

CUSTOMS AND  
BORDER PROTECTION

# Section 559 Donation Acceptance Authority

*Proposal Evaluation Procedures & Criteria Framework*



U.S. Customs and  
Border Protection



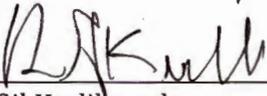
U.S. General Services Administration

## Foreword

On January 17, 2014, section 559 of the *Consolidated Appropriations Act, 2014*, P.L. 113-76 (Section 559), became law, authorizing U.S. Customs and Border Protection (CBP) and the U.S. General Services Administration (GSA) to accept donations of real property, personal property (including monetary donations) and non-personal services from private sector and Government entities. Subparagraph (f)(4) of Section 559 requires that CBP, in consultation with GSA, establish procedures for evaluating donation proposals and make any such evaluation criteria available to the public no later than 180 days after the date of enactment of the law.

Since enactment, CBP and GSA have coordinated closely to satisfy the statutory requirement and have jointly developed this *Section 559 Donation Acceptance Authority Proposal Evaluation Procedures & Criteria Framework* (Section 559 Framework). This document describes the procedures and criteria that CBP and GSA will use systematically and equitably to receive, evaluate, select, plan, develop, and formally accept donations proposed under Section 559.

CBP and GSA are pleased to deliver this section 559 Framework as a testament to our agencies' mutual interest in ensuring process transparency and overall implementation success.

  
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R. Gil Kerlikowske                      Date  
Commissioner  
U.S. Customs and Border Protection

  
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Norman Dong                              Date  
Commissioner  
Public Buildings Service  
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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 FY 2012 *Consolidated Appropriations Act, 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 559 of the *Consolidated Appropriations Act, 2014*, P.L. 113-76 (Section 559), augments CBP's ability to implement this initiative by authorizing CBP and the U.S. General Services Administration (GSA) to accept donations of real property, personal property (including monetary donations) and non-personal services from private sector and Government entities. Since enactment in January 2014, CBP and GSA have coordinated closely to develop the below *Section 559 Donation Acceptance Authority Proposal Evaluation Procedures & Criteria Framework*, which encompasses the procedures that CBP and GSA will use to receive, evaluate and select donation proposals systematically and equitably for further planning and development prior to accepting formally the proposed real property, personal property or non-personal services donation. It also specifies the criteria that CBP and GSA 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 copy of the Section 559 provision (Appendix E), an evaluation procedures flowchart (Appendix A) and other pertinent information and guidance.

## Introduction

On January 17, 2014, section 559 of the *Consolidated Appropriations Act, 2014*, P.L. 113-76 (Section 559), became law, authorizing U.S. Customs and Border Protection (CBP) and the U.S. General Services Administration (GSA) to accept donations of real property, personal property (including monetary donations) and non-personal services from private sector and Government entities. Donations accepted under Section 559 may be used for activities associated with the construction, alteration, operations, or maintenance of new or existing ports of entry, including land acquisition, design and the deployment of equipment and technologies.

Subparagraph (f)(4) of Section 559 requires that CBP, in consultation with GSA, establish procedures for evaluating donation proposals and make any such evaluation 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, selecting, planning, developing, and formally accepting donations proposed under Section 559.

## Donation Proposal Evaluation Procedures

### Overview

The following subsections and flowchart in Appendix A outline the procedures that CBP and GSA will use to evaluate, select and advance donation proposals submitted under Section 559. 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 selection of viable donation proposals that CBP, GSA and the Selectee will coordinate to plan and develop fully in Phase II.
- **Phase II: Proposal Planning & Development** – A fully planned and developed donation proposal that fulfills CBP's operational needs at an acceptable cost, schedule and risk.
- **Phase III: Donation Acceptance Agreement** – A signed Donation Acceptance Agreement formalizing acceptance of the proposed real property, personal property or non-personal services donation 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 Donation Acceptance Authority launch and proposal submission period procedures leading up to Phase I. Pre-Proposal Evaluation & Selection procedures may vary depending on future demand 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 potential donors with ample information regarding CBP and GSA’s operational and non-operational criteria, proposal evaluation and selection procedures and timelines, infrastructure-related constraints (*e.g.*, funding and staffing), and other pertinent information. Potential donors may, in turn, use this information to not only gauge their potential willingness and ability to partner with CBP and GSA on port of entry infrastructure 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	OFO HQ	OA OFO OPA GSA	Post Donation Acceptance Authority launch announcement on CBP.gov, GSA.gov and FedBizOpps, including: <ul style="list-style-type: none"> <li>• Donation Acceptance Authority and other Section 559-related background information;</li> <li>• Open period dates and instructions, including an email address for submitting proposals;</li> <li>• Proposal evaluation criteria;</li> <li>• High-level proposal evaluation procedures; and</li> <li>• Overview of common funding, staffing and other challenges that CBP and GSA face when exploring infrastructure improvements.</li> </ul>
2	Potential Donors	None	Develop and submit donation proposals to the designated email address.
3	OFO HQ	OA OFO OPA GSA	Post update on CBP.gov, GSA.gov and FedBizOpps notifying the potential donors that the period for submitting donation proposals has closed and provide a timeline for disseminating selection notifications.

