



Donation Acceptance Authority

Intellectual Property Rights Enforcement Partnerships

Proposal Evaluation Procedures & Criteria Framework



**U.S. Customs and
Border Protection**

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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 Section 482. Section 482 was further amended by the *National Defense Authorization Act (NDAA)* of Fiscal Year 2022 (P.L. 117-81, Section 6410), signed into law on December 27, 2021, which expanded and extended CBP’s ability to implement this initiative authorizing CBP to continue to enter into partnerships in the form of donations of personal property and equipment from private sector and government entities. *See* 6 U.S.C. 301a.

CBP’s Donations Acceptance Program (DAP), Office of Trade (OT), Office of Chief Counsel (OCC), and Office of Trade Regulations and Rulings (OT- ORR) have coordinated closely to develop the below *Section 482 Donation Acceptance Authority Proposal Evaluation Procedures & Criteria Framework for Intellectual Property Rights Enforcement Partnerships* (the “Section 482 IPR Enforcement Framework”). The Section 482 IPR Enforcement Framework encompasses the procedures that CBP-DAP will use systematically to receive, evaluate, and select donation proposals for further planning and development. Further, it sets forth how CBP-DAP will evaluate accepting the proposed donated tool in the form of hardware, software, equipment, and similar technologies, as well as related support services and training, for the purposes of IPR enforcement. It also specifies the criteria that CBP-DAP will use to help determine upfront proposal viability before expending resources on 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), a copy of Section 308(d) of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA) (Appendix F), Appendix G 19 C.F.R. § 133.61, and other pertinent information and guidance.

Future Section 482 IPR Enforcement Framework revisions will be made in consultation with OCC and OT-RR to the extent such revisions relate to the receipt, evaluation, selection, planning, development or acceptance, or any combination of the foregoing, of hardware, software, equipment, and similar technologies as well as related support services and training, for the purposes of IPR enforcement, related to a port of entry.

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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 308(d) of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA), P.L. 114-125 (2016), extended that authority to allow for the donation of tools for Intellectual Property Rights (IPR) Enforcement.

Title 19 Code of Federal Regulations § 133.61 prescribes the methods by which donations of IPR technology and related support services may be made. Specifically, Title 19 CFR 133.61(a) sets forth the scope of this section and identifies the authority to accept donations, § 133.61(b) describes the donation process, and § 133.61(c) lays out the elements of the written donation agreement.

Acceptance of such donations must also be consistent with Section 482 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. CBP has consulted with GSA, and both parties agree that CBP will take the lead (and often sole) role in evaluating donations of IPR enforcement tools under DAP because these donations primarily impact CBP operations as opposed to port of entry infrastructure. This document therefore will serve as CBP's framework for receiving, evaluating, approving, planning, developing, and formally accepting donations proposed under Section 482, to include IPR Enforcement proposals.

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-DAP, OT, OT- ORR, and OCC, as applicable, will use to: evaluate, select, plan, develop, and accept donation proposals submitted under 19 CFR § 133.61. CBP-DAP 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 and input to the next phase. 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; these offices will include, but are not limited to, OT, OT- ORR, and OCC, 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 or any combination of the foregoing, hardware, software, equipment, and similar technologies as well as accepting donations for related training and other support services, for the purposes of IPR enforcement.

