



One Hundred Sixteenth Congress  
Committee on Homeland Security  
U.S. House of Representatives  
Washington, DC 20515

August 27, 2020

Mark A. Morgan  
Senior Official Performing the Duties of Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20229

Dear Mr. Morgan:

We write to express our concern with U.S. Customs and Border Protection's (CBP) recent decision to begin awarding its own construction contracts for select border wall projects. Previously, CBP has relied solely on the Army Corps of Engineers' extensive contracting experience to perform this task. In fact, the Army Corps of Engineers undertook a multi-phased effort beginning in May 2017 to pre-qualify vendors and establish contracting vehicles for barrier construction.

Earlier this year, CBP officials told Committee staff that they planned to begin awarding their own construction contracts, which would be solicited from the four vendors that received a contract in 2017 to build a barrier prototype out of other-than-concrete materials.<sup>1</sup> Despite being one of the vendors that built an entirely concrete prototype, CBP awarded a \$290 million contract to Fisher Sand & Gravel Company (hereinafter "Fisher") to construct approximately 17 miles of border wall in Webb County, Texas on August 3, 2020.<sup>2</sup> The Department of Defense's Office of Inspector General is currently investigating the propriety of the company's initial contract award.<sup>3</sup> There are also significant quality issues with short stretches of wall Fisher built on private land in Sunland Park, New Mexico and Mission, Texas, as well as concerns about whether these segments would meet CBP's operational needs.<sup>4</sup>

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<sup>1</sup> *CBP Awards Contracts for "Other Materials" Border Wall Prototypes*, CBP, Sept. 7, 2017, <https://www.cbp.gov/newsroom/national-media-release/cbp-awards-contracts-other-materials-border-wall-prototypes>.

<sup>2</sup> *Contract Award for Additional Border Wall System in Laredo, Texas*, CBP, Aug. 3, 2020, <https://www.cbp.gov/newsroom/national-media-release/contract-award-additional-border-wall-system-laredo-texas>.

<sup>3</sup> *CBP Awards Contracts for Border Wall Prototypes*, CBP, Aug. 31, 2017, <https://www.cbp.gov/newsroom/national-media-release/cbp-awards-contracts-border-wall-prototypes> and *Project Announcement: Audit of U.S. Army Corps of Engineers Border Infrastructure Contract*, DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL, Dec. 19, 2019, <https://www.dodig.mil/Reports/Project-Announcement-Memos/Article/2044212/project-announcement-audit-of-us-army-corps-of-engineers-border-infrastructure/>.

<sup>4</sup> Perla Trevizo and Jeremy Schwartz, *A Privately Funded Border Wall Was Already at Risk of Collapsing if Not Fixed. Hurricane Hanna Made It Worse*. PROPUBLICA, July 9, 2020, <https://www.propublica.org/article/a-privately->

Fisher's selection raises questions about how CBP is soliciting and awarding border wall construction contracts. For example, it is unclear why CBP is restricting bids to those vendors that received contracts in 2017 to build barrier prototypes, especially since none of the prototype designs are being constructed. This approach is counter to acquisition best practices of promoting full and open competition and opportunities for small businesses. We also have concerns about CBP's capacity to properly oversee contractor performance. That is why we are requesting that CBP halt performance under any contracts it has awarded and provide to the Committee the following information no later than September 10, 2020:

1. CBP's rationale for its decision to start awarding its own construction contracts, including the cost-benefit or similar analysis of doing so compared to continuing to rely solely on the Army Corps of Engineers for this task;
2. The methodology used to determine which projects CBP will award contracts for instead of the Army Corps of Engineers;
3. An explanation for why CBP has decided to restrict competition to those vendors awarded contracts to build barrier prototypes, including the market research or other analysis CBP performed over the last 3 years to justify this decision;
4. A copy of the acquisition plan and acquisition decision memorandum approving CBP's new approach;
5. Copies of all solicitations and contracts CBP has awarded for wall projects since January 2020;
6. A copy of the quality assurance plan or similar document outlining how CBP will conduct oversight of contractor performance for any and all construction contracts it awards.

Thank you for your prompt attention to this matter.

Sincerely,



BENNIE G. THOMPSON  
Chairman



KATHLEEN RICE  
Chairwoman  
Subcommittee on Border Security,  
Facilitation, and Operations