



# CUSTOMS AND BORDER PROTECTION

## Section 482

## Donation Acceptance Authority

*Proposal Evaluation Procedures & Criteria Framework*



U.S. Customs and  
Border Protection



U.S. General Services Administration

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## Executive Summary

In concert with the Fiscal Year (FY) 2014 President's Budget Request, U.S. Customs and Border Protection (CBP) developed and delivered to Congress its Resource Optimization at Ports of Entry report, requested as part of the *Consolidated Appropriations Act of 2012*, P.L. 112-74. The report explains how CBP is implementing business improvements, thoroughly and systematically analyzing port of entry staffing needs and exploring alternative sources of funding to bridge current and anticipated mission resource gaps.

Section 2 of the *Cross-Border Trade Enhancement Act of 2016*, P.L. 114-279 (the "2016 Trade Enhancement Act"), amended title IV of the *Homeland Security Act of 2002* to, among other things, add a new section 482, which augments CBP's ability to implement this initiative by jointly authorizing CBP and the U.S. General Services Administration (GSA) to accept real property, personal property, monetary, and non-personal services donations from private sector and government entities (Section 482). In addition, section 4 of the 2016 Trade Enhancement Act repealed section 559 of the *Consolidated Appropriations Act of 2014*, P.L. 113-76 (Section 559), which was the previous authority under which CBP and GSA were authorized to accept donations at ports of entry; however, it did not affect any agreement entered into, or any proposal accepted for consideration, under Section 559 on or before December 15, 2016.

CBP and GSA have coordinated closely to develop the below *Section 482 Donation Acceptance Authority Proposal Evaluation Procedures & Criteria Framework* (the "Section 482 Framework"). The Section 482 Framework encompasses the procedures that CBP and GSA, as applicable, will use systematically and equitably to receive, evaluate and select donation proposals for further planning and development prior to accepting the proposed real property, personal property, monetary, or non-personal services donation, or any combination of the foregoing. It also specifies the criteria that CBP and GSA, as applicable, will use to help determine upfront proposal viability before expending resources on costly planning and development activities. Appendices provide supplementary details to facilitate a comprehensive review and understanding of the Donation Acceptance Authority, including a visual overview of the donation acceptance process (Appendix A), a copy of the Section 482 provision (Appendix E) and other pertinent information and guidance.

Future Section 482 Framework revisions will be made in consultation with GSA to the extent such revisions relate to the receipt, evaluation, selection, planning, development or acceptance, or any combination of the foregoing, of real property donations at a land port of entry under the jurisdiction, custody or control of GSA.

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## Introduction

On December 16, 2016, section 2 of the *Cross-Border Trade Enhancement Act of 2016*, P.L. 114-279, amended title IV of the *Homeland Security Act of 2002* to, among other things, add a new section 482, which jointly authorized CBP and GSA to accept real property, personal property, monetary, and non-personal services donations from private sector and government entities (Section 482). Donations accepted under Section 482 may be used for port of entry construction, alteration, operation, or maintenance purposes, including land acquisition, design and the deployment of equipment and technologies. Section 482 supplanted section 559 of the *Consolidated Appropriations Act of 2014*, P.L. 113-76 (Section 559); however, it did not affect any agreement entered into, or any proposal accepted for consideration, under Section 559 on or before December 15, 2016.

Subparagraph (c)(3) of Section 482 requires that CBP, in consultation with GSA, establish criteria for evaluating donation proposals and make such criteria available to the public. CBP and GSA have coordinated closely since enactment to meet these requirements. This document is the culmination of CBP and GSA's coordinated efforts and will serve as the framework for receiving, evaluating, approving, planning, developing, and formally accepting donations proposed under Section 482.

## Donation Proposal Evaluation Procedures

### Overview

The following subsections, and the visual overview of the donation acceptance process depicted in Appendix A, outline the procedures that CBP and GSA, as applicable, will use to evaluate, select, plan, develop, and accept donation proposals submitted under Section 482. CBP and GSA will only consider submissions that envision Federal ownership of the proposed donation. These procedures have been organized into three distinct phases, each of which produces a clear and distinguishable output as input to the next. The three phases and their associated outputs are as follows:

- **Phase I: Proposal Evaluation & Selection** – A viable donation proposal that has been evaluated and selected for further planning and development by CBP and GSA, as applicable.
- **Phase II: Proposal Planning & Development** – A fully planned and developed donation proposal that is executable and fulfills CBP's operational needs at an acceptable cost, schedule and risk.
- **Phase III: Donation Acceptance Agreement** – A fully executed Donation Acceptance Agreement (DAA) that formalizes acceptance of the proposed real property, personal property, monetary, or non-personal services donation, or any combination of the foregoing, by CBP or GSA, or both.