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## Phase I: Proposal Evaluation & Selection

The purpose of Phase I: Proposal Evaluation & Selection is to equip CBP and GSA leadership with the quantitative and qualitative 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	OFO HQ	None	Compile donation proposal submissions and disseminate to the affected CBP Field Offices.
2	Affected Field Offices	OFO HQ & other support offices	Review each donation proposal and return feedback and recommendations to OFO HQ, which will refer to this information as it conducts its Donation Assessment in Step 3 of this Table.
3	OFO HQ	Affected Field Offices, internal support offices, & other agencies, as needed	Conduct Donation Assessment to evaluate and score each proposal against the Donation Assessment Tool's operational criteria in Appendix B. Only those proposals that are of operational interest proceed to the next step of review.
4	CBP GSA	Affected Field Offices, internal support offices, & other agencies, as needed	Assuming operational interest exists, conduct Donation Assessment to evaluate and score each proposal against the Donation Assessment Tool's non-operational criteria in Appendix C.
5	OFO HQ	Affected Field Offices & CBP/GSA Review Panel	Compile a comprehensive package of Donation Assessment results, a ranking of proposals and working-level proposal selection recommendations for CBP and GSA leadership review.
6	OFO AC OA AC GSA	OFO HQ OA	Review package and approve or disapprove recommendations. GSA's approval or disapproval is limited to real property-related donations directed at land ports of entry (LPOEs) under the jurisdiction, custody and control of GSA. Follow-up information may be requested from the interested party to facilitate final proposal selections in Step 7 of this Table.
7	C1	OFO AC OA AC GSA	Review package, including OFO AC, OA AC and GSA recommendations, and make final proposal selections.
8	OFO HQ	OA GSA	Issue selection notification letters. Potential donors whose proposals were not selected will be given the opportunity to request a meeting to review proposal risks and deficiencies and may be invited to update and resubmit during the next proposal submission period. Potential donors whose proposals are selected, referred to as Selectees, will be invited to engage in Phase II planning and development activities.

## Phase II: Proposal Planning & Development

The purpose of Phase II: Proposal Planning & Development is to plan and develop collaboratively selected proposals into executable projects that fulfill CBP's operational needs at an acceptable cost, schedule and risk as determined by the Government. To the extent practicable, project planning and development activities will align with the federal budget cycle. Table 3 describes the high-level procedures for Phase II: Proposal Planning & Development.

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

Step	Lead Component	Coordinating Components	Procedures
1	CBP GSA	Selectee	Draft a Memorandum of Agreement to acknowledge high-level consensus on forthcoming planning, development and, if applicable, execution-related objectives and activities, negotiated 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, Presidential Permit application activities and technical development). Identify, analyze and compare alternatives to fulfilling CBP's operational needs against the partnership's collective conditions and constraints ( <i>e.g.</i> , the Selectee's financial capacity and revenue targets, and CBP and GSA's resource availability). The level of effort required in this step is dependent on the complexity of the proposal. Continue to refine and narrow alternatives until a preferred alternative is identified that fulfills CBP's operational needs at an acceptable cost, schedule and risk as determined by the Government. CBP and GSA 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 preferred alternative final cost and schedule baselines, cost outlays and funding strategies, acquisition plans, and other project execution requirements.
4	CBP GSA	Selectee, internal support offices, & other agencies, as needed	Confirm that all planning activities have been completed, no outstanding critical risks exist and the appropriate agencies are prepared to request out-year funds, as necessary. Proceed to project execution activities in accordance with existing CBP and GSA processes and standards. If accepting a monetary donation, proceed directly 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 prior to the actual transfer and use of the real property, personal property or non-personal services. The timetable for acceptance, transfer of ownership and use depends on the nature of the 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	OFO HQ GSA	OA CBP OCC GSA OGC	Prepare Donation Acceptance Agreement, including an overview of the proposed donation and its intended use, donation conditions and other pertinent information. GSA's involvement in Donation Acceptance Agreement development activities is limited to real property-related donations directed at LPOEs under the jurisdiction, custody and control of GSA.
2	OFO AC OA AC GSA	OFO HQ OA	Review Donation Acceptance Agreement and approve or disapprove. GSA's approval or disapproval is limited to real property-related donations directed at LPOEs under the jurisdiction, custody and control of GSA.
3	C1 GSA Administrator or other authorized agency officials	OFO AC OA AC GSA	Review and sign the Donation Acceptance Agreement. Proceed to accept donation.

