

**From:**

(b) (6), (b) (7)(C)

**To:**

(b) (6), (b) (7)(C)

**Subject:**

RGV Issue Paper Get-backs

**Attachments:**

[RGV SPC 2013 Issue Paper - RGV Redefine PF 225 Fence Requirements for O-....pdf](#)

[RGV RE-ENV-FIN Getbacks.docx](#)

[O-1 - 3 Estimate of Costs.xlsx](#)

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<<RGV SPC 2013 Issue Paper - RGV Redefine PF 225 Fence Requirements for O-....pdf>> <<O-1 - 3 Estimate of Costs.xlsx>>

<<RGV RE-ENV-FIN Getbacks.docx>>



## United States Border Patrol Rio Grande Valley Sector



### RGV Revised Requirements for Projects O-1 through O-3 October 10, 2013

#### ISSUE / BRIEFING TOPIC:

Rio Grande Valley Sector has redefined the requirements for Projects O-1 through O-3 for McAllen and Rio Grande City Stations (**Decisional**).

#### DESIRED OUTCOME:

Establish (b) (7)(E) technology and associated infrastructure (b) (7)(E) the McAllen (MCS) and Rio Grande City (RGC) Stations' Area of Responsibility (AOR).

#### BACKGROUND:

- Of the 21 Pedestrian Fence (PF) 225 projects in Rio Grande Valley Sector, two were planned for RGC (O-1 through O-2) and one for MCS (O-3). All three projects amount to approximately (b) (7)(E) of pedestrian fence.
  - Project O-1 was to be placed on both sides of the Roma Port of Entry (POE), in (b) (7)(E), and is approximately (b) (7)(E) in length.
  - Project O-2 was to be placed on both sides of the Rio Grande City POE, in (b) (7)(E), and is approximately (b) (7)(E) in length.
  - Project O-3 was to be placed on both sides of the Los Ebanos POE, in (b) (7)(E), and is approximately (b) (7)(E) in length.
- In June 2012, RGC and MCS station management met with Office of Border Patrol (OBP) representatives to discuss the "Total Mission Concept" approach with a mix of TI and Technology and reduce the length of the fence from (b) (7)(E) to an estimated (b) (7)(E) while including (b) (7)(E) technology and patrol roads along the original fence alignment.
- RGV Sector is now assessing the options and seeks to establish a set of requirement for Projects O-1 through O-3 in the event that a path forward is decided.

#### CHALLENGES/CONCERNS:

##### **Project O-3 (McAllen):**

- The current fence alignment will have to be moved north due to the extensive erosion of the river bank caused by flooding from the runoff of Hurricane Alex.

##### **Project O-1 (Rio Grande City):**

- Some of the soil under the current fence alignment has been impacted by flooding from the runoff of Hurricane Alex.

Prepared by: SBPA (b) (6), (b) (7)(C)

3/27/2013

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BW11 FOIA CBP 004813

- [REDACTED] (b) (5)

**Project O-2 (Rio Grande City):**

- The current fence alignment east of the Rio Grande City POE has been impacted due to the erosion of the river bank caused by flooding from the runoff of Hurricane Alex.

**RECOMMENDATION:**

**1. McAllen Station Requirement:**

- [REDACTED] (b) (5)
- [REDACTED] (b) (5)
- [REDACTED] (b) (5)

**2. Rio Grande City Requirement:**

- [REDACTED] (b) (5)
- [REDACTED] (b) (5)
- [REDACTED] (b) (5)

f Approve/Date: [REDACTED] (b) (6) 10/11/2013 Disapprove/Date: \_\_\_\_\_

Needs Discussion/Date: \_\_\_\_\_ Modify/Date: \_\_\_\_\_

ATTACHMENTS

(b) (7)(E), (b) (5)



