



**Testimony of Stephen Amitay, Esq.  
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**National Association of Security Companies (NASCO)**

**Before the  
House Homeland Security Subcommittee on Cybersecurity,  
Infrastructure Protection and Security Technologies**

**Hearing on  
*“Securing Federal Facilities: Challenges of the Federal  
Protective Service and the Need for Reform”***

**July 13, 2011**

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Background on NASCO and Private Security

NASCO is the nation's largest contract security trade association, whose member companies employ more than 300,000 security officers across the nation who are servicing commercial and governmental clients including the Federal Protective Service (FPS). Formed in 1972, NASCO strives to increase awareness and understanding among policy-makers, consumers, the media and the general public of the important role of private security in safeguarding persons and property. At the same time, NASCO has been the leading advocate for raising standards for the licensing of private security firms and the registration, screening and training of security officers, and NASCO has worked with legislators and officials at every level of government to put in place higher standards for companies and officers. As the recognized source of information and views for the contract security industry, NASCO regularly holds seminars and other events for industry which provide a forum for information and interaction with members of Congress, congressional staff, federal officials legal and policy experts on governmental and other issues and activities affecting the private security industry.

At the federal level, NASCO was the driving force behind the 2004 passage of the Private Security Officers Employment Authorization Act (PSOEAA), which authorized all employers of private security officers to request FBI criminal background checks on their officers, and NASCO is continuing to work to establish an effective and comprehensive PSOEAA check process. Of more relevance to today's hearing, for the past several years, NASCO has worked closely with both the House and the Senate Homeland Security Committees, the Federal Protective Service (FPS) and the Government Accountability Office (GAO) on issues and legislation related to FPS and the FPS Contract Guard Program. NASCO testified at the two hearing last Congress on FPS that were held by the Full Committee.

Nearly 2 million people are employed in private security domestically compared to fewer than 700,000 public law enforcement personnel. Approximately 75 percent of private security personnel work for contract security companies, with the balance serving as proprietary or “in-house” security. The vast majority of contract security firms employ many former law enforcement and military personnel in management and as security officers. Private security officers are guarding federal buildings, courthouses, military installations, critical infrastructure facilities, businesses, and public areas. Private security officers are often the “first” responder on the scene of a security or terrorism-related incident providing crucial support to public law

enforcement. In addition, with increasing fiscal pressure on governmental entities, private security is increasingly relied upon to fill the gaps resulting from law enforcement funding cutbacks.

At the federal level, not including the military services, there are approximately 35,000 to 40,000 private security officers working for various federal agencies with almost 15,000 at FPS.

## Challenges of the Federal Protective Service

### Introduction

There is no doubt that FPS faces some serious challenges in its mission to protect over 9,000 federal facilities of which at over 2,300 facilities approximately 15,000 contract Protective Security Officers (“PSO’s”) are deployed. And over the past several years, the GAO has uncovered deficiencies within the FPS “Contract Guard Program.” However, GAO has never inferred that contract security officers are incapable or unable to provide effective security, and and GAO has made repeated recommendations to FPS of steps it should take related to training, oversight, management, contracting and recordkeeping that will improve the operation of the Contract Guard Program and PSO performance.

NASCO believes that FPS, working with security contractors, can address the current challenges, laid out in this testimony, that are impeding better performance by PSO’s and contractors. NASCO also stands ready to work with the members of this Subcommittee and others in Congress to improve the operation of FPS through authorization and reform legislation.

Under the tenure of Director Patterson, FPS has reached out to contractors in new and positives ways which bode well for the future relationship and cooperation between FPS and its contractor “partners.” FPS security contractors have considerable expertise and working experience in matters related to contract officer training, deployment, tracking, communication, that can benefit FPS. One wonders if maybe contractors were consulted during the development of the RAMP program, which was touted as an easy to use interactive database that would track PSO records, things may have turned out better.

Overall, a major theme being emphasized now at FPS is standardization and NASCO fully agrees that greater standardization and consistency across all elements of the Contract Guard Program will be of great benefit to FPS and contractors. Often FPS policies and actions not only vary from region to region but within regions from building to building and contract to contract. In addition to working more closely with contractors, FPS could also benefit from adopting successful contracting and management policies and procedures that other federal agencies use with their contract security contracts and contractors.

