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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

June 8, 2018

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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The Honorable Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Dear Mr. McAleenan:

I write to request information regarding the federal acquisition of privately owned land along the U.S.-Mexico border.

As you know, I have repeatedly raised concerns that, despite requesting billions of dollars for the undertaking, U.S. Customs and Border Protection (CBP) has not estimated the time, difficulty, and expense of procuring land for the border wall President Trump ordered, including the likelihood that the project will require forcible takings from farmers, ranchers, and other landowners. On February 2, 2018, I wrote to Secretary of Homeland Security Kirstjen Nielsen requesting information on new legal authorities CBP is proposing to “allow for more expedited acquisition of land.”¹ To date, this information has not been provided.

I recently learned that CBP has accelerated its efforts to acquire land along the border. Last month, CBP notified my office that, in conjunction with the U.S. Army Corps of Engineers (USACE), it would immediately begin reaching out to landowners in the Rio Grande Valley of Texas to obtain Rights of Entry for Survey (ROE-S).² Each ROE-S will give the federal government access to private property to conduct environmental assessments, land surveys, appraisals, and other activities needed to facilitate construction of the “contiguous, physical wall” President Trump ordered.³ While each ROE-S will only be granted with landowner consent, information gathered during the survey could subsequently be used by the government to initiate a later eminent domain action against the landowner.

In addition, I understand that CBP intends to award an estimated \$240 million contract to survey and map private property along the border. According to an April 18, 2018, Sources Sought notice issued by USACE on behalf of CBP, the government intends to issue a Request

¹ Letter from Ranking Member Claire McCaskill, Senate Committee on Homeland Security and Governmental Affairs, to The Honorable Kirstjen Nielsen, Secretary, Department of Homeland Security (Feb. 2, 2018).

² Email from U.S. Customs and Border Protection, Office of Congressional Affairs, to Committee on Homeland Security and Governmental Affairs Staff (Apr. 16, 2018).

³ Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

for Proposals (RFP) on or about August 25, 2018, and anticipates awarding the \$240 million surveying and mapping contract at a later date.⁴

This \$240 million contract would apparently be in addition to – and potentially duplicative of – contracts USACE has previously awarded related to border-wall and a funding request from the Department of Justice (DOJ) for additional land acquisition attorneys. According to information provided to Committee staff on March 15, 2018, USACE has already awarded approximately \$14.7 million to six vendors for title research, surveying, and design work related to the wall President Trump ordered.⁵ Additionally, DOJ has requested \$1.8 million for 20 new positions, including 12 land acquisition attorneys, “to meet litigation, acquisition, and appraisal demands during the construction along the border between Mexico and the United States.”⁶ A previous DOJ funding request indicated that “hundreds or thousands of parcels of land” would need to be acquired to facilitate border wall construction.⁷

I am troubled by your agency’s lack of transparency regarding the estimated cost and impact to private landowners of the proposed border wall. As explained in detail in multiple reports by Committee minority staff and the Government Accountability Office (GAO), land acquisition issues posed significant challenges during prior fence deployment efforts.⁸ I fear that, by not fully disclosing the cost and impact to private landowners of future wall construction to Congress and the American people, CBP risks repeating these same mistakes.

⁴ FedBizOpps, *Sources Sought Synopsis for Real Estate Survey, Architect-Engineer Contracts in Support of USACE Southwestern Division, Border Infrastructure Project Management Office (W9126G18U999)* (Apr. 18, 2018) (www.fbo.gov/index?s=opportunity&mode=form&id=d693021279f1370d86916a7d5e550287&tab=core&_cvview=0).

⁵ Email from U.S. Army Corps of Engineers to Committee on Homeland Security and Governmental Affairs Staff (Mar. 15, 2018).

⁶ U.S. Department of Justice, Environment and Natural Resources Division, *FY 2019 Budget and Performance Summary* (Feb. 2018).

⁷ U.S. Department of Justice, Environment and Natural Resources Division, *FY 2018 Performance Budget Congressional Justification* (May 2017).

⁸ Minority Staff, Senate Committee on Homeland Security and Governmental Affairs, *Southern Border Wall: Soaring Cost Estimates and Lack of Planning Raise Fundamental Questions About Administration’s Key Domestic Priority* (Apr. 18, 2017); Minority Staff, Senate Committee on Homeland Security and Governmental Affairs, *Eminent Domain: Administration Lacks Plans or Cost Estimates for Land Seizures Necessary to Construct Border Wall* (Nov. 13, 2017); Government Accountability Office, *Secure Border Initiative: Observations on Selected Aspects of SBInet Program Implementation* (GAO-08-131T) (Oct. 24, 2007); Government Accountability Office, *Secure Border Initiative Fence Construction Costs* (GAO-09-244R) (Jan. 29, 2009); Government Accountability Office, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps* (GAO-17-331) (Feb. 2017).