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 - DAP, in coordination with OT, OCC, and ORR, 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 IPR enforcement 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 on the proposed IPR tool, 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 – DAP	None	Schedule an informal call with potential donor. Hear possible proposal, explain parameters of DAP and IPR enforcement. If viable, a formal call with other CBP components takes place.
2	CBP - DAP	OFO, OT, OT – RR, OCC, and other CBP offices as applicable	Hold meetings and otherwise communicate to educate prospective donors regarding: <ul style="list-style-type: none"> ➤ The scope and limitations of 19 CFR 133, including what donations CBP may or may not legally accept; ➤ Proposal submission requirements, including applicable dates, submission instructions, and evaluation timelines; ➤ Proposal evaluation criteria and representative evaluation factors; and The donation acceptance process, including the procedures CBP will use to determine proposal viability.
3	Prospective Donor	None	Develop and submit donation proposal to DAP@cbp.dhs.gov . <ul style="list-style-type: none"> ➤ The donation offer must describe the proposed donation in sufficient detail to enable CBP to determine its compatibility with existing CBP technologies, networks, and facilities (e.g. operating system or similar requirements, power supply requirements, item size and weight, etc.); and ➤ The donation offer must also include information pertaining to the donation’s scope, purpose, expected benefits, intended use, costs, and attached conditions, as applicable, to enable CBP to evaluate the donation and make a determination as to whether to accept it.
4	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 – DAP, and other CBP internal offices, 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 - DAP	OFO, OT, OT - RR, OCC, and other CBP offices as applicable	<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"> ➤ Confirm that the proposal is consistent with the statutory provisions of 19 CFR § 133.61. If not, all further evaluation activities will cease, and the prospective donor will be notified accordingly; ➤ Identify any major adverse operational implications; and ➤ 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. ➤ Director of Alternative Funding Programs (AFP) will send out notice of acceptance.
3	CBP - DAP	OFO, OT, OT - RR, OCC, and other CBP offices as applicable	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 - DAP	None	Compile the proposal recommendation and submit for leadership consideration.
5	CBP - DAP	None	AFP and DAP leadership reviews the proposal recommendation and determines whether to select the proposal.
6	CBP - DAP	None	Within 180 days of receiving the completed proposal, notify prospective donor whether 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. 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 – DAP	OCC, ORR	<p>Draft and fully execute a Memorandum of Understanding (MOU), as applicable, to acknowledge high-level consensus on:</p> <ul style="list-style-type: none"> ➤ 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, pilot ports, number of tools, design and OIT standards, and technical specifications). <p>Agree to the protection of Personal Identifying Information (PII), business confidential information, and other sensitive information. The donor will agree to maintain confidentiality of such information and will execute Non-Disclosure Agreements (DHS Form 11000-6), as applicable.</p>
2	CBP – DAP	OFO, OT, OT – RR, OCC, and other CBP offices as applicable	<p>Begin executing planning and development activities (<i>e.g.</i>, 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. CBP will evaluate against the considerations in Appendix D to assist in this determination.</p>
3	CBP – DAP	Donor	<p>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, if applicable.</p>
4	CBP – DAP	OFO, OT, OT – RR, OCC, and other CBP offices as applicable	<p>Confirm that all planning and tool development activities have been completed. Proceed to Phase III: Donation Acceptance Agreement.</p>

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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 CBP may accept the proposed donation. The DAA is signed by all the parties prior to acceptance of the IPR enforcement tool. 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 - DAP	ORR and OCC	Prepare DAA, including an overview of the proposed donation and its intended use, donation conditions, and other pertinent information.
2	CBP – DAP	OT and OFO	Review and sign the DAA. Proceed to project acceptance.

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Donation Proposal Evaluation Criteria

The following outlines the criteria that CBP internal offices, as applicable, will use to evaluate donation proposals submitted under Section 482, as well as statutory provisions under 19 CFR § 133.61. 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 to select a donation proposal:

- The impact of the proposal on the land, sea, or airport 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;
- Such proposal’s potential to enhance the enforcement of recorded marks, as set forth and defined in 19 CFR 133;
- Such proposal’s mark potential to be recorded with CBP, under 19 CRF 133.1and 19 CFR 133.2 for Trademarks, and 133.31 and 133.32 for Copyrights;
- Such proposal’s potential to comply with information sharing limitations in 19 CRF 133.21, and any subsection as applicable;
- 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, if any;
- Other factors that the Commissioner of CBP or the Administrator of GSA determines to be relevant.