While there is much to criticize and question at FPS, it must be emphasized that the relative situation for contractors has improved dramatically over the past couple years and under Director Patterson the degree of communication between FPS and contractors is at a new level. Whether this better attitude translates into working relationships on various items – and currently no

mechanism exists for new initiatives to be vetted through industry prior to implementation – remains to be seen, but the contracting community has reason to be optimistic.

### Federalization is Not the Answer

While some have suggested that the solution to improving security officer performance is to “federalize” the FPS contract security officers, such a “solution” lacks any substantive rationale or proof. In fact, one can look at the current performance problems of the federalized TSA screener force (and performance comparisons with non-federalized airport screeners) and it is abundantly clear that the “federalization” is not the prescription for better screening performance. What is clear though about “federalization” is that it would greatly increase the costs to FPS and the American people. In 2009, in response to a question at a Senate FPS hearing, then FPS Director Gary Shenkel estimated that on an annualized cost basis (thus not including retirement benefits) federalizing FPS security officers would increase costs by about 35% or an extra \$400M per year.

Additionally, in the private sector, constant competition from other contractors creates an incentive to perform well, employ best practices, eliminate waste, and seek to constantly improve. Such performance drivers are not present in the federal sector and the federal workplace is beset with additional employee performance and motivation issues. Finally, as the TSA federal screener program has revealed, the same entity should not serve as the regulator, operator, and auditor of security services.

### The Need for Greater Cooperation between FPS and Contractors and Better FPS Guidance

As noted above, while the relationship between FPS and contractors seems to be on the upswing, one problem that has plagued FPS for years is its treatment and lack of consultation with security contractors. FPS is not the only federal agency that contracts for security services, but while other agencies routinely bring in security contractors to discuss possible changes and new requirements, put out draft RFP’s for contractors to comment upon, provide specific guidance when asked, and work hand in hand with contractors on key issues, this has generally not been the case with FPS. When it comes to topics such as the training, deploying and supervising of security officers at buildings, security service contracting, and other topics related to the “business” of security services, often the security contractors working with FPS have vastly more knowledge and experience than FPS contracting officers and inspectors. It also goes without saying that FPS contractors have a vested interest in the successful provision of security at federal facilities by FPS and they want to see FPS operate as effectively as possible.

While there are signs that FPS is being more proactive and positive with contractors such as the establishment of Regional Industry Days and quarterly meetings with individual contractors, and a greater willingness to address “legal liability” issues, there is still much more that can be done to improve the relationship. Only recently, has the FPS sought out the experience, expertise and views of its “partners” on a small amount of substantive Contract Guard Program initiatives. In addition, in many key areas related to PSO performance and contracting, FPS has not adequately addressed contractor concerns and provided clear guidance. Not only can a better working

relationship between FPS and contractors and better guidance provided to contractors lead to improved and more effective building security, but it could also save FPS money.

As mentioned above, FPS contractors were not consulted during the development of RAMP and were constantly told different things about the system. Now, after a year or so of operation, RAMP could prove to be a very costly mistake. Even when it was up and running, there were major problems, mostly relating to fact that contractor's could not access the database.

While not as drastic, a similar misstep was brewing with the current FPS effort ("National Training Initiative") to increase and improve the substance and delivery of PSO training. Currently PSO training totals about 128 hours of which 112 is provided by the contractor. No one will argue that PSO training needed to be updated, improved and standardized, and some of the improvements that have been rolled out so far have been very positive. At the outset of the initiative several years ago, during a PSO "job task analysis" contractors (including NASCO) were consulted. However, for a long period of time not much about the NTI was revealed to contractors nor was there any consultation. Thus, it came as quite a shock to the contracting community last December when FPS shared with NASCO a proposal to replace the current 128 hours of training with an existing 337 hour FLETC training program for "Infrastructure Protection Officers." Yes, such training would be standardized and likely to improve performance, but logistically it would be incredibly difficult to undertake and the costs would be astronomical. After receiving further input, FPS drilled further down on what training was needed for PSO "critical tasks" and determined such a program was not necessary.

Related to the lack of contractor input on the "National Training Initiative" is a similar lack of contractor input on a concurrent FPS effort to improve X-ray and Magnetometer training called the "National Weapons Detection Training Program". The Program would increase current FPS provided X-ray and Magnetometer training – a crucial piece of training – from 8 hours to 16 hours. FPS proposed the new training after the first 2009 GAO Report that found weaknesses in the performance of PSO's and FPS training. Last year, GAO reported that the 16 hours of training was supposed to be delivered to all PSO's by the end of 2010. At last check, the training program was still under review and revision at FPS HQ—almost two years after it was proposed. Again, contractors, who have extensive experience with X-ray/Magnetometer training, including their own programs that have been certified by other governmental entities, have not been consulted by FPS on developing the new training nor approached on any type of beta testing of the new program in the field.