These phases and the high-level procedural framework associated with each are described below in further detail. An additional subsection, Pre-Proposal Evaluation & Selection, is included to describe the activities that CBP, in coordination with GSA, as applicable, will undertake to assist prospective donors gauge their willingness and ability to submit a successful proposal. Pre-Proposal Evaluation & Selection procedures may vary depending on future demand, the complexity of the proposed donation and other factors and, therefore, are not identified as a stand-alone phase for the purpose of this document.

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## Pre-Proposal Evaluation & Selection

The purpose of Pre-Proposal Evaluation & Selection Procedures is to provide prospective donors with ample information regarding CBP and GSA’s operational and technical criteria, proposal evaluation and selection procedures and timelines, and other pertinent information. Prospective donors may, in turn, use this information to not only gauge their potential willingness and ability to work cooperatively with CBP and GSA on the proposed port of entry improvements, but also to enhance the overall viability of their proposal submission. Table 1 describes the high-level Pre-Proposal Evaluation & Selection procedures.

**Table 1 – Pre-Proposal Evaluation & Selection Procedures**

Step	Lead Component	Coordinating Components	Procedures
1	CBP	GSA	Use various modes of communication to educate prospective donors regarding: <ul style="list-style-type: none"> <li>➤ The scope and limitations of the Section 482 authority, including what donations CBP and GSA may or may not legally accept;</li> <li>➤ Proposal submission requirements, including applicable dates, submission instructions and evaluation timelines;</li> <li>➤ Proposal evaluation criteria and representative evaluation factors; and</li> <li>➤ The donation acceptance process, including the procedures CBP and GSA, as applicable, will use to determine proposal viability.</li> </ul>
2	Prospective Donor	None	Develop and submit donation proposal to <a href="mailto:dap@cbp.dhs.gov">dap@cbp.dhs.gov</a> .
3	CBP	None	Confirm proposal receipt and provide prospective donor with timeline of ensuing evaluation and selection activities.

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## Phase I: Proposal Evaluation & Selection

The purpose of Phase I: Proposal Evaluation & Selection is to equip CBP leadership and GSA leadership, as applicable, with the assessment that they need to render an informed and defensible proposal selection determination. Table 2 describes the high-level procedures for Phase I: Proposal Evaluation & Selection.

**Table 2 – Phase I: Proposal Evaluation & Selection Procedures**

Step	Lead Component	Coordinating Components	Procedures
1	CBP	None	Disseminate the proposal to the affected Evaluation Leads and subject matter experts (SMEs).
2	CBP and GSA, as applicable	None	<p>Within 60 days of receiving the proposal, Evaluation Leads and SMEs will conduct a preliminary review to:</p> <ul style="list-style-type: none"> <li>➤ Confirm that the proposal is consistent with the statutory provisions of Section 482. If not, all further evaluation activities will cease and the prospective donor will be notified accordingly;</li> <li>➤ Identify any major adverse operational implications; and</li> <li>➤ Determine whether the proposal is complete or incomplete. If incomplete, the prospective donor will be so notified, together with a description of the additional documentation that must be provided to make the proposal acceptable for further evaluation. The prospective donor may provide the requested material either through a direct response or by updating and resubmitting its proposal.</li> </ul>
3	CBP and GSA, as applicable	None	Evaluation Leads conclude their review by evaluating the proposal against the operational and technical criteria in Appendices B and C, respectively, and reach consensus on a proposal recommendation.
4	CBP and GSA, as applicable	None	Compile the proposal recommendation and submit for leadership consideration.
5	CBP and GSA, as applicable	None	Leadership reviews the proposal recommendation and determines whether or not to select the proposal.
6	CBP	GSA, as applicable	Within 180 days of receiving the completed proposal, notify prospective donor whether or not its proposal was selected. A prospective donor whose proposal was not selected will be given the opportunity to request a meeting to review key proposal risks and deficiencies. A prospective donor whose proposal is selected (referred to hereafter as the “Recommended Donor”) will be invited to engage in Phase II planning and development activities.