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## Donation Proposal Evaluation Criteria

The following outlines the criteria that CBP and GSA will use to evaluate donation proposals submitted under Section 559. These criteria satisfy the requirements set forth in subparagraph (f)(5) of Section 559, which state that CBP and GSA must consider the following when determining whether or not to approve a donation proposal:

- The impact of such proposal on the port of entry at issue and other ports of entry on the same border;
- The potential of such proposal to increase trade and travel efficiency through added capacity;
- The potential of such proposal to enhance the security of the port of entry at issue;
- The funding available to complete the intended use of a donation under this subsection, if such donation is real property;
- The costs of maintaining and operating such donation;
- Whether such donation, if real property, satisfies the requirements of such proposal, or whether additional real property would be required;
- An explanation of how such donation, if real property, was secured, including if eminent domain was used;
- The impact of such proposal on staffing requirements; and
- Other factors that CBP or GSA determine to be relevant.

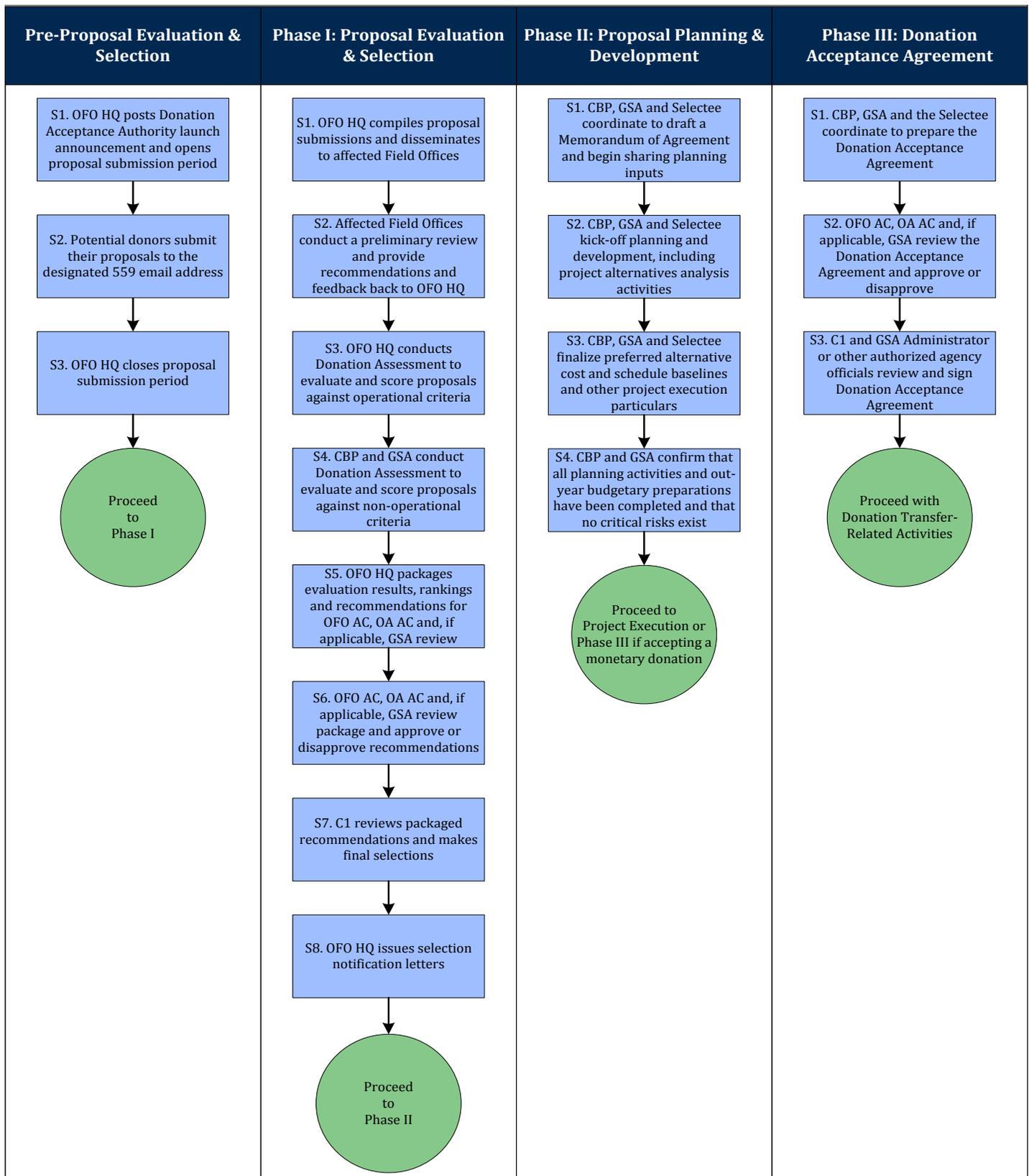
For assessment purposes, proposal evaluation criteria have been formatted and packaged into an Excel file, referred to as the Donation Assessment Tool (reflected in Appendices B and C). The Donation Assessment Tool encompasses the criteria that CBP and GSA will evaluate and score against during successive Donation Assessments in Phase I to determine overall proposal viability. The tool's criteria are organized into two separate tabs, Operational Criteria and Non-Operational Criteria. These criteria are outlined below.