Also, guidance from FPS to contractors is lacking in many critical areas despite repeated attempts by contractors to obtain clearer guidance. One such area is guidance related to detaining individuals. There is a thin line between what constitutes detention and what constitutes an arrest, and a PSO and his employer could face legal liabilities in cases of "false arrest." Contractors have told FPS that the current Security Guard Information Manual (SGIM) is vague and unclear in this area.<sup>1</sup> Making the situation more confusing, FPS officials in the field are giving PSO's detention instructions that differ from what is in the SGIM. Despite these obvious problems, FPS has yet to provide stronger and more consistent guidance in this area.

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<sup>1</sup> For instance, PSO's are sometimes required to pat down individuals and if something is found the individual is asked to remove it. However, in cases where the individual refuses, there is no guidance.

Related to a lack of guidance is a lack of cooperation with disciplining officers. Both FPS and contractors would benefit from greater coordination and mutual support with regard to the discipline and removal of contract security officers. Contractors fully understand that it is the contractor's responsibility to discipline employees. However, when discipline is based solely on the observations or information provided by FPS or other Government officials, it is critical that the contractor be able to present those observations or information in any subsequent labor or legal action. Currently, FPS is reluctant to permit its officials to testify in labor arbitrations, to provide videotapes, or even to allow the contractor to communicate directly with its tenant agency personnel. This can make it virtually impossible to defend a suspension or termination when the affected employee files a union grievance. FPS does not benefit when a terminated contract security officer wins reinstatement and back pay because the relevant information was withheld from the union arbitration.

Post Orders represent a vexing problem for PSO's and contractors. Post Orders can conflict with the desires of the actual building manager of the facility being protected. This can put the contractor and the PSO in a difficult position, and potentially may compromise facility security. More so, Post Orders are fairly nebulous and vague, and can be different for functionally identical posts, such as Social Security Administration offices. In addition, changes to Post Orders are often made verbally with no concurrent written update. Similar problems exist with Occupant Emergency Plans (OEPs) which often are not current, and in some facilities are nonexistent. However, in such facilities, the PSO on post is still responsible for the safe and effective evacuation of facility occupants. Without an OEP, the security officer will have to rely on his own judgment, and his own knowledge of the facility, which may be incomplete. Every facility should have a current OEP for the guidance of the security officer on post.

In the Senate FPS Reform bill (S.772) there is language related to requiring FPS to initially update and then regularly update the Security Guard Information Manual and post orders for each guard post overseen by the FPS. A requirement to update the SGIM, post orders, and also Occupant Emergency Plans should be considered for inclusion in possible House legislation.

Other areas in need of better guidance are Supervision and Relief and Dual Employment.

On a positive note, more recently, at a meeting in the National Capital Region (NCR), the largest FPS region by far, FPS actively reached out to contractors to involve them from the ground floor in a new effort to utilize the Homeland Security Information Network (HSIN) to provide alerts, bulletins and critical information to contractors on a timely basis. Later HSIN could be used to conduct online training, track posts and fill out incident reports. FPS officials at the meeting stated that they did not want to create another thing that "we think is great" but "users don't like" and FPS said they wanted to hear from their "partners" (the contractors). As such, a pilot program using HSIN is being set up in the NCR.

NASCO and the FPS contractor community remain ready, willing and able to work with FPS to improve the current training and delivery methods, improve guidance given to contractors and PSO's and assist FPS in any other way. Contractors have experience with various training regimes across the federal government, in the states, and the commercial sector. It makes sense

that pilots or “beta testing” (like what is contemplated with HSIN) should be developed prior to national implementation of new programs and feedback opportunities should be built into new programs shortly after roll out. This will provide FPS with the ability to more quickly respond to changes that would allow these new initiatives to be more efficient and effective in the field.

The HSIN pilot program represents a very positive development in terms of cooperating with contractors and showing them the professional respect that a “partner” deserves. However, whether this represents a “sea change” in FPS’ relationship with contractors remains to be seen and there are still a great deal of other important issues that need addressing.