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## Phase II: Proposal Planning & Development

The purpose of Phase II: Proposal Planning & Development is to plan and develop collaboratively the selected proposal into an executable project that fulfills CBP's operational and technical needs at an acceptable cost, schedule and risk, as determined in the sole discretion of CBP and, as applicable, GSA. To the extent practicable, project planning and development activities will align with the federal budget cycle. Table 3 describes potential high-level procedures for Phase II: Proposal Planning & Development; however, the level of effort, specific steps, requirements, and duration of Phase II ultimately will depend on the size, scope and complexity of the selected proposal.

**Table 3 – Phase II: Proposal Planning & Development Procedures**

Step	Lead Component	Coordinating Components	Procedures
1	CBP and GSA, as applicable	Recommended Donor	Draft and fully execute a Memorandum of Understanding (MOU) to acknowledge high-level consensus on forthcoming planning, development and, if applicable, execution-related objectives and activities, anticipated timelines, roles and responsibilities, and funding obligations, and begin sharing planning inputs ( <i>e.g.</i> , operational needs, rough space requirements, project staffing needs, design standards, technical specifications, and other pertinent information).
2	To Be Determined during Step 1	To Be Determined during Step 1	Begin executing planning and development activities ( <i>e.g.</i> , environmental studies, feasibility studies and technical development), the nature of which may vary depending on the size, scope and complexity of the proposal. Refine conceptual proposal scope into an executable project that fulfills CBP's operational and technical needs at an acceptable cost, schedule and risk, as determined in the sole discretion of CBP and, as applicable, GSA. CBP and GSA, as applicable, will evaluate against the considerations in Appendix D to assist in this determination.
3	To Be Determined during Step 1	To Be Determined during Step 1	Identify and document final cost and schedule baselines, plus any contingencies, cost outlays, funding strategies, acquisition plans, and other project execution requirements in accordance with the MOU.
4	CBP and GSA, as applicable	Recommended Donor	Confirm that all planning and pre-construction development activities have been completed, no outstanding critical risks exist and the appropriate agencies are prepared to request out-year funds, as appropriate. Proceed to Phase III: Donation Acceptance Agreement.

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### Phase III: Donation Acceptance Agreement

The purpose of Phase III: Donation Acceptance Agreement is to formalize the terms and conditions under which either CBP or GSA, or both, may accept the proposed donation. The DAA is signed by all the parties prior to project execution in the case of a donation of real property, personal property or non-personal services and prior to acceptance in the case of a monetary donation. Table 4 describes the high-level procedures for Phase III: Donation Acceptance Agreement.

**Table 4 - Phase III: Donation Acceptance Agreement Procedures**

Step	Lead Component	Coordinating Components	Procedures
1	CBP	GSA, as applicable, and Recommended Donor	Prepare DAA, including an overview of the proposed donation and its intended use, donation conditions and other pertinent information.
2	CBP, GSA, as applicable, and Recommended Donor	None	Review and sign the DAA. Proceed to project execution or, in the case of a monetary donation, acceptance.

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### Donation Proposal Evaluation Criteria

The following outlines the criteria that CBP and GSA, as applicable, will use to evaluate donation proposals submitted under Section 482. These criteria satisfy the requirements set forth in subparagraph (c)(3) of Section 482, which states that CBP and GSA, as applicable, must consider the following when determining whether or not to select a donation proposal:

- The impact of the proposal on the land, sea or air port of entry at issue and other ports of entry or similar facilities or other infrastructure near the location of the proposed donation;
- Such proposal’s potential to increase trade and travel efficiency through added capacity;
- Such proposal’s potential to enhance the security of the port of entry at issue;
- The impact of the proposal on reducing wait times at that port of entry or facility and other ports of entry on the same border;
- The funding available to complete the intended use of such donation;
- The costs of maintaining and operating such donation;
- The impact of such proposal on CBP staffing requirements;
- For a donation of real property:
  - Whether such donation satisfies the requirements of such proposal, or whether additional real property would be required; and
  - How such donation was acquired, including if eminent domain was used; and
- Other factors that the Commissioner of CBP or the Administrator of GSA determines to be relevant.

