

## DHS Presidential Transition Office Tasking 19:

**List all resources available that could be used for wall/barrier construction including details about specific accounts, account balances, etc.**

### CBP Financial Resources

CBP's current budget does not have any resources planned or dedicated for wall/barrier construction. The total FY 2017 President's Budget Request for CBP budget is \$13.63 billion, including \$11.35 billion in direct appropriations and \$2.28 billion in projected user fees. CBP's annual budget submission requests funding to support its mission priorities, including border security, immigration enforcement, travel and tourism promotion, and international trade facilitation.

Annual funding requests attempt to find a balance between funding mission-critical investments in technology, intelligence, readiness assets, and people. Wherever possible, CBP seeks to fund technology and infrastructure improvements that would make CBP more efficient and assist frontline personnel. As the largest federal law enforcement agency, CBP's annual budget to support its approximately 60,000 employees represents nearly 70 percent of its annual request, limiting our ability to invest in new resources to meet any new or emergent requirements. Furthermore, when factoring in all fixed costs such as rent, fuel, maintenance, and other must pay bills that amount increases to nearly 85 percent of CBP's total budget, limiting available spending on operational expenses such travel, training, equipment, and relocations; and especially limiting investments in technology and infrastructure to address the most critical requirements.

DHS/CBP have existing legal authorities set out in Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, as amended, 8 U.S.C. 1103 note, that provide the authority to construct border fence and roads in the vicinity of the border in areas of high illegal entry. Section 102 of IIRIRA also includes the DHS Secretary's (the Secretary) waiver authority, under which the Secretary may waive all legal requirements the Secretary deems necessary to ensure the expeditious construction of barriers and roads in the vicinity of the border in areas of high illegal entry. In terms of funding authority, construction of wall/barrier would need to be in the newly established Procurement, Construction and Improvement appropriation established in FY 2017 with the Common Appropriations Structure. Prior to FY 2017, these authority for these types of activities were the Border Security Fencing, Infrastructure and Technology (BSFIT) appropriation and the Construction and Facilities Management (C&FM) Appropriation.

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CBP currently has appropriated funds for border security fence repair and maintenance but has not identified funding or out year budget resources for new fence/wall construction. However,

(b) (5)

Likewise, there is no funding requested for new construction of facilities in the FY 2017 budget. There are balances in the legacy Construction and Facilities Management Account, but again these are committed to specific mission critical infrastructure. (b) (7)(E), (b) (5)

**Major Construction, Alterations, Improvements and Fit-Out (est. \$20.2M)**

- o (b) (7)(E), (b) (5)
- o (b) (7)(E), (b) (5)
- o (b) (7)(E) **Central Processing Center:** Prior year funding will be utilized towards the phase 2 build out of the (b) (7)(E) Central Processing Center. The Phase 2 effort is

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focused on ensuring that the safety and security of both our agents and the individuals who pass through our facility are protected. The improvements to the facility will also result in improved conditions throughout the facility. Cancellation or delays to Phase II will significantly inhibit OBP's ability to process the excessive number of aliens entering the country through this sector.

#### **Minor Construction, Alterations and Improvements (est. \$2.5M)**

The majority of these funds are required to provide furniture, fixtures, and equipment and minor alterations associated with smaller projects such as lease relocations. Without these funds, projects would be unable to be completed, potentially resulting in a dual lease and lease holdover situation, where we cannot vacate the existing space, but a lease has been signed and new space built out to CBP's specifications but is unable to be completed.

#### **Sustainment (est. \$13.4M)**

These funds are designated for outstanding repair and deferred maintenance projects that were unable to be awarded prior to the end of FY 2016. These projects are critical to sustaining CBP's facilities in safe, secure, and operable conditions. Over \$4M is being utilized to repair or upgrade security and fire protection/suppression systems, which are critical to the life and safety of CBP's employees, contractors, and the public who pass through our facilities. Funds may also be used to assist CBP with additional sustainment costs related to the ongoing Haitian Migration Crisis. Carryover funds are also required to pay the final utility bill of FY 2016 for owned facilities.

#### **Real Property Lifecycle Management (\$12.3M)**

These funds are needed to ensure continuity of operations for CBP's Facilities Energy and Environmental Compliance program and the centralized utility management and processing program. CBP is unable to fully execute either of these critical program capabilities due to competing priorities for funding in FY 2017; therefore carryover is planned to be utilized to ensure there is no disruption to services until a more permanent solution is implemented in FY 2018. The compliance program and its resources are utilized to plan and implement environmental mitigation strategies to minimize CBP's risk exposure due to non-compliance with key environmental and life safety requirements including, but not limited to, safe drinking water, lead clean up at firing ranges, and hazardous waste leakage. In addition, this funding enables CBP to process the on-time payment of CBP's utility bills through its centralized utility management and invoice processing services, which, since its implementation in 2013, has resulted in improved timeliness of processing bills, reduction in man hours required to process and manage the accounts and ultimately allowed operational components to focus on their mission instead of these administrative-like functions.

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If CBP does not have adequate prior year balances to address these issues, the potential consequences include the cancellation of an in-progress project, deficiencies in facilities or improvements, and outdated or obsolete infrastructure, all of which would have a significant impact on the operations of the facility.