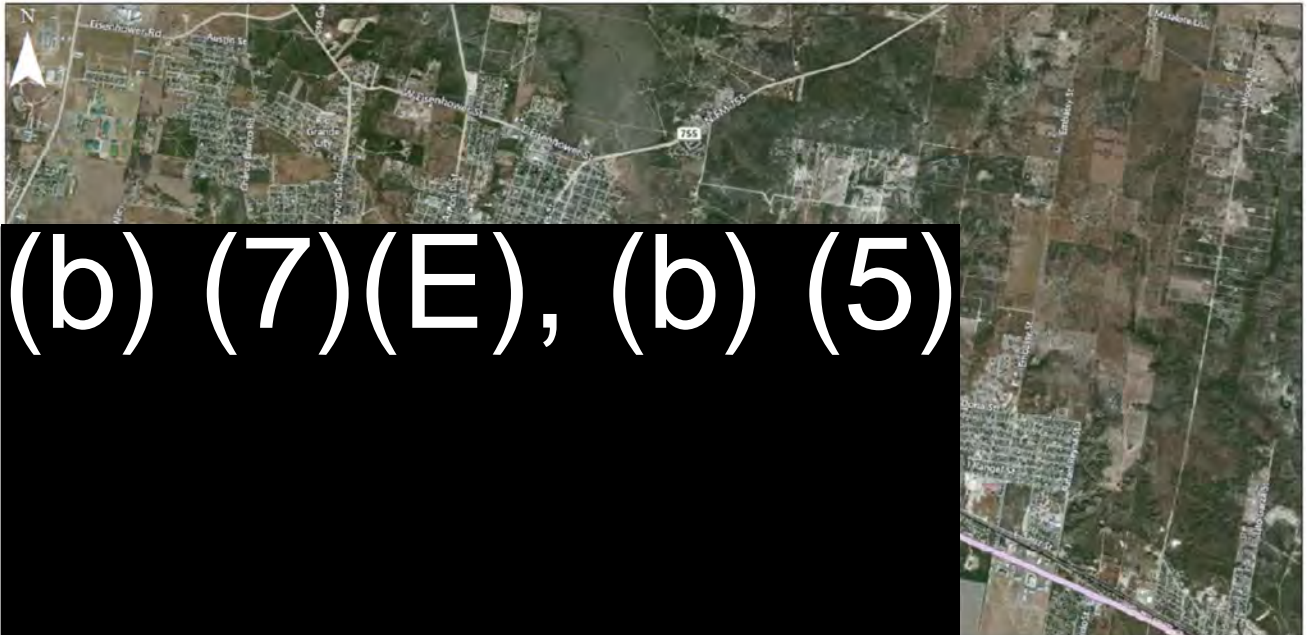
Projects O-1 through O-3 Overview



(b) (7)(E), (b) (5)



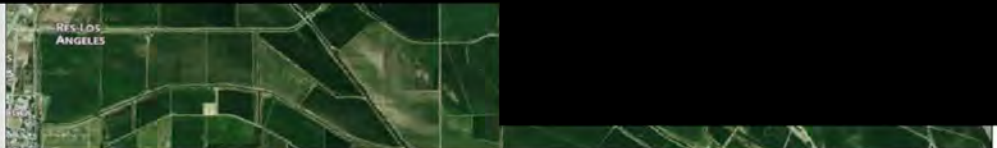
Project O-1 (RGC AOR)



(b) (7)(E), (b) (5)

(b) (7)(E), (b) (5)

-  Fence Alignment 0-1
-  Fence Alignment 0-2
-  Fence Alignment 0-3
-  RGV Sector Stations AOR



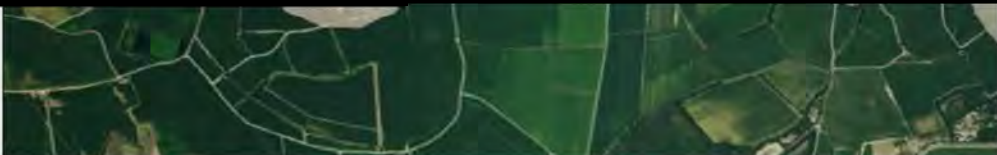
Project O-2 (RGC AOR)

(b) (7)(E), (b) (5)



(b) (7)(E), (b) (5)

- Fence Alignment 0-1
- Fence Alignment 0-2
- Fence Alignment 0-3
- RGV Sector Stations AOR



Project O-3 (MCS AOR)

Fiscal/Appropriations Considerations

- Fence construction for the O-1 to O-3 segments is funded out of the Border Security Fencing, Infrastructure, and Technology (BSFIT) appropriation. BSFIT funds may be expended for CBP “fencing, infrastructure, and technology.” Congress requires DHS to submit an expenditure plan for approval, which details the CBP’s plan “for a program to establish a security barrier along the borders of the United States of fencing and vehicle barriers, where practicable, and other forms of tactical infrastructure and technology.”