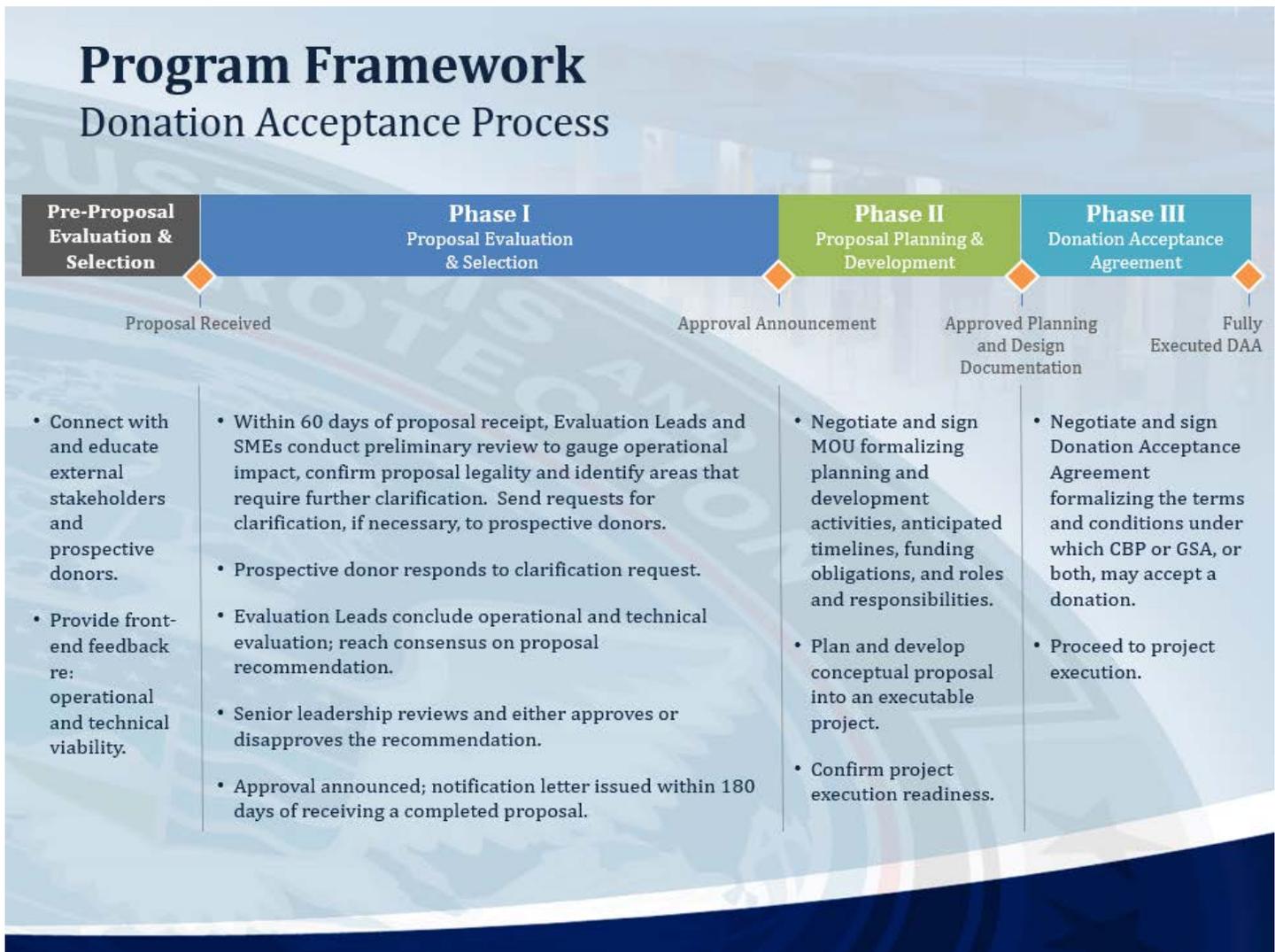
To satisfy the above consideration requirements, CBP and GSA, as applicable, will evaluate each proposal during Phase I against the below criteria to determine overall proposal viability. The criteria are organized into two separate categories: operational criteria and technical criteria.