We have identified these specific accounts which are the most germane to the discussion about construction of wall/fence since they have been used to fund fence activities in the past, and where we would request funding or initially evaluate trade-offs. We have other accounts such as those that fund our personnel and air and marine programs, which we don't believe are appropriate and might have additional constraints before they could be used, so we have not included their details.

**Other CBP Non-financial Resources and Capabilities**

While CBP does not have identified funding for fence construction, it does have experience, leadership, partnerships, and authorities that would be beneficial in the event funding was available for fence construction.

- o **Strategic Site Context** – Fencing/Walls are a critical part of increased border security and USBP's multilayered approach to defending the Nation. Access roads, persistent surveillance, and fully-equipped agents are *equally* vital. It is a system of systems.

**Commented [GT1]:** This is where USBP's paper begins.



- o **Key Leadership & Expertise** – Based upon previous border infrastructure and fencing projects, CBP's Border Patrol and Air and Marine Program Management Office (BPAM PMO), part of CBP's Office of Facilities and Asset Management has critical institutional knowledge on such construction projects. Between 2007 and 2008 hundreds of miles of pedestrian and vehicle fence were completed successfully. Significant projects include the following:
  - Project Pedestrian Fence 70: Completed in 2007, this effort produced 70 miles of primary geographically-appropriate fence. Challenges such as hills, rivers, mountains, forest, desert, urban, rural & remote environment require different security infrastructure.
  - Pedestrian Fence 225: Constructed 225 miles of pedestrian fence along the Southwest border in California, Arizona, New Mexico, and Texas.
  - Vehicle Fence 300: Built 299.9 miles of vehicle fence along the Southwest border in strategic locations, predominantly in Arizona and New Mexico; the remaining in California and Texas.

**Commented [GT2]:** USBP had a section here called "Existing Resources." OF has deleted because it would no longer be necessary if the first 3 pages of this paper are kept intact.

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- o The table below documents existing pedestrian and vehicle mileage by Sector.

Sector	Primary Pedestrian Fence	Primary Vehicle Fence	Primary Fence Total
Big Bend (BBT)	4.6	0.2	4.8
Del Rio (DRT)	4.0	0.0	4.0
El Centro (ELC)	44.0	14.9	58.9
El Paso (EPT)	64.8	101.3	166.0
Laredo (LRT)	1.4	0.0	1.4
Rio Grande Valley (RGV)	54.9	0.0	54.9
San Diego (SDC)	45.9	0.4	46.2
Tucson (TCA)	71.8	139.4	211.2
Yuma (YUM)	62.9	43.8	106.6
<b>TOTAL</b>	<b>354.2</b>	<b>299.9</b>	<b>654.1</b>

- o **Acquisition Strategy** – CBP has begun to plan for the potential for new fence construction. For instance, CBP began discussions with USACE as to how CBP and USACE can quickly respond to any new USBP border infrastructure requirements. CBP, working in conjunction with USACE, have discussed a plan to create a Multiple Award Task Order Contracting (MATOC) and Indefinite Delivery/Indefinite Quantity (IDIQ) pool of pre-qualified contractors. This strategy will award construction and design contracts expeditiously. This significantly reduces the acquisition timeline and affords CBP the flexibility to execute timely new fence construction. As part of lessons learned from the PF225 project, CBP determined that acquisition timeframe, up to issuing the Notice to Proceed can take up to approximately 12 to 18 months. After NTP, construction can be completed within approximately 12 to 18 months, assuming applicable environmental and land management laws are waived and condemnation is executed if needed.
- o **Collaborative Inter-Agency Partnerships** – Through previous construction efforts, CBP senior leadership developed a strong, collaborative, inter-agency partnerships with the (USACE), the Department of Justice (DOJ) and other federal, state, and local agencies. These partnerships enable execution of CBP's USBP border infrastructure requirements.
- o **Acquisition Timeline** – As part of lessons learned from prior projects CBP identified the planning factor from start-to-finish as 36 months -- half in planning and acquisition - half in construction.
  - Assumes the DHS Secretary employs legally-permissible & assertive waivers below.
- o **Existing Legal Authorities** – DHS/CBP have existing legal authorities set out in Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, as amended, 8 U.S.C. 1103 note, that provide the authority to construct border fence and roads in the vicinity of the border in areas of high illegal entry.
  - Provides DHS Secretary’s (the Secretary) waiver authority for expeditious construction of barriers and roads in the vicinity of the border in areas of high illegal entry.
  - When CBP cannot acquire necessary real estate through voluntary sales or acquisition, CBP will work closely with DOJ to prepare and file condemnation actions paying fair market value for land to be acquired for mission critical construction.

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- We note here that amendments or “fixes” to Section 102 of IIRIRA, i.e., clarifying its application to technology, possibly eliminating the consultation requirements, etc., could further facilitate expeditious construction.
- **Government Furnished Material (GFM) and Supply Chain** – In previous fence construction initiatives a regular and dependable supply of steel proved at times to be problematic. As a result, CBP developed a plan to procure steel in bulk. To that end, CBP has assembled an acquisition team needed to procure steel in bulk in addition to other necessary materials.

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### Failing Fencing/Walls with Inadequate Supporting Access Roads



### Recently Constructed Fencing Examples



Primary Fence



Tertiary Fence



Secondary Fence



Vehicle Fence

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