

30-Day CBP Port Modernization Review: Summary and Department Response

Americans should have complete confidence the Recovery Act funds have been spent properly, according to law and consistent with the intent of Congress. The Department of Homeland Security is firmly committed to upholding this responsibility.

Background

In September 2009, Secretary Napolitano ordered a 30-day review of all CBP Recovery Act port projects to provide even greater transparency into the selection process. The review was completed by senior, career officials across the federal government who did not participate in the initial decision making. It was led by the highest ranking career official in the DHS Office of the General Counsel and included representatives from the Department of State, Office of National Drug Control Policy and individuals with expertise in security, contracting, construction, and procurement. The committee examined the process by which ports were selected for Recovery funding, how cost estimates were derived, how funding was awarded, and how savings could be utilized. During the review, no new contracts were let.

Timeline

In 2005, Congress directed CBP to develop a master construction planning process to prioritize land port of entry projects. The most recent pre-Recovery Act iteration of this process was a five-year plan sent to Congress in October 2008. In addition to the long term plan, CBP also provided Congress with a list of infrastructure priorities and funding requirements for inclusion in the economic stimulus bill during Fall 2008. Additional technical assistance, including the breakout of port funding between GSA- and CBP-owned ports, was provided to the Appropriations Committee in February 2009 prior to the Recovery Act's passage. In April 2009, CBP submitted its expenditure plan for CBP-owned ports of entry to the House and Senate Appropriations Committees.

Findings

The 30-day review found that U.S. Customs and Border Protection (CBP) selected the Recovery Act port projects based on merit and established priority and planning practices and that cost estimates were reasonable and justified. The independent committee determined CBP's plans were "based on a set of practical, thoughtful and thorough criteria that allow CBP to meet the goals of the Recovery Act while simultaneously addressing CBP's pressing recapitalization needs."

Specific findings addressed in the report include:

CBP's Existing Ports Fail to Meet the Security Standards of a Post-9/11 World

The vast majority of CBP-owned land ports of entry considered for reconstruction under the Recovery Act have passed their 30-year life expectancy and 20 are 40 or more years old. Described as "dilapidated and run-down" in the report, the Committee notes "it was immediately apparent that the conditions at these facilities hinder the duties that CBP Officers are required to perform" and "clearly [do] not provide the tools needed... [to] guard against terrorist threats."

The Committee's review of land ports of entry selected for Recovery Act funding found remote locations with limited infrastructure that prevent the ports from fulfilling their missions. The Committee expressed alarm that given these circumstances, determined individuals could easily cross the border and avoid inspection entirely. Deficiencies noted during three site visits to ports along the Northern border included port buildings far removed from the road as well as poor signage and lack of technology, enabling vehicles to bypass checkpoints without stopping. The report described conditions that endanger law enforcement personnel, such as inspections conducted on the highway in the midst of incoming traffic due to deficient facilities at the ports. The lack of security features, including holding cells and adequate space, have led some perpetrators to flee on foot and the report cautioned "in the event of multiple violators, the officers could be overwhelmed and unable to respond."

CBP's Plans Fulfilled the Legislative Intent of the Recovery Act

The review found CBP "followed the intent of Congress and has followed sound methodologies in implementing the spending instructions of the Recovery Act." The committee notes that "Congress had transparent access to CBP's plans for the use of appropriated funds for port of entry facilities, and Congress ultimately decided to provide those funds." To fulfill the requirements of the Recovery Act, "CBP acted prudently in response to the large appropriation specified for CBP-owned port of entry facilities."

CBP's Port Modernization Costs are Justified and Fair

Consistent with the intent of Congress and the Recovery Act, the report found ports of entry require "some minimum cost to enable the missions it sets out for those standing post." The report determined that, utilizing independent government cost estimates, competitive procurement processes, and substantial consultation with field, architectural and engineering specialists, CBP "followed merit-based processes that avoid lavish spending on the new facilities."

The review also found that, based on the current state of the CBP ports and the operational and security standards required today, the costs associated with constructing new land ports of entry go beyond merely "replicating the facilities already on site." Substantial costs relate to roadway demolition and construction, electrical and security systems, and additional land acquisition and environmental remediation, as well as features lacking in the current facilities including detention rooms, interview rooms, and secondary inspection garages.

CBP's Selection of Recovery Act Projects Was Based on Merit and Established Planning and Prioritization Protocols

The review found the ports selected for Recovery Act funding were based on a "pre-existing project selection process," which CBP has utilized for more than a decade, while also taking into account "the two additional Recovery Act requirements of ownership and timeliness." The Committee determined that there was no "inappropriate interference (political or otherwise) in the merit-based decisions made with respect to upgrading these facilities," and that CBP "followed established planning and prioritization protocols." In fact, the Committee said CBP's Recovery Act project selection utilized "the same process CBP had originally used to arrive at the 2008 spend plan, albeit augmented to meet the Recovery Act's ownership and shove[sic]-readiness requirements."

The report also found that additional ports slated to receive Recovery funding were justified and based on the information available at the time. For example, some ports moved up the list once it was determined land acquisition and environmental concerns could be addressed within the timelines prescribed by the Recovery Act. In total, 33 CBP-owned land ports of entry are expected to undergo full modernization (up from 23 in the original April 2009 spend plan) and eight CBP ports will receive funding for emergent repairs.

Recommended Reforms

Based on the 30-day review, the Committee made the following recommendations and Secretary Napolitano has directed CBP and other entities within the Department to take the following actions in response:

Recommendation: CBP should be allowed to proceed with its current plans for construction for land port of entry facilities.

Action: Effective immediately, CBP will proceed with its current port modernization projects, while implementing the recommendations included here, to address critical national security needs efficiently and expeditiously within the timelines prescribed by the Recovery Act.

Recommendation: CBP should continue to invest in additional port of entry facilities as it experiences lower-than-expected costs due to current market forces for labor and materials.

Action: Effective immediately, CBP will redeploy any cost savings accrued through the current port modernization projects to additional CBP-owned ports of entry within the timeline prescribed by the Recovery Act. Through smart management and a competitive procurement process, CBP has already driven costs down by an average of 25% per port from the original cost estimates proposed in its spend plan in April 2009.

Recommendation: The Department should develop guidelines and practices regarding value engineering. The Committee could not say whether following such an analysis for the CBP construction prototypes and specific design plans would have certainly resulted in different or lower cost designs.

Action: The Secretary has directed the Deputy Secretary to oversee the development of DHS policy to effectively implement construction design value engineering “principles,” and provide appropriate oversight to maximize efficiencies for all DHS real property projects.

Effective immediately, the Department will apply value engineering “principles” to the design of all CBP-owned port projects to determine if any elements exceed the absolute minimum requirements for CBP to accomplish its mission. If any non-essential capital costs are identified, CBP will modify design requirements and redeploy the funding to additional port modernization projects.

Recommendation: The Department should conduct periodic studies to determine whether any ports of entry should be closed. Although permanent closure of a port of entry involves a number of complex considerations (international relations and impacts on local residents to name just two), some of the facilities that currently exist are separated by only several miles and have low traffic volumes.

Action: This recommendation will be taken under advisement and reviewed in consultation with the interagency.