**Table 5 – Operational & Technical Evaluation Criteria**

Operational Criteria	Technical Criteria
Operational Impact	Funding & Financing Strategy (Technical)
Funding & Financing Strategy (Operational)	Real Estate Implications
Health & Safety Requirements	Environmental & Cultural Resource Implications
Economic & Community Benefits	Technical Feasibility
Community Support	Planning Implications
Other Agency Support for Operations	Proposal Support
Project Duration & Timeline	

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## Appendix A – Visual Overview of the Donation Acceptance Process



\* Pre-Proposal Evaluation & Selection is included to describe prospective donor outreach and education, as well as, proposal submission activities leading up to Phase I.

## Appendix B – Operational Criteria

Criteria	Example Evaluation Factors
Operational Impact	<ul style="list-style-type: none"> <li>➤ Whether the proposal poses an adverse impact to existing local and regional CBP operations.</li> <li>➤ Whether the proposal presents measurable existing and future CBP operational benefits, including the proposal’s potential to enhance the security of the port of entry at issue.</li> </ul>
Funding & Financing Strategy (Operational)	<ul style="list-style-type: none"> <li>➤ Whether the proposal presents a sound strategy for accommodating CBP’s exposure to operating costs (<i>e.g.</i>, salaries, overtime, equipment, and technologies); specifically, what is being funded?</li> <li>➤ Whether the prospective donor’s overall funding and financing strategy for these costs appears to be viable, <i>i.e.</i>, how it is being funded.</li> </ul>
Health & Safety Requirements	<ul style="list-style-type: none"> <li>➤ Whether the proposal presents a sound strategy for sustaining or enhancing employee and public health and safety conditions both during and following donation acceptance.</li> </ul>
Economic & Community Benefits	<ul style="list-style-type: none"> <li>➤ Whether the proposal presents measurable local, regional and national economic and community benefits, including reduced wait times and enhanced travel and trade.</li> </ul>
Community Support	<ul style="list-style-type: none"> <li>➤ Whether the proposal has the support of all impacted local and regional stakeholders.</li> </ul>
Other Agency Support for Operations	<ul style="list-style-type: none"> <li>➤ Whether the proposal addresses the ability of other agencies to provide operational support based on new or increased capacity, hours, location, or workload increases.</li> </ul>
Project Duration & Timeline	<ul style="list-style-type: none"> <li>➤ Whether the proposal presents a feasible planning, development and delivery strategy that poses no to minimal adverse impact on current and future operations.</li> </ul>

## Appendix C – Technical Criteria

Criteria	Example Evaluation Factors
Funding & Financing Strategy (Technical)	<ul style="list-style-type: none"> <li>➤ Whether the proposal presents a sound strategy for accommodating CBP and GSA’s, as applicable, exposure to planning, design and construction-related costs, in addition to first and out-year sustainment costs (<i>e.g.</i>, equipment and technology operations and maintenance and facility rent); specifically, what is being funded?</li> <li>➤ Whether the prospective donor’s overall funding and financing strategy for these costs appears to be viable, <i>i.e.</i>, how it is being funded.</li> </ul>
Real Estate Implications	<ul style="list-style-type: none"> <li>➤ Whether additional real estate is required to accommodate existing and downstream operations and, if so, whether the proposal presents a sound strategy for acquiring such real estate.</li> <li>➤ Whether the proposal presents a sound strategy for identifying and acquiring necessary rights-of-way, easements or other interests in real estate.</li> </ul>
Environmental & Cultural Resource Implications	<ul style="list-style-type: none"> <li>➤ Whether the proposal presents information on meeting the requirements of the National Environmental Policy Act of 1969, as amended (NEPA).</li> <li>➤ Whether the proposal presents the potential to affect cultural or historic resources.</li> <li>➤ Whether a Phase I Environmental Site Assessment has been completed in accordance with the American Society for Testing and Materials standards for any real property related to the donation.</li> <li>➤ Whether any recognized environmental conditions have been mitigated and, if not, whether a plan is in place to address them.</li> </ul>
Technical Feasibility	<ul style="list-style-type: none"> <li>➤ Whether the proposal appears to be technically feasible, including whether it appears to fit within the site footprint and includes all major infrastructure and technology components.</li> <li>➤ Whether the proposal purports to comply with all applicable laws, regulations and technical and security standards.</li> <li>➤ Whether the proposal appears compatible with existing equipment and technologies and established securities and protocols.</li> </ul>
Planning Implications	<ul style="list-style-type: none"> <li>➤ Whether the proposal is consistent with CBP’s current list of out-year investment priorities.</li> <li>➤ Whether the proposal comports with the out-year planning priorities of CBP’s interagency and international partners.</li> <li>➤ Whether the proposal’s planning and delivery schedule appears to be both reasonable and accurate.</li> </ul>
Proposal Support	<ul style="list-style-type: none"> <li>➤ Whether the proposal has public support at the political, national or regional levels, or any combination thereof.</li> <li>➤ Whether the proposal has support from all affected federal agencies.</li> </ul>