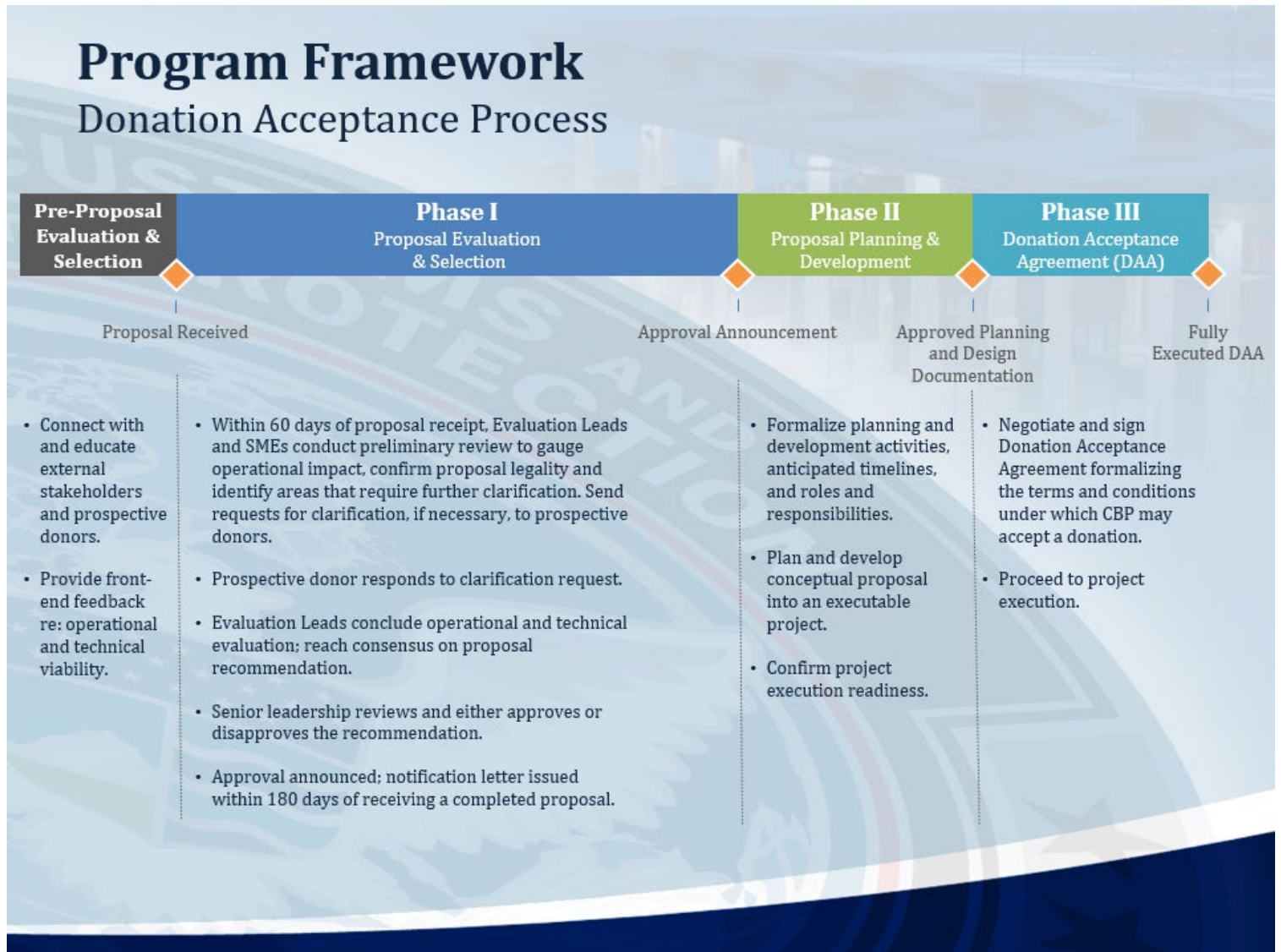
To satisfy the above consideration requirements, CBP will evaluate each proposal during Phase I against the below criteria to determine overall proposal viability. The criteria are organized into two separate categories: operational criteria and technical criteria.

