. No, JOC work will need to be identified either as HBP eligible or not. Can new JOC work classifications be create for BIC credit? The eligible costs need to be clearly determined/segregated.

Questions from City of Bakersfield

- 1) Quoting from the Draft bulletin and under section I. Purpose, “The credit, in turn, serves as the required non-Federal match for a future local Federal-Aid bridge project.” Here is an example to illustrate if our understanding of BIC is correct: Like said we have a project this FY for methacrylate deck treatment on HBP eligible bridges and the funding

is all local fund. The cost for this project is \$200,000, and through the BIC then we can request to receive credit up to 100 percent. If we did receive 100% credit for this project then we have now \$200,000 of credit that can be applied towards a future federally funded project, and this \$200,000 can be used to offset the local match requirements of that future project. Is this example correct?

- 2) Can we apply BIC credits to future BPMP projects?
- 3) Is there a limit to the amount of BIC requested?
- 4) Once we received BIC then how long will the credit last? Is there an expiration date to the credit?
- 5) From Section III. Project Programming for Banking BIC, "Caltrans approval of scope and cost for the BIC program is required prior to commencing work." We have several bridge projects that's all local funded and it's scheduled for this FY. Is there a way or a mechanism to get BIC credit for these projects since the projects will most likely start before Caltrans will have the BIC process established?
- 6) When will BIC be available and when can agencies submit for approval?

Response

- 1) Yes, provide all the work (costs) are HBP eligible.
- 2) Yes, credits can be applied to any HBP eligible costs.
- 3) There is no credit limit currently defined.
- 4) There is no Credit expiration date currently defined.
- 5) As soon as the Office Bulletin is approved you may Submit Exhibit 6-A's for your projects. We will work with the agency to bank the credits for the projects.
- 6) It is on the agency to request BIC with an Exhibit 6-A. The sooner Caltrans receives BIC requests and approves them, the sooner the agency accrues credits. See No. 5.

Comments from Mike Giuliano

I read over the "Bridge Investment Credit (BIC)" Draft that you recently put out. It will be interesting to see what kind of comments you get.

But there is one potential concern that I have on it. The US Senate recently passed the new DRIVE Act, which would be the new transportation act replacing MAP-21. Of course, who knows whether or not the House and President will ever get around to passing it???

But buried in it is a clause that **"Rewrites 23 USC 133(g) to clarify that an "off-system" bridge is one on a public road other than the NHS....."**. I've attached it (the excerpt) with this email.

The fear is that if this happens, it will render many more bridges as "off-system", where our Toll Credit policy would kick in. If this happens, it would significantly reduce or eliminate many local agencies' incentive to locally fund a project to create their BIC credit account to offset future local matches.

Anyway, just food for thought and maybe something to keep an eye on.

County of Los Angeles Response

We support the program, even if we will not presently take advantage of it. It is a good program, one that will help expedite lesser cost HBP projects by eliminating the federal requirements and apply those costs as the local match on other HBP projects. Our ability to take advantage of the program is dependent on existing fund availability, do we spend our gas tax to build the credit and then receive the benefit with other projects reimbursement down the road. Our overall reimbursement may be slightly less overall, but may be made up through cost savings efficiencies to carry out the credit earning projects without federal requirements.

We take issue with the requirement that the banked credit necessary to cover the local match must be 200% of PE and R/W and 125% of CON. When dealing with multiple projects the bank will fluctuate and provisions for freely combing BIC in combination with local funds to cover the local match is not mentioned.

Key points:

1. The program will primarily benefit agencies with larger bridge inventories such as the County. Smaller agencies with fewer bridges may have difficulty meeting the “banking” requirements.
2. Recommendation small projects (CC < \$1 million) should participate in this program. Since the credit can only be used towards the local match of a future project (11.47%), a local agency will need anywhere from one big project with CC > \$10 million to ten smaller projects (~\$1 million) to utilize the entire “banked” credit.
3. Program offers no financial benefit for off-system bridges. Off-System bridges are already 100% reimbursable through the use of toll credits.

Comments:

1. There should be a provision that allows local agencies to use the credit balance if it is less than 200% of required local match for Preliminary Engineering (PE) and Right of Way (R/W) and 125% of required local match for Construction (CON) under certain circumstances. Otherwise, locals may not be able to draw down their entire credit amount.
2. Section IV indicates that upward cost adjustments are not allowed once the credit request is approved prior to commencement of work. Provisions should be included to allow for upward cost adjustments in the event that unforeseen circumstances are encountered during performance of work.
3. Caltrans needs to define “eligible work” (PE, R/W, CE, CC) and specify the credit amount that can be “banked” for a project. For instance, the HBP program limits PE to 25% of CC and CE to 15% of CC but the actual PE and CE costs are much higher especially on smaller projects. Caltrans must specify if the amount of credit a local agency can bank from a project is limited in any way, or if Caltrans will allow locals to “bank” credit for PE and CE exceeding 25% and 15% of CC, respectively.

Clarifying Questions:

1. Are stand-alone bridge painting projects eligible for the credit?
2. Are stand-alone bridge barrier rail replacement projects eligible for the credit?
3. Does the work need to be competitively bid to qualify for the credit?
4. Can both PE and CON phases be performed by local agency staff?
5. Will submittal of as-built plans to Caltrans be required for preventive maintenance type work? Section IV indicates that as-built plans are to be submitted to Caltrans after completion of work.

Responses

1. Yes, spot painting may be done under Preventive Maintenance (PM) guidelines and major painting under HBP procedures in Chapter 6 of LAPG.
2. Barrier rail replacement is only available under PM guidelines. Please see PM guidelines for barrier rail replacement eligibility.
3. Local agencies performing work to bank credit do not need to follow federal requirements however local agencies procedures and guidelines must be followed.
4. Yes as long as they have qualified staff to do the work.
5. Yes.