### Training and Standardization

One area where there continues to be room for improvement at FPS is with the training of PSO’s, including training substance, standardization, delivery, verification and availability. First off though, FPS is to be commended for recent improvements/updates it has made to various PSO training, certification and equipment requirements and its goal toward greater standardization of training. These include new physical agility test standards, increasing firearm qualification from once to twice a year, standardizing equipment and other changes. Recently, these new standard in training helped contractors meet FEMA requirements to move PSO’s across state lines during the recent spate of natural disasters.<sup>2</sup>

While FPS has made strides in improving training and standardization, there is still room for much more. Weapons training and standardization is a prime example. As for training, a lack of consistency in approach has caused some PSOs to be disqualified where they might not be somewhere else in the country.<sup>3</sup> Contractors are comfortable with and can train to any standard. FPS range review officers should be provided with standardized instruction in how to assess the training. In addition, contractors would like to see greater standardization in the caliber of weapons. Currently, the weapon varies from region to region. While some areas still use a .38 caliber revolver, others use a 9mm or .40 S&W semiautomatics, and yet others are using a .357 SIG semiautomatic. Standardization of the weapon caliber across all regions would have several benefits: it will permit contractors to create and implement a nationwide training syllabus and training standard. This will allow contractor trainers to focus on a single standard and improve proficiency. Standardization across all regions will assist with disaster and surge response, allowing contractors to move security officers across regions more efficiently. The government would realize some cost savings long-term because the same weapon can be used on all contracts, and no change in weapon platform changes would be required when contractors change. For similar reasons, FPS would benefit from standardizing the requirement for OC “pepper” spray. Currently, some contracts require OC spray while others do not.

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<sup>2</sup> With the standardized PSO training, FEMA is getting a consistent and expected level of PSO everywhere from CA to ND to AL. Although this is a positive development, it is still hindered by the requirement to have state and local licensure, even during emergency response situations. Given that there is a new, substantive training standard, the time might be right for FPS to approach local jurisdictions through MOU’s (or Congress through legislation) that allows the temporary posting of PSOs for emergency response situations.

<sup>3</sup> In a related example, recently some PSO’s went to an FPS weapons qualification course dressed in government approved fatigues, which have been accepted by FPS qualifiers in the past, but were not on that day, and so the PSO’s were turned away.

Another area of training where improvement is needed, and was noted by GAO, is building specific and scenario specific training.

While FPS is to be applauded for the steps it is taking to improve and standardize training, there are still a number of training related issues and inconsistencies that NASCO and FPS contractors stand ready to work with FPS and Congress to identify and address.

Perhaps though the greatest problem related to training is not so much substance but the lack of FPS time and resources for training delivery and oversight. As more and more is added to the responsibilities of FPS inspectors some functions have slipped to a lower priority. This includes such areas as weapons training oversight and government supplied training. These cause delays in deployment of new PSOs and contractors build higher levels of overtime into proposals to compensate for these delays, thus potentially costing the Government more than might be expected.

In its July 2009 report on the Contract Guard Program the GAO noted that in some cases the FPS provided 8 hours of X-ray/Magnetometer training was simply not provided to contract security officers or in other cases it was inadequate and not uniform. While FPS' response was (1) not all PSO posts required X-ray/Mag training; and (2) FPS would increase X-ray/Mag training to 16 hours, as noted above, that 16 hour training course still has not been developed. More so, with staffing shortages and competing demands, it is unlikely the training will be delivered efficiently and soon enough. In many cases, the single qualified FPS Inspector also serves as the Area Commander and Contracting Officer's Technical Representative, so the X-ray/Mag training is at best a secondary duty, more likely a tertiary duty. Given the scrutiny that is being applied to the Mag and X-ray screening, and the vital importance of this screening to keep explosives and weapons out of Federal facilities, this is not a good situation.

As alluded to above, one solution to address the inability of FPS to produce on a timely basis effective X-Ray/Mag training is to consult with security contractors who have already developed such training on their own that is used for other clients and to test their PSO's.<sup>4</sup> More so, a proven way that FPS can address its lack of training personnel is to follow the example of numerous state governments who "certify" private trainers to provide the required training (firearms, handcuff, baton, "pepper spray") that security officers need to obtain state licenses and certifications. Contract trainers could go through an FPS "train the trainer" program and receive certification to train and qualify PSO's on the current contractor provided training *and* the X-Ray/Mag training.<sup>5</sup> Such a "certified" trainer program would create more uniform and "trusted" training and contractor trainers are much more flexible in terms of scheduling than FPS trainers and less expensive. FPS inspectors could still audit and spot check training but they could reduce the amount of training monitoring they have to perform and would be freed up to attend

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<sup>4</sup> In the past, an FPS contractor developed an X-Ray/Mag training program that FPS stated would be a sufficient substitute for the 8 hour FPS provided course. However, FPS later rescinded that approval.