- (b) (5)

- (b) (5)

Real Estate

- The Declarations of Taking in the O-1 to O-3 condemnation cases state: “The public purpose for which said Estates in said properties is taken is to construct roads, fencing, vehicle barriers, security lighting, and/or related structures designed to help secure the United States-Mexico border within the State of Texas.”

- (b) (5)

- (b) (5)

Environmental Considerations

- In April of 2008, the DHS Secretary, pursuant to Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), executed a waiver (the “Waiver”) that



covered all of the fence construction that was to take place as a part of the PF225 and VF300 programs, including the proposed construction of the O-1 through O-3. The Waiver also covered roads that were to be constructed or improved as a part of the PF225 and VF 300 program.

- New requirements:

- All-Weather Patrol Road: (b) (5)  
[Redacted]

- (b) (7)(E) : (b) (5)  
[Redacted]

- Permanent Lighting: (b) (5)  
[Redacted]

- (b) (5)  
[Redacted]

(b) (5)

Other Political, PR, and Optics-Related Considerations

- (b) (5)
- 
-

O-1 through O-3 Estimate of Costs

Item Description	Cost
USACE Project Costs	\$ (b) (5)
USACE Project Cost of Roads and Drainage	\$ (b) (5)
Percentage of Road and Drainage Costs to Project Costs	
Original BPFTI Estimate	\$
Percentage of Road and Drainage Costs to Project Costs	
Estimate of Roads and Drainage Costs	\$
Estimated Cost of Lighting	\$
Revised Estimate of Costs for Roads, Drainage and Lights	\$

USACE Estimate of Costs

Item Description	Contract Cost	Proj
Segment O-1 Fence	\$ (b) (5)	\$ (b) (5)
Segment O-1 Access Roads	\$ (b) (5)	\$ (b) (5)
Segment O-1 (b) (7)(E)	\$ (b) (5)	\$ (b) (5)
Segment O-2 Fence	\$ (b) (5)	\$ (b) (5)
Segment O-2 Access Roads	\$ (b) (5)	\$ (b) (5)
Segment O-2 (b) (7)(E)	\$ (b) (5)	\$ (b) (5)
Segment O-3 Fence	\$ (b) (5)	\$ (b) (5)
Segment O-3 Access Roads	\$ (b) (5)	\$ (b) (5)
Segment O-3 (b) (7)(E)	\$ (b) (5)	\$ (b) (5)
<b>Total</b>	\$ (b) (5)	\$ (b) (5)
O-1 Fence Structural Features	\$ (b) (5)	O-2 Fence Structural Features
Fence	\$ (b) (5)	Fence
Welding	\$ (b) (5)	Welding
Foundation Excavation	\$ (b) (5)	Foundation Excavation
Foundation Concrete	\$ (b) (5)	Foundation Concrete
Grounding	\$ (b) (5)	Grounding
Subtotal	\$ (b) (5)	Subtotal
Drainage	\$ (b) (5)	Drainage
RCP	\$ (b) (5)	RCP
Headwalls	\$ (b) (5)	Headwalls
Subtotal	\$ (b) (5)	Subtotal
WADI Span	\$ (b) (5)	WADI Span
Box Culverts	\$ (b) (5)	Box Culverts
Access Roads	\$ (b) (5)	Access Roads
Earthwork	\$ (b) (5)	Earthwork
Surface Course	\$ (b) (5)	Surface Course
Drainage System	\$ (b) (5)	Drainage System
Subtotal	\$ (b) (5)	Subtotal
Access Road	\$ (b) (5)	Access Road
Earthwork	\$ (b) (5)	Earthwork
Surface Course	\$ (b) (5)	Surface Course
Drainage System	\$ (b) (5)	Drainage System
Subtotal	\$ (b) (5)	Subtotal
(b) (7)(E)	\$ (b) (5)	(b) (7)(E)