**Table 5 – Operational/Non-Operational Evaluation Criteria**

<b>Operational Criteria</b>	<b>Non-Operational Criteria</b>
<b>Criteria</b>	<b>Criteria</b>
Operational Impact	Financial Feasibility
Operational Benefits	Legal Implications
Funding Strategy	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	

Donation proposals will be evaluated against the above criteria. Proposals may undergo two separate Donation Assessments: first, by an OFO HQ Review Panel that will evaluate and score against the above left operational criteria, and second, by an expanded CBP/GSA Review Panel that will evaluate and score against the above right non-operational criteria.

## Appendix A – Donation Proposal Evaluation Procedures Flowchart



\* Pre-Proposal Evaluation & Selection procedures included to describe Donation Acceptance Authority launch and proposal submission activities leading up to Phase I.

## Appendix B – Donation Assessment Tool Operational Criteria

Criteria	Example Evaluation Factors
Operational Impact	➤ Whether the proposal poses an adverse impact to existing CBP operations.
Operational Benefits	➤ Whether the proposal presents measurable existing and future CBP operational benefits.
Funding Strategy	➤ Whether the proposal presents a sound strategy for accommodating CBP’s exposure to start-up operating costs ( <i>e.g.</i> , salaries, overtime and equipment) and first and out-year operating costs ( <i>e.g.</i> , operations and maintenance).
Health & Safety Requirements	➤ Whether the proposal presents a sound strategy for sustaining or enhancing employee and public health and safety conditions both during and following donation implementation.
Economic & Community Benefits	➤ Whether the proposal presents measurable local, regional, and national economic and community benefits, including enhanced travel and trade.
Community Support	➤ Whether the proposal has the support of all impacted local and regional stakeholders.
Other Agency Support for Operations	➤ Whether the proposal addresses the ability of other agencies to provide operational support based on new or increased capacity, hours, location, or workload increases.
Project Duration & Timeline	➤ Whether the proposal presents a feasible planning and delivery strategy that poses no to minimal adverse impact on current and future operations.