Table 5 – Operational & Technical Evaluation Criteria

Operational Criteria	Technical Criteria
Operational Impact	Funding & Financing Strategy (Technical)
Funding & Financing Strategy (Operational)	Proposal Support
Health & Safety Requirements	Environmental & Cultural Resource Implications
Economic & Community Benefits	Technical Feasibility
Community Support	Planning Implications
Other Agency Support for Operations	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"> ➤ Whether the proposal poses an adverse impact to existing local and regional CBP operations. ➤ Whether the proposal presents existing and future CBP operational benefits.
Funding & Financing Strategy (Operational)	<ul style="list-style-type: none"> ➤ 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 donated? ➤ 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.
Health & Safety Requirements	<ul style="list-style-type: none"> ➤ Whether the proposal presents a sound strategy for sustaining or enhancing employee and public health and safety conditions both during and following donation acceptance.
Economic & Community Benefits	<ul style="list-style-type: none"> ➤ Whether the proposal presents measurable local, regional and national economic and community benefits, including enhanced trade and IPR enforcement actions.
Community Support	<ul style="list-style-type: none"> ➤ Whether the proposal has the support of impacted local and regional stakeholders.
Other Agency Support for Operations	<ul style="list-style-type: none"> ➤ 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	<ul style="list-style-type: none"> ➤ Whether the proposal presents a feasible planning, development and delivery strategy that poses no to minimal adverse impact on current and future operations.

Appendix C – Technical Criteria

Criteria	Example Evaluation Factors
Funding & Financing Strategy (Technical)	<ul style="list-style-type: none"> ➤ Whether the proposal presents a sound strategy for accommodating CBP exposure to planning, design, and deployment-related costs of tools, in addition to first and out-year sustainment costs (<i>e.g.</i>, equipment and technology operations and maintenance); specifically, what is being donated? ➤ 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.
Technical Feasibility	<ul style="list-style-type: none"> ➤ Whether the proposal purports to comply with all applicable laws, regulations and technical and security standards. ➤ Whether the proposal appears compatible with existing equipment and technologies and established securities and protocols. ➤ Whether the proposed technology adequately protects identifying information from disclosure except to the right holder in accordance with 19 CFR § 133.21. ➤ Whether the proposed technology maintains a complete record of communication between the right holder and CBP personnel.
Planning Implications	<ul style="list-style-type: none"> ➤ Whether the proposal is consistent with CBP’s current list of out-year investment priorities. ➤ Whether the proposal comports with the out-year planning priorities of CBP’s interagency and international partners. ➤ Whether the proposal’s planning and delivery schedule appears to be both reasonable and accurate.
Proposal Support	<ul style="list-style-type: none"> ➤ Whether the proposal has public support at the political, national or regional levels, or any combination thereof. ➤ Whether the proposal has support from all affected federal agencies.

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

CBP, internal offices, 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 donation 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

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
- ✓ Funding Strategy
- ✓ Fixtures, Equipment, & Technologies Funding Strategy
- ✓ Operations & Maintenance Funding Strategy

Proposal Viability

- ✓ Safety Requirement Compliance
- ✓ Public Support
- ✓ Federal Agency Support
- ✓ Recommended Donor Qualifications
- ✓ Is mark recorded with CBP for IPR protection (Trademark and Copyright)

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

Legal Implications

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

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 or leased land port of entry.

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

(i) the fair market value of the donation is \$75,000,000 or less; and

(ii) the fair market value of donations with respect to the land port of entry total \$75,000,000 or less over the preceding five years.

(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 or leased 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, 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 \$75,000,000 or less; and

(ii) the fair market value of the donations with respect to the land port of entry total \$75,000,000 or less over the preceding five years.

(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 December 31, 2026.

(B) **RULE OF CONSTRUCTION.**—The termination date referred to in subparagraph (A) shall not apply to a proposal accepted for consideration by U.S. Customs and Border Protection or the General Services Administration pursuant to this section or a prior pilot program prior to 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

(i) the donation will not be used for the construction of a detention facility or a border fence wall; and

(ii) the donor will be notified in the Donations Acceptance Agreement that the donor shall be financially responsible for all costs and operating expenses related to the operation, maintenance, and repair of the donated real property until such a time as U.S. Customs and Border Protection provides the donor written notice otherwise.

(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 a biennial 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 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.

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**Appendix F – Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), (Section 308)
Excerpt**

SEC. 308. TRAINING WITH RESPECT TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS.