(b) (5) = All features required for roadway construction

Features required for Roadway Construction

Drainage O-1	\$ (b) (5)
Access Roads O-1	\$ (b) (5)
Drainage O-2	\$ (b) (5)

Roadway costs percentage of Cc

Access Roads O-2	\$	(b) (5)	
Drainage O-3	\$		
Access Roads O-3	\$		
Roadway Total	\$		Roadway Contract Costs (b) (5)
Contract Costs Total	\$		Project Costs Total
Loren Flossman Estimate	\$		Roadway costs percentage of Flc

Escallation Factor

Escallation Factor (b) (5)

(b) (5)

O-3 Fence Structural Features	\$
Fence	\$
Welding	\$
Foundation Excavation	\$
Foundation Concrete	\$
Grounding	\$
Subtotal	\$
Drainage	
RCP	\$
Headwalls	\$
Subtotal	\$
WADI Span	
Box Culverts	\$
Access Roads	
Earthwork	\$
Surface Course	\$
Drainage System	\$
Subtotal	\$
Access Road	
Earthwork	\$
Surface Course	\$
Drainage System	\$
Subtotal	\$
Gates	\$

(b) (5)

tion

Contract Costs

(b) (5)

(b) (5)

rossman Costs \$ (b) (5)

Install Site Lighting  
Assumptions:

(b) (5)

Item Description	UOM	Units	Unit Cost	Cost	Source Document and Notes	Conversion of Units
Transformer	Ea					
Panel Board	Ea					
Meter Center	Ea					
Underground Power Feed	Ea					
Electrical Distribution	LF					
Light Pole	Ea					
Miscellaneous	Ea					
Total						



t(b) (5) each)

**From:** (b) (6), (b) (7)(C)  
**To:** (b) (6), (b) (7)(C)  
**Cc:** (b) (6), (b) (7)(C)  
**Subject:** RE: Legal Issues  
**Date:** Friday, February 03, 2017 9:32:38 AM

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(b) (6), (b) (7)(C) as requested, below are bullets regarding RE Issues, followed by a more detailed explanation (i.e. Background Information) on each issue:

**BULLETS:**

**RGV:**

1. **TITLE ISSUES:** Inadequately maintained public land records compelled condemnation actions for all acquisitions in order to clear title/ownership, with only a handful of exceptions. We remain in court with over 90 owners for cases filed in 2008, still working to resolve these complex title issues.
2. **TREATY WITH MEXICO:** The 1970 Boundary Treaty between the U.S. and Mexico governing construction in the floodplain caused unavoidable significant delays to determining an amenable alignment, and thus delays to completing required condemnation actions.
3. **RELOCATIONS:** For as-yet unconstructed Segments (O-1,2,3), we currently estimate there will be approximately (b) (5) residential and commercial relocations; primarily to the northward shift of the IBWC-approved alignment instituted to avoid violation of the 1970 Boundary Treaty with Mexico.
4. **SEVERING PROPERTY:** Due to the fact that fence in RGV must be constructed north of floodplain, thousands of acres of privately owned land was left between the fence and river.

(b) (5)

5.

(b) (7) (E)

6. **INVERSE CONDEMNATION SUIT – HIDALGO LEVEE WALL:** Real estate was not acquired to construct PF225 segments (O-4 thru O-10), which is a flood control levee wall with steel bollards atop of it that was essentially cut into the existing levee in Hidalgo County. There is now an ongoing lawsuit by a handful of owners who are suing the government claiming what is called “inverse condemnation” - insisting that the land should be acquired and property value damages be compensated.

**WEST OF RGV:**

1. **TOHONO O’ODHAM NATION (TON):** (b) (7)(E), (b) (5)  
[Redacted]  
[Redacted]