## Appendix D – Checklist of Planning, Development, & Execution Considerations

CBP, GSA, as applicable, and the Recommended Donor cross-check against the following non-exhaustive list of considerations during Phase II: Proposal Planning and Development to facilitate arriving at an executable project that fulfills CBP’s operational needs at an acceptable cost, schedule and risk. For risk management purposes, these considerations are further cross-checked during project execution.

### Operational Merit

- ✓ Operational Impact
- ✓ Operational Benefits
- ✓ Funding Strategy
- ✓ Health & Safety Requirements
- ✓ Other Agency Support for Operations
- ✓ Economic & Community Benefits
- ✓ Project Duration & Timeline
- ✓ Community Support

### Proposal Viability

- ✓ Safety Requirement Compliance
- ✓ Public Support
- ✓ Federal Agency Support
- ✓ Recommended Donor Qualifications

### Planning Implications

- ✓ Internal Agency Need Alignment
- ✓ External Agency Need Alignment
- ✓ Detailed Planning & Delivery Schedule
- ✓ Interagency & International Planning & Execution Readiness
- ✓ Permit Strategy
- ✓ Permit Completion
- ✓ Sustainability Requirements

### Environmental & Cultural Resource Implications

- ✓ Environmental & Cultural Benefits
- ✓ Phase I & II Environmental Site Assessment
- ✓ Environmental Remediation Compliance
- ✓ Environmental Decision Completion
- ✓ NEPA Review
- ✓ Historic Preservation Restrictions
- ✓ Historic Preservation & Cultural Resources Review

### Real Estate Implications

- ✓ Real Estate Sufficiency
- ✓ Real Estate Acquisition Strategy
- ✓ Right-of-Way Acquisition Strategy
- ✓ Right-of-Way Acquisition Completion
- ✓ Temporary or Permanent Easements
- ✓ Utilities Management Strategy

### Technical Feasibility

- ✓ General Technical Feasibility
- ✓ Design Standards & Technical Specifications
- ✓ Systems Compatibility
- ✓ Technical Scalability
- ✓ Security Requirements

### Financial Feasibility

- ✓ Updated Cost Estimates & Funding Implications
- ✓ Planning Funding Strategy
- ✓ Design Funding Strategy
- ✓ Construction Funding Strategy
- ✓ Furniture, Fixtures, Equipment, & Technologies Funding Strategy
- ✓ Operations & Maintenance Funding Strategy
- ✓ GSA Fair Annual Rent Impact & Strategy
- ✓ Staffing Funding Strategy

### Legal Implications

- ✓ Proposal Conditions
- ✓ Downstream Liabilities
- ✓ Bonding & Insurance Coverage
- ✓ Title & Ownership Evidence
- ✓ Property Conveyance Authority
- ✓ Tolling Authority
- ✓ Compliance with Applicable Laws
- ✓ Procurement Implications

## Appendix E – *Cross-Border Trade Enhancement Act, 2016, (Section 482) Excerpt*

### SEC. 482. PORT OF ENTRY DONATION AUTHORITY.

#### (a) PERSONAL PROPERTY DONATION AUTHORITY.—

(1) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, may enter into an agreement with any entity to accept a donation of personal property, money, or nonpersonal services for the uses described in paragraph (3) only with respect to the following locations at which U.S. Customs and Border Protection performs or will be performing inspection services:

(A) A new or existing sea or air port of entry.

(B) An existing Federal Government-owned land port of entry.

(C) A new Federal Government-owned land port of entry if—

(i) the fair market value of the donation is \$50,000,000 or less; and

(ii) the fair market value, including any personal and real property donations in total, of such port of entry when completed, is \$50,000,000 or less.

(2) LIMITATION ON MONETARY DONATIONS.—Any monetary donation accepted pursuant to this subsection may not be used to pay the salaries of U.S. Customs and Border Protection employees performing inspection services.