## Appendix C – Donation Assessment Tool Non-Operational Criteria

Criteria	Example Evaluation Factors
Financial Feasibility	<ul style="list-style-type: none"> <li>➤ Whether the proposal’s upfront and downstream non-operational cost estimates (<i>e.g., the cost of planning, design, and construction</i>) appear to be accurate.</li> <li>➤ Whether the potential donor is willing to assume these costs and, if so, to what extent.</li> <li>➤ Whether the potential donor resources needed to fund these costs are immediately available. Proposals which rely on the full faith and credit of CBP or GSA will not be entertained.</li> <li>➤ Whether the potential donor’s overall financing strategy appears to be viable.</li> </ul>
Legal Implications	<ul style="list-style-type: none"> <li>➤ Whether the conditions placed on the proposed donation are feasible.</li> <li>➤ Whether the proposal poses potential financial, land-related or other potentially adverse downstream liabilities.</li> <li>➤ Whether the potential donor has the legal authority to implement a new tolling mechanism or adjust the fees of an existing tolling mechanism.</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 measurable local, regional, national, or international, or any combination thereof, environmental or cultural benefits.</li> <li>➤ Whether a Phase I Environmental Site Assessment has been completed in accordance with ASTM 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.</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 investment 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> <li>➤ Whether the proposal presents a sound strategy for sustaining the proposed donation following implementation.</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 and the Selectee cross-check against the following non-exhaustive list of considerations during Phase II: Proposal Planning and Development to facilitate the identification of a preferred alternative 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
- ✓ Selectee Qualifications

### Planning Implications

- ✓ Internal Agency Need Alignment
- ✓ External Agency Need Alignment
- ✓ Detailed Planning & Delivery Schedule
- ✓ Sustainment Strategy
- ✓ 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
- ✓ 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 – Consolidated Appropriations Act, 2014 Section 559 Excerpt

(a) IN GENERAL.—In addition to existing authorities, the Commissioner of U.S. Customs and Border Protection, in collaboration with the Administrator of General Services, is authorized to conduct a pilot program in accordance with this section to permit U.S. Customs and Border Protection to enter into partnerships with private sector and government entities at ports of entry for certain services and to accept certain donations.

(b) 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.

(c) DURATION.—The pilot program described in subsection (a) shall be for five years. A partnership entered into during such pilot program may last as long as required to meet the terms of such partnership. At the end of such five year period, the Commissioner may request that such pilot program be made permanent.

(d) COORDINATION.—

(1) IN GENERAL.—The Commissioner, in consultation with participating private sector and government entities in a partnership under subsection (a), shall provide the Administrator with information relating to U.S. Customs and Border Protection’s requirements for new facilities or upgrades to existing facilities at land ports of entry.

(2) CRITERIA.—The Commissioner and the Administrator shall establish criteria for entering into a partnership under subsection (a) that include the following:

(A) Selection and evaluation of potential partners.

(B) Identification and documentation of roles and responsibilities between U.S. Customs and Border Protection, General Services Administration, and private and government partners.

(C) Identification, allocation, and management of explicit and implicit risks of partnering between U.S. Customs and Border Protection, General Services Administration, and private and government partners.

(D) Decision-making and dispute resolution processes in partnering arrangements.

(E) Criteria and processes for U.S. Customs and Border Protection and General Services Administration to terminate agreements if private or government partners are not meeting the terms of such a partnership, including the security standards established by U.S. Customs and Border Protection.

(3) EVALUATION PLAN.—The Commissioner, in collaboration with the Administrator, shall submit to the Committee on Homeland Security, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate, an evaluation plan for the pilot program described in subsection (a) that includes the following:

(A) Well-defined, clear, and measurable objectives.

(B) Performance criteria or standards for determining the performance of such pilot program.

(C) Clearly articulated evaluation methodology, including—

(i) sound sampling methods;

(ii) a determination of appropriate sample size for the evaluation design;

(iii) a strategy for tracking such pilot program’s performance; and

(iv) an evaluation of the final results.

(D) A plan detailing the type and source of data necessary to evaluate such pilot program, methods for data collection, and the timing and frequency of data collection.

(e) AUTHORITY TO ENTER INTO AGREEMENTS FOR THE PROVISION OF CERTAIN SERVICES AT PORTS OF ENTRY.—

(1) IN GENERAL.—Notwithstanding section 13031(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)) and section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the Commissioner may, during the pilot program described in subsection (a) and upon the request of a private sector or government entity with which U.S. Customs and Border Protection has entered into a partnership, enter into a reimbursable fee agreement with such entity under which—