In an effort to better understand the land acquisition costs and impact to private property owners of border wall construction, and how the most recent Sources Sought notice relates to previous contract awards and funding requests, I ask that you coordinate with USACE and DOJ as necessary and provide answers to the following questions:

1. What is CBP's current estimate for the number of tracts of land that must be acquired to facilitate construction of the border barrier segments that will be built using FY 2018 appropriated funding, and what is CBP's current total cost estimate for this land acquisition, including environmental assessments, title research, property surveys, appraisals, compensation to landowners, litigation expenses, and any other relevant factors?
2. What is CBP's current estimate for the number of tracts of land that must be acquired to facilitate construction of the border barrier segments identified in the President's FY 2019 budget request to Congress, and what is CBP's current total cost estimate for this land acquisition, including environmental assessments, title research, property surveys, appraisals, compensation to landowners, litigation expenses, and any other relevant factors?
3. Please provide a comprehensive list containing the following information for each tract of land that either must be acquired (using both FY 2018 and FY 2019 funds) or was acquired since January 20, 2017:
 - a. Property ID;
 - b. County;
 - c. State;
 - d. Legal description and/or property address;
 - e. Property owner name;
 - f. Property owner mailing address;
 - g. Estimated acreage to be acquired (or actual acreage);
 - h. Estimated value of property to be acquired (or actual value); and
 - i. (in the case of acquired tracts) Date of acquisition.
4. How does the Sources Sought notice issued April 18, 2018, by USACE on behalf of CBP relate to title research, surveying, and design contracts previously awarded by USACE,

including a \$3.7 million award to Michael Baker International for survey and design work along a 2.9-mile stretch of border in Hidalgo County, Texas and a \$3 million award to Premier Land Services for title research in Starr County, Texas? How does the notice relate to DOJ's \$1.8 million request for 20 new positions, including 12 land acquisition attorneys, in FY 2019?

5. Why, in your view, is an additional \$240 million surveying and mapping contract necessary?
6. How was the \$240 million cost estimate for this potential contract derived?
7. Please provide a list of all parties that responded to the April 18, 2018, Sources Sought notice by name and DUNS number.
8. Do CBP and USACE still anticipate issuing an RFP for real estate survey services on or about August 25, 2018?
9. Please identify all property owners that CBP, USACE, and/or DOJ – or contractors working on behalf of CBP, USACE, or DOJ – have contacted to date regarding an ROE-S for the border wall President Trump ordered. How many ROE-S have been signed and returned? How many have not been signed and returned? Please provide a sample of an ROE-S that has either been sent to or returned by a property owner along the southwest border.
10. According to information provided to Committee staff, CBP created a “Wall Decision Support Tool” in 2017 to prioritize segments of the border where additional infrastructure investments might be needed.⁹ Through this Decision Support Tool, CBP ranked 197 segments of the southwest border by various criteria, including the operational and engineering feasibility of building a wall on each of the segments. One factor that was considered was land acquisition – specifically, the number of tracts and landowners, the ease of land ownership identification, and the quality of landownership records in each border segment.¹⁰ With regard to the Wall Decision Support Tool, please provide the following:
 - a. A ranked list of all 197 border segments by each of the three land acquisition factors (number of tracts and landowners, ease of landownership identification, and quality of landownership records); and

⁹ U.S. Customs and Border Protection, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Jan. 19, 2017).

¹⁰ Department of Homeland Security, *Border Security Improvement Plan: Fiscal Year 2017 Report to Congress* (Jan. 4, 2018).

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- b. Information sufficient to identify the location of each of the 197 border segments assessed (e.g. Border Patrol sector and station).

I request that you provide this information as soon as possible but in no event later than June 29, 2018. If you have questions regarding this request or should you be unable to meet this deadline, please contact Joel Walsh of my Committee staff at Joel_Walsh@hsgac.senate.gov. Please send all official correspondence related to this request to Rina_Patel@hsgac.senate.gov. Thank you in advance for your prompt attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Lt. Gen. Todd T. Semonite
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers

Jeffrey H. Wood
Acting Assistant Attorney General
Environment and Natural Resources Division
Department of Justice

Ron Johnson
Chairman