



May 22, 2019

Army Corps of Engineers and U.S. Southern Border Barriers

The U.S. Army Corps of Engineers (USACE) is performing work on border barriers, roads, and lighting along the U.S. southern border on behalf of the Departments of Homeland Security (DHS) and Defense (DOD). In addition to USACE’s military and civil works responsibilities, a variety of entities—federal agencies (including DOD entities) and tribal, state, local and foreign governments—may access USACE’s engineering and contracting expertise through the agency’s Interagency and International Support (IIS) program. Typically the requesting entity reimburses USACE’s IIS work.

Pursuant to IIS agreements, DHS has tasked USACE with managing various construction activities to meet border security requirements of DHS’s Customs and Border Protection (CBP). Under recent DHS-funded IIS agreements, USACE is constructing barriers and roads along the U.S. southern border, as illustrated in **Table 1**. Separately, in February 2019, the DHS requested DOD assistance with the construction of barriers, roads, and lighting at 11 drug smuggling “corridors” between the United States and Mexico. As of mid-May 2019, DOD has reprogrammed \$2.5 billion to fund DHS-requested projects. For the first round of DOD-funded projects, DOD has tasked the USACE to manage these projects as part of its IIS program. To accomplish the work for DHS and DOD, USACE is awarding project-specific contracts and is seeking to create a prequalified source list of companies to perform up to \$8 billion in border infrastructure projects (e.g., see Solicitation No. W9126G-19-R-BI20).

This In Focus describes the IIS work USACE is performing for DHS for border security and the work USACE is performing for DOD as part of its counterdrug activities.

USACE Border Work for DHS

CBP is the primary DHS entity tasked with identifying priorities for barrier and road improvements to meet border security requirements along the U.S.-Mexico border. Prior and current IIS agreements between CBP and USACE for border barrier work have been entered into pursuant to the Economy in Government Act (31 U.S.C. §1535, referred to as the Economy Act). CBP is not required to enter into these IIS agreements. Under IIS agreements, CBP reimburses USACE for its work, which consists largely of preparing projects for construction (e.g., assisting DHS with real estate acquisition) and managing construction contracts. USACE in turn contracts with private sector firms to perform the construction. **Table 1** shows the DHS-funded USACE IIS projects along the southern border using DHS FY2017 and FY2018 funds. Although similar USACE IIS work on behalf of DHS is anticipated, CRS has not received information on IIS agreements beyond those shown in **Table 1**.

CBP is preparing for construction in CBP’s Rio Grande Valley sector of Texas. Border barrier construction in Texas

is complicated not only by land ownership issues along the border but also by concerns about potential flooding and other effects on U.S. and Mexican communities and sensitive ecosystems. To address some of these challenges, barriers in some locations may be situated atop levees or at the edge of the 100-year floodplain.

Table 1. USACE Border Barrier and Road Work Using FY2017 and FY2018 DHS Funding
(\$, in millions; mi = miles)

Location	Cost	Description
FY2017		
San Diego, CA	\$147	14 mi barrier replacement
Calexico, CA	\$20	2 mi barrier replacement
Santa Teresa, NM	\$75	20 mi barrier replacement
EL Paso, TX	\$22	4 mi barrier replacement
Rio Grande Valley, TX	\$49	Barrier gates
Roads in Texas and in CBP’s El Paso sector	\$76	23 mi
FY2018		
San Diego, CA	\$251	14 mi barrier replacement
California	\$135	15 mi barrier replacement
Arizona	\$293	32 mi barrier replacement
Rio Grande Valley, TX	\$617	13 mi levee barrier, 12 mi barrier

Source: CRS using information provided by USACE in March 2019.

USACE Border Work for DOD

USACE is involved in DOD activities to assist DHS with border engineering projects in drug trafficking corridors. **Table 2** identifies selected actions associated with the DHS-requested, DOD border construction work. DHS requested the assistance pursuant to authority allowing the Secretary of Defense to support other federal agencies—as well as tribal, state, local, and foreign governments—with counterdrug activities and efforts to counter transnational organized crime (10 U.S.C. §284). This support can include the construction of roads, fences, and lighting to block drug smuggling corridors at U.S. international boundaries. (See CRS Insight IN11052, *The Defense Department and 10 U.S.C. 284: Legislative Origins and Funding Questions*, by Liana W. Rosen.)