- (A) U.S. Customs and Border Protection will provide services described in paragraph (2) at a port of entry;
- (B) such entity will pay a fee imposed under paragraph (4) to reimburse U.S. Customs and Border Protection for the costs incurred in providing such services; and
- (C) each facility at which U.S. Customs and Border Protection services are performed shall be provided, maintained, and equipped by such entity, without cost to the Federal Government, in accordance with U.S. Customs and Border Protection specifications.
- (2) SERVICES DESCRIBED.—Services described in this paragraph are any activities of any employee or contractor of U.S. Customs and Border Protection pertaining to customs, agricultural processing, border security, and immigration inspection related matters at ports of entry.
- (3) LIMITATIONS.—
- (A) IMPACTS OF SERVICES.—The Commissioner may not enter into a reimbursable fee agreement under this subsection if such agreement would unduly and permanently impact services funded in this or any other appropriations Act, or provided from any account in the Treasury of the United States derived by the collection of fees.
- (B) FOR CERTAIN COSTS.—The authority found in this subsection may not be used at U.S. Customs and Border Protection-serviced air ports of entry to enter into reimbursable fee agreements for costs other than payment of overtime.
- (C) The authority found in this subsection may not be used to enter into new preclearance agreements or begin to provide U.S. Customs and Border Protection services outside of the United States.
- (D) The authority found in this subsection shall be limited with respect to U.S. Customs and Border Protection- serviced air ports of entry to five pilots per year.
- (4) FEE.—
- (A) IN GENERAL.—The amount of the fee to be charged pursuant to an agreement authorized under paragraph (1) shall be paid by each private sector and government entity requesting U.S. Customs and Border Protection services, and shall include the salaries and expenses of individuals employed by U.S. Customs and Border Protection to provide such services and other costs incurred by U.S. Customs and Border Protection relating to such services, such as temporary placement or permanent relocation of such individuals.
- (B) OVERSIGHT OF FEES.—The Commissioner shall develop a process to oversee the activities reimbursed by the fees charged pursuant to an agreement authorized under paragraph (1) that includes the following:
- (i) A determination and report on the full costs of providing services, including direct and indirect costs, including a process for increasing such fees as necessary.
  - (ii) Establishment of a monthly remittance schedule to reimburse appropriations.
  - (iii) Identification of overtime costs to be reimbursed by such fees.
- (5) DEPOSIT OF FUNDS.—Funds collected pursuant to any agreement entered into under paragraph (1) shall be deposited as offsetting collections and remain available until expended, without fiscal year limitation, and shall directly reimburse each appropriation for the amount paid out of that appropriation for any expenses incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services.
- (6) TERMINATION.—The Commissioner shall terminate the provision of services pursuant to an agreement entered into under paragraph (1) with a private sector or government entity that, after receiving notice from the Commissioner that a fee imposed under paragraph (4) is due, fails to pay such fee in a timely manner. In the event of such termination, all costs incurred by U.S. Customs and Border Protection, which have not been reimbursed, will become immediately due and payable. Interest on unpaid fees will accrue based on current Treasury borrowing rates. Additionally, any private sector or government entity that, after notice and demand for payment of any fee charged under paragraph (4), fails to pay such fee in a timely manner shall be liable for a penalty or liquidated damage equal to two times the amount of

such fee. Any amount collected pursuant to any agreement entered into under paragraph (1) shall be deposited into the account specified under paragraph (5) and shall be available as described therein.

(7) NOTIFICATION.—The Commissioner shall notify the Congress 15 days prior to entering into any agreement under paragraph (1) and shall provide a copy of such agreement.

(f) DONATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commissioner and the Administrator may, during the pilot program described in subsection (a), accept a donation of real or personal property (including monetary donations) or nonpersonal services from any private sector or government entity with which U.S. Customs and Border Protection has entered into a partnership.

(2) ALLOWABLE USES OF DONATIONS.—The Commissioner and the Administrator, with respect to any donation provided pursuant to paragraph (1), may—

(A) use such donation for necessary activities related to the construction, alteration, operation, or maintenance of an existing port of entry facility under the jurisdiction, custody, and control of the Commissioner, including expenses related to—

- (i) land acquisition, design, construction, repair and alteration;
- (ii) furniture, fixtures, and equipment;
- (iii) the deployment of technology and equipment; and
- (iv) operations and maintenance; or

(B) transfer such property or services to the Administrator for necessary activities described in subparagraph (A) related to a new or existing port of entry under the jurisdiction, custody, and control of the Administrator, subject to chapter 33 of title 40, United States Code.