(3) USES.—Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in subparagraphs (A) through (F) of section 411(g)(3), which are related to a new or existing sea or air port of entry or a new or existing Federal Government-owned land port of entry described in paragraph (1), including expenses related to—

(A) furniture, fixtures, equipment, or technology, including the installation or deployment of such items; and

(B) the operation and maintenance of such furniture, fixtures, equipment, or technology.

#### (b) REAL PROPERTY DONATION AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (3), the Commissioner of U.S. Customs and Border Protection, and the Administrator of the General Services Administration, as applicable, may enter into an agreement with any entity to accept a donation of real property or money for uses described in paragraph (2) only with respect to the following locations at which U.S. Customs and Border Protection performs or will be performing inspection services:

(A) A new or existing sea or air port of entry.

(B) An existing Federal Government-owned land port of entry.

(C) A new Federal Government-owned land port of entry if—

(i) the fair market value of the donation is \$50,000,000 or less; and

(ii) the fair market value, including any personal and real property donations in total, of such port of entry when completed, is \$50,000,000 or less.

(2) USE.—Donations accepted pursuant to this subsection may be used for activities of the Office of Field Operations set forth in section 411(g), which are related to the construction, alteration, operation, or maintenance of a new or existing sea or air port of entry or a new or existing a Federal Government owned land port of entry described in paragraph (1), including expenses related to—

(A) land acquisition, design, construction, repair, or alteration; and

(B) operation and maintenance of such port of entry facility.

(3) LIMITATION ON REAL PROPERTY DONATIONS.—A donation of real property under this subsection at an existing land port of entry owned by the General Services Administration may only be accepted by the Administrator of General Services.

#### (4) SUNSET.—

(A) IN GENERAL.—The authority to enter into an agreement under this subsection shall terminate on the date that is 4 years after the date of the enactment of this section.

(B) **RULE OF CONSTRUCTION.**—The termination date referred to in subparagraph (A) shall not apply to carrying out the terms of an agreement under this subsection if such agreement is entered into before such termination date.

(c) **GENERAL PROVISIONS.**—

(1) **DURATION.**—An agreement entered into under subsection (a) or (b) (and, in the case of such subsection (b), in accordance with paragraph (4) of such subsection) may last as long as required to meet the terms of such agreement.

(2) **CRITERIA.**—In carrying out an agreement entered into under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, shall establish criteria regarding—

(A) the selection and evaluation of donors;

(B) the identification of roles and responsibilities between U.S. Customs and Border Protection, the General Services Administration, and donors;

(C) the identification, allocation, and management of explicit and implicit risks of partnering between the Federal Government and donors;

(D) decision-making and dispute resolution processes; and

(E) processes for U.S. Customs and Border Protection, and the General Services Administration, as applicable, to terminate agreements if selected donors are not meeting the terms of any such agreement, including the security standards established by U.S. Customs and Border Protection.

(3) **EVALUATION PROCEDURES.**—

(A) **IN GENERAL.**—The Commissioner of U.S. Customs and Border Protection, in consultation with the Administrator of General Services, as applicable, shall—

(i) establish criteria for evaluating a proposal to enter into an agreement under subsection (a) or (b); and

(ii) make such criteria publicly available.

(B) **CONSIDERATIONS.**—Criteria established pursuant to subparagraph (A) shall consider—

(i) the impact of a proposal referred to in such subparagraph on the land, sea, or air port of entry at issue and other ports of entry or similar facilities or other infrastructure near the location of the proposed donation;

(ii) such proposal's potential to increase trade and travel efficiency through added capacity;

(iii) such proposal's potential to enhance the security of the port of entry at issue;

(iv) the impact of the proposal on reducing wait times at that port of entry or facility and other ports of entry on the same border;

(v) for a donation under subsection (b)—

(I) whether such donation satisfies the requirements of such proposal, or whether additional real property would be required; and

(II) how such donation was acquired, including if eminent domain was used;

(vi) the funding available to complete the intended use of such donation;

(vii) the costs of maintaining and operating such donation;

(viii) the impact of such proposal on U.S. Customs and Border Protection staffing requirements; and

(ix) other factors that the Commissioner or Administrator determines to be relevant.