In March 2019, DOD accepted three of the 11 DHS-requested projects and reprogrammed \$1 billion for their construction. Unlike previous domestic uses of Section 284 to support border engineering projects, which often used military troops and equipment, there is no indication that military assets will be called upon to execute these initial DHS-requested, DOD-accepted projects. Rather, USACE is

contracting with private firms to perform design and construction.

Table 2. Selected Actions Related to February 2019 DHS-Requested DOD Assistance with Border Barrier Construction Projects

Action (Date)	Description
DHS request to DOD (2/25/2019)	DHS requests DOD assistance with 11 barrier projects consisting of more than 210 miles of construction (principally replacing vehicle barrier with pedestrian barrier).
DOD letter to DHS (3/25/2019)	Acting Secretary of Defense decides to support three of the requested projects for roughly 57 miles of barrier construction.
DOD re-programming (3/25/2019)	DOD reprograms \$1 billion for counterdrug purposes, pursuant to 10 U.S.C. §284, and transfers \$1 billion out of its Drug Interdiction and Counter-Drug Activities account into U.S. Army Operations and Maintenance (Army O&M).
USACE contracts (4/9/19)	USACE awards first contracts using Army O&M funds for DHS-requested DOD border projects.
DOD re-programming (5/9/2019)	DOD reprograms \$1.5 billion pursuant to 10 U.S.C. §284 and transfers \$1.5 billion out of Drug Interdiction and Counter-Drug Activities account into Army O&M.
Federal Register notices (5/15/2019)	DHS's <i>Federal Register</i> notices indicate that the Acting Secretary of Defense has decided to support additional DHS-requested projects (84 FR 21798; 84 FR 21800).

Source: CRS using the referenced letters, reprogramming documents, *Federal Register* notices, and DOD press releases.

USACE has announced and in some cases awarded border barrier contracts using Army O&M funds shown in **Table 2**. Some of the contracts have encountered challenges. For example, a federal court rejected a bid protest regarding a \$789 million contract award to replace 46 miles of vehicle barrier with pedestrian barrier in New Mexico. Also, after a protest, USACE rescinded award of a \$187 million contract to replace 11 miles of barrier in southwest Arizona. (For

more on bid protests, see CRS Report R45080, *Government Contract Bid Protests: Analysis of Legal Processes and Recent Developments*, by David H. Carpenter and Moshe Schwartz.)

On May 9, 2019, DOD reprogrammed \$1.5 billion to support additional counterdrug activities. The funds are to be used on DHS-requested border construction projects. Two *Federal Register* notices and a release by DHS's Office of Public Affairs on May 15, 2019, indicate the areas within which DOD is to execute the additional DHS-requested border construction projects and that DOD is to execute the projects in coordination with USACE. These additional projects are for 78 miles of barrier construction and for road construction and lighting installation. **Figure 1** illustrates the location of the DHS-requested DOD-assistance projects, including those that have been reported as accepted by DOD and those that remain pending.

The DHS-requested projects are in California, Arizona, and New Mexico. The February 2019 DHS letter indicated that DHS is responsible for applicable environmental planning and compliance for the assistance projects. The letter indicated that the 11 projects are on federal land, and DHS will address any real estate requirements.

Homeland Security Waiver

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, confers the Secretary of Homeland Security with broad authority to construct barriers and roads along the U.S. border to deter illegal crossings and provides the Secretary with authority to waive legal requirements that may impede the expeditious construction of barriers and roads deployed under this authority. The Secretary has made various determinations to use the Section 102 waiver authority to construct barriers and roads and published notices of these determinations in the *Federal Register*. USACE's work for CBP shown in **Table 1** and the DHS-requested, DOD-accepted assistance projects appear to be at locations and for work under published determinations. For more information on the waiver authority and its use, see CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*, by Michael John Garcia.

Figure 1. Locations of U.S.-Mexico Border Construction Projects for Which DHS-Requested Assistance from DOD in February 2019, and Status of DOD Assistance



Source: CRS using sources discussed in **Table 2**.

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