- (a) TRAINING – The Commissioner shall ensure that officers of U.S. Customs and Border Protection are trained to effectively detect and identify merchandise destined for the United States that infringes intellectual property rights, including through the use of technologies identified under subsection (c).
- (b) CONSULTATION WITH PRIVATE SECTOR – The Commissioner shall consult with private sector entities to better identify opportunities for collaboration between U.S. Customs and Border Protection and such entities with respect to training for officers of U.S. Customs and Border Protection in enforcing intellectual property rights.
- (c) IDENTIFICATION OF NEW TECHNOLOGIES – In consultation with the private sector entities, the Commissioner shall identify –
 - 1) Technologies with the cost-effective capability to detect and identify merchandise at United States ports of entry that infringes intellectual property rights; and
 - 2) Cost-effective programs for training officers of U.S. Customs and Border Protection to use such technologies.
- (d) DONATIONS OF TECHNOLOGY – Not later than the date that is 180 days after the date of the enactment of this Act, the Commissioner shall prescribe regulations to enable U.S. Customs and Border Protection to receive donations of hardware, software, equipment, and similar technologies, and to accept training and other support services, from private sector entities, for the purpose of enforcing intellectual property rights.

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Appendix G – 19 CFR 133 – Trademarks, Trade Names, and Copyrights – Subpart H – Donations of Intellectual Property Rights Technology and Related Support Services, (Section § 133.61), Excerpt

§ 133.61 DONATIONS OF INTELLECTUAL PROPERTY RIGHTS TECHNOLOGY AND RELATED SUPPORT SERVICES.

- (a) SCOPE – The Commissioner of U.S. Customs and Border Protection (CBP) is authorized to accept donations of hardware, software, equipment, and similar technologies, as well as related support services and training, from private sector entities, for the purpose of assisting CBP in enforcing intellectual property rights. Such acceptance must be consistent with the conditions set forth in this section and section 308(d) of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301 note), as well as either section 482 of the Homeland Security Act of 2002, as amended by section 2 of the Cross-Border Trade Enhancement Act of 2016 (6 U.S.C. 301a), or section 507 of the Department of Homeland Security Appropriations Act of 2004 (Pub. L. 108-90). However, this section does not apply to merchandise provided to CBP as samples, *e.g.*, as referenced in §§ 151.10 and 177.2 of this chapter.
- (b) DONATION OFFER – A donation offer must be submitted to CBP either via email, to dap@cbp.dhs.gov, or mailed to the attention of the Executive Assistant Commissioner, Office of Field Operations, or his/her designee. The donation offer must describe the proposed donation in sufficient detail to enable CBP to determine its compatibility with existing CBP technologies, networks, and facilities (*e.g.* operating system or similar requirements, power supply requirements, item size and weight, *etc.*). The donation offer must also include information pertaining to the donation's scope, purpose, expected benefits, intended use, costs, and attached conditions, as applicable, that is sufficient to enable CBP to evaluate the donation and make a determination as to whether to accept it. CBP will notify the donor, in writing, if additional information is requested or if CBP has determined that it will not accept the donation.
- (c) AGREEMENT TO ACCEPT DONATION – If CBP accepts a donation of hardware, software, equipment, technologies, or related support services and training, for the purpose of enforcing intellectual property rights, CBP will enter into a signed, written agreement with an authorized representative of the donor. The agreement must contain all applicable terms and conditions of the donation. An agreement to accept a donation must provide that the hardware, software, equipment, technologies, or related support services and training are offered without the expectation of payment, and that the donor expressly waives any future claims, except those expressly reserved in the agreement, against the government related to the donation.

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Appendix H – Acronyms List

Acronym	Definition
CEE	Centers of Excellence and Expertise
CBP	U.S. Customs & Border Protection
AFP	Alternative Funding Programs
DAA	Donations Acceptance Agreement
TFTEA	Trade Facilitation and Trade Enforcement Act of 2015
OT	Office of Trade
OT - RR	Office of Trade - Regulations and Rulings
OCC	Office of Chief Counsel
OIT	Office of Information Technology
OFO	Office of Field Operations
GSA	U.S. General Services Administration
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act of 1969, as amended
SME	Subject Matter Expert