(3) CONSULTATION AND BUDGET.—

(A) WITH THE PRIVATE SECTOR OR GOVERNMENT ENTITY.—To accept a donation described in paragraph (1), the Commissioner and the Administrator shall—

(i) consult with the appropriate stakeholders and the private sector or government entity that is providing the donation and provide such entity with a description of the intended use of such donation; and

(ii) submit to the Committee on Appropriations, the Committee on Homeland Security, and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Appropriations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Environment and Public Works of the Senate a report not later than one year after the date of enactment of this Act, and annually thereafter, that describes—

- (I) the accepted donations received under this subsection;
- (II) the ports of entry that received such donations; and
- (III) how each donation helped facilitate the construction, alternation, operation, or maintenance of a new or existing land port of entry.

(B) SAVINGS PROVISION.—Nothing in this paragraph may be construed to—

- (i) create any right or liability of the parties referred to in subparagraph (A); or
- (ii) affect any consultation requirement under any other law.

(4) EVALUATION PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Commissioner, in consultation with the Administrator, shall establish procedures for evaluating a proposal submitted by a private sector or government entity to make a donation of real or personal property (including monetary donations) or nonpersonal services under paragraph (1) relating to a port of entry under the jurisdiction, custody and control of the Commissioner or the Administrator and make any such evaluation criteria publicly available.

(5) CONSIDERATIONS.—In determining whether or not to approve a proposal referred to in paragraph (4), the Commissioner or the Administrator shall consider—

- (A) the impact of such proposal on the port of entry at issue and other ports of entry on the same border;
- (B) the potential of such proposal to increase trade and travel efficiency through added capacity;
- (C) the potential of such proposal to enhance the security of the port of entry at issue;

(D) the funding available to complete the intended use of a donation under this subsection, if such donation is real property;

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

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

(G) an explanation of how such donation, if real property, was secured, including if eminent domain was used;

(H) the impact of such proposal on staffing requirements; and

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

(6) UNCONDITIONAL MONETARY DONATIONS.—A monetary donation shall be made unconditionally, although the donor may specify—

(A) the port of entry facility or facilities to be benefitted from such donation; and

(B) the timeframe during which such donation shall be used.

(7) SUPPLEMENTAL FUNDING.—Real or personal property (including monetary donations) or nonpersonal services donated pursuant to paragraph (1) may be used in addition to any other funding (including appropriated funds), property, or services made available for the same purpose.

(8) RETURN OF DONATIONS.—If the Commissioner or the Administrator does not use the real property or monetary donation donated pursuant to paragraph (1) for the specific port of entry facility or facilities designated by the donor or within the timeframe specified by the donor, such donated real property or money may be returned to the donor. No interest shall be owed to the donor with respect to any donation of funding provided under such paragraph (1) that is returned pursuant to this paragraph.

(9) SAVINGS PROVISION.—Nothing in this subsection may be construed to affect or alter the existing authority of the Commissioner or the Administrator to construct, alter, operate, and maintain port of entry facilities.

(g) ANNUAL REPORTS.—The Commissioner, in collaboration with the Administrator, shall annually submit to the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Environment and Public Works of the Senate a report on the pilot program and activities undertaken pursuant thereto in accordance with this Act.

(h) DEFINITIONS.—In this section—

(1) the term “private sector entity” means any corporation, partnership, trust, association, or any other private entity, or any officer, employee, or agent thereof;

(2) the term “Commissioner” means the Commissioner of U.S. Customs and Border Protection; and

(3) the term “Administrator” means the Administrator of General Services.

(i) ROLE OF GENERAL SERVICES ADMINISTRATION.—Under this section, collaboration with the Administrator of General Services is required only with respect to partnerships at land ports of entry.

**Appendix F – Acronyms List**

<b>Acronym</b>	<b>Definition</b>
<b>ASTM</b>	American Society for Testing and Materials
<b>CATEX</b>	Categorical Exclusion
<b>CBP</b>	U.S. Customs & Border Protection
<b>CBP OCC</b>	CBP Office of Chief Counsel
<b>CMO</b>	CBP Communications Management Office
<b>C1</b>	CBP Commissioner
<b>EA</b>	Environmental Assessment
<b>EIS</b>	Environmental Impact Statement
<b>GSA</b>	General Services Administration
<b>GSA OGC</b>	GSA Office of General Counsel
<b>LPOE</b>	Land Port of Entry
<b>OA</b>	CBP Office of Administration
<b>OA AC</b>	CBP Office of Administration Assistant Commissioner
<b>OFO AC</b>	CBP Office of Field Operations Assistant Commissioner
<b>OFO HQ</b>	CBP Office of Field Operations Headquarters
<b>OPA</b>	CBP Office of Public Affairs