**BACKGROUND INFORMATION:**

**RGV:**

7. **TITLE ISSUES:** Any land acquired by the U.S. Government must meet the standards outlined Counties in the Uniform Appraisal Standards for Federal Land Acquisition, also known as the Yellow Book. These standards are promulgated and enforced by the Department of Justice (DOJ). With only a few exceptions, all properties that were required to support PF225 fence construction in RGV failed to meet those standards, and required condemnation litigation to resolve ownership. The primary cause of this issue is the substandard quality of the property records at the County level – RGV includes Starr County (segments O-1,2), Hidalgo County (O-3 thru O-10) and Cameron County (O-11 thru O-21). We remain in litigation with over 90 owners from cases that were originally filed in 2008, primarily due to the complexities of resolving land ownership of the property the government condemned.
  - a. **NOTE:** Beyond RGV, this title issue will arise in other Texas counties for any future fence constructed, particularly in the Del Rio and Laredo areas.
8. **TREATY WITH MEXICO:** The 1970 Boundary Treaty between the U.S. and Mexico governs that any new construction within the flood plain along the international border by either nation’s government must be approved by the other nation. The purpose for such an agreement to address the impact of the flooding of the river, a disproportionate amount of water could be diverted to the other side. In the case of planned segments (O-1,2,3), there is no flood control levee, therefore all of the original alignment was in the FEMA 100-year floodplain. U.S. International Boundary and Water Commission (IBWC) did not approve construction until February 2012, when a redesign effort finally reached an alignment that sufficiently reached a near-zero flood diversion effect. Essentially, the alignment was shifted to the north, made more parallel to the river, and (b) (7)(E) in the fence were incorporated. Therefore, most of the land originally condemned for construction does not fall within the newly approved alignment. All of the original condemnation cases along (O-1,2,3) were placed on hold when this issue arose, and the cases were only recently revived and are being litigated to their conclusion. Condemnation of the property located along the new alignment will require new title research and new condemnation filings.
9. **RELOCATIONS:** For Segments (O-1,2,3) we currently estimate there will be approximately (b) (5) residential and commercial relocations; primarily to the northward shift of the IBWC-approved alignment instituted to avoid violation of the 1970 Boundary Treaty with Mexico.
10. **SEVERING PROPERTY:** Due to the fact that fence in RGV must be constructed north of floodplain, thousands of acres of privately owned land was left between the fence and river. Ongoing condemnation litigation continues in large part because of disputes over the amount to which the fence diminished the value of what we refer to as the “riverside remainder.”

11.

(b) (7)(E)

(b) (7)(E)

12. **INVERSE CONDEMNATION SUIT – HIDALGO LEVEE WALL:** PF225 segments (O-4 thru O-10) were not a free-standing fence as in the rest of the border. They were built as a flood control levee wall that was essentially cut into the existing levee in Hidalgo County. In order to have the barrier meet Border Patrol's (b) (7)(E) requirement, the height was extended in most areas of the wall with steel bollards installed into the top of the wall. Because the primary purpose of the wall was flood protection, real estate was not acquired for construction – the IBWC's levee easement allowed for construction, maintenance and operation of flood control infrastructure. However, there is now an ongoing lawsuit by a handful of owners who are challenging that determination, insisting that the land should have been acquired outright, and that they are also entitled to compensation for depreciated value to their riverside remainder property.

**WEST OF RGV:** Beyond some challenging individual landowners, PF225 & VF300 did not encounter widespread real estate issues west of RGV. This is because the fence was generally constructed in the 60' Roosevelt Reservation, an area reserved by a 1907 Executive Order for the use of the federal government. This reservation of rights did not apply to Texas, because it is a river border, and because most of the property in Texas was already privately owned, versus in the western states where most of the land along the border still had not generally been patented for private use.

2. **TOHONO O'ODHAM NATION (TON):** (b) (7)(E), (b) (5)  
[Redacted]

v/r  
(b) (6), (b) (7)(C)  
[Redacted]

**From:** (b) (6), (b) (7)(C)  
**Sent:** Friday, February 03, 2017 7:53 AM

**To:** (b) (6), (b) (7)(C)

**Subject:** FW: Legal Issues

(b) (6), (b) (7)(C)

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**From:** (b) (6), (b) (7)(C)

**Sent:** Friday, February 03, 2017 6:19 AM

**To:** (b) (6), (b) (7)(C)

**Subject:** Legal Issues

(b) (6), (b) (7)(C)

For clarification, Deputy Provost is requesting the following for her S1 brief on Monday (due this morning):

Legal Issues

What are the pitfalls of the last fence installation (Secure Fence Act)?

She is requesting some high level bullets.

Thank you for your help,

(b) (6), (b) (7)(C)