(C) **DETERMINATION AND NOTIFICATION.**—

(i) **INCOMPLETE PROPOSALS.**—

(I) **IN GENERAL.**—Not later than 60 days after receiving the proposals for a donation agreement from an entity, the Commissioner of U.S. Customs and Border Protection shall notify such entity as to whether such proposal is complete or incomplete.

(II) RESUBMISSION.—If the Commissioner of U.S. Customs and Border Protection determines that a proposal is incomplete, the Commissioner shall—

(aa) notify the appropriate entity and provide such entity with a description of all information or material that is needed to complete review of the proposal; and

(bb) allow the entity to resubmit the proposal with additional information and material described in item (aa) to complete the proposal.

(ii) COMPLETE PROPOSALS.—Not later than 180 days after receiving a completed proposal to enter into an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection, with the concurrence of the Administrator of General Services, as applicable, shall—

(I) determine whether to approve or deny such proposal; and

(II) notify the entity that submitted such proposal of such determination.

(4) SUPPLEMENTAL FUNDING.—Except as required under section 3307 of title 40, United States Code, real property donations to the Administrator of General Services made pursuant to subsection (a) and (b) at a GSA-owned land port of entry may be used in addition to any other funding for such purpose, including appropriated funds, property, or services.

(5) RETURN OF DONATIONS.—The Commissioner of U.S. Customs and Border Protection, or the Administrator of General Services, as applicable, may return any donation made pursuant to subsection (a) or (b). No interest shall be owed to the donor with respect to any donation provided under such subsections that is returned pursuant to this subsection.

(6) PROHIBITION ON CERTAIN FUNDING.—

(A) IN GENERAL.—Except as provided in subsections (a) and (b) regarding the acceptance of donations, the Commissioner of U.S. Customs and Border Protection and the Administrator of General Services, as applicable, may not, with respect to an agreement entered into under either of such subsections, obligate or expend amounts in excess of amounts that have been appropriated pursuant to any appropriations Act for purposes specified in either of such subsections or otherwise made available for any of such purposes.

(B) CERTIFICATION REQUIREMENT.—Before accepting any donations pursuant to an agreement under subsection (a) or (b), the Commissioner of U.S. Customs and Border Protection shall certify to the congressional committees set forth in paragraph (7) that the donation will not be used for the construction of a detention facility or a border fence or wall.

(7) ANNUAL REPORTS.—The Commissioner of U.S. Customs and Border Protection, in collaboration with the Administrator of General Services, as applicable, shall submit an annual report identifying the activities undertaken and agreements entered into pursuant to subsections (a) and (b) to—

(A) the Committee on Appropriations of the Senate;

(B) the Committee on Environment and Public Works of the Senate;

(C) the Committee on Finance of the Senate;

(D) the Committee on Homeland Security and Governmental Affairs of the Senate;

(E) the Committee on the Judiciary of the Senate;

(F) the Committee on Appropriations of the House of Representatives;

(G) the Committee on Homeland Security of the House of Representatives;

(H) the Committee on the Judiciary of the House of Representatives;

(I) the Committee on Transportation and Infrastructure of the House of Representatives; and

(J) the Committee on Ways and Means of the House of Representatives.

(d) GAO REPORT.—The Comptroller General of the United States shall submit an annual report to the congressional committees referred to in subsection (c)(7) that evaluates—

- (1) fee agreements entered into pursuant to section 481;
- (2) donation agreements entered into pursuant to subsections (a) and (b); and
- (3) the fees and donations received by U.S. Customs and Border Protection pursuant to such agreements.

(e) JUDICIAL REVIEW.—Decisions of the Commissioner of U.S. Customs and Border Protection and the Administrator of the General Services Administration under this section regarding the acceptance of real or personal property are in the discretion of the Commissioner and the Administrator and are not subject to judicial review.

(f) RULE OF CONSTRUCTION.—Except as otherwise provided in this section, nothing in this section may be construed as affecting in any manner the responsibilities, duties, or authorities of U.S. Customs and Border Protection or the General Services Administration.

## Appendix F – Acronyms List

Acronym	Definition
<b>CBP</b>	U.S. Customs & Border Protection
<b>DAA</b>	Donations Acceptance Agreement
<b>GSA</b>	U.S. General Services Administration
<b>MOU</b>	Memorandum of Understanding
<b>NEPA</b>	National Environmental Policy Act of 1969, as amended
<b>SME</b>	Subject Matter Expert