<sup>5</sup> Given that contractors supply the vast of amount training to PSO's why does FPS have to supply the X-ray/Mag training? PSO's who fail field X-Ray/Mag tests obviously passed the FPS X-ray/Mag training or they would not have been deployed in the first place. The key is better training and better supervision in the field, not who administers the training.

to more important duties. In the Senate FPS Reform Bill (S.772) there is a requirement that by 2014 at least 25% of all training be monitored by FPS. This would not be necessary with a certified trainer program and also would be incredibly labor intensive and disruptive for the contractors. In fact, due to the current overburdening of FPS staff, FPS is not even able to meet the current 10% monitoring requirement, let alone meet an increased requirement.

### Better Oversight, Management and Contracting

In past reports, the GAO has called for better management and oversight of Contract Guard and Program contracts. Over the past several years, FPS has made moves to professionalize and standardize the contracting process and the contracting personnel with positive results. The ability of the industry to understand what is expected both in Contract Administration/Proposal Development and in Service Delivery/Officer Standards is much better, and it allows the Government to achieve a higher level of consistency/lower level of risk from building to building, from officer to officer.

However, improvement is still needed. Like other agencies, FPS should consult more with contractors on the procurement process and the upfront aspects of procurement; development of the scope of work, establishing evaluation criteria, setting realistic and detailed financial parameters to ensure realistic pricing submissions – must be at the core of the FPS Mission to improve quality. Doing so will have much more effect on quality than post award remediation and training.

Another issue is that FPS contracting personnel do not coordinate with FPS field personnel in creating solicitation standards and evaluating contractor proposals. Currently, solicitations are allowing contractors to propose supervision plans based on their best judgment of post requirements, while at the same time aiming toward a competitive low cost. The evaluation board accepts the proposal that it considers to be “best value,” but it appears that the FPS field personnel are not on board with that process. As a result, when the contractor attempts to implement the supervision plan that was accepted as part of the winning bid, the FPS field personnel often object that it is inadequate. Both FPS and contractors would benefit from including a minimum supervision requirement in each solicitation that has been evaluated and reviewed by the Contracting Officer’s Technical Representative and other FPS field personnel. This will allow a better understanding of contract requirements, and allow contractors to fully price the actual requirements on the front end, instead of fighting with FPS for reimbursement of increased costs after the contract is awarded.

A real sore point with contractors is the fact that FPS will not provide any of the certifications held by incumbent PSO’s to the successor contractor, who by Executive Order, is required to offer all qualified PS’s a position under the new contractor. Thus, when bidding a contract, a contractor has no idea if the current officers hold the proper certifications or meet the training requirements. Theoretically, a new contractor would have to consider pricing in full retraining and certification of incumbent officers since it can only guess how many incumbent officers fully meet the new contract requirements. It is not reasonable to expect the old contractor to turn over the records or for the PSO to have them. FPS has said it will work with contractors on transition issues, but a responsible bidder cannot rely upon such statements when formulating a proposal.

A requirement for FPS to make available certification and qualification data could save money in the procurement process.

Finally, there are still concerns that some FPS contracting officials are looking more at “low cost” than “best value.” While a “best value” evaluation is required, there is ample evidence that awards allegedly based on “best value” are more realistically based on lowest cost, and technical capability and past performance are not being valued as they should. The FPS is now placing more emphasis on past performance rather than the “low bid” approach but price is still a deciding factor (the three evaluation criteria are now past performance, technical approach and price). NASCO supports the inclusion of higher performance related standards in contracts, as well as taking steps to ensure that the quality of a company’s training, personnel, management and operational procedures – which result in a higher bid ---are adequately considered during the procurement process. Companies should not be essentially penalized for going beyond the minimum training and management standards required by the contract.

In terms of oversight, FPS is to be commended for its efforts at quality assurance through Operation Shield. Many contractors have similar internal Red Team exercises and see the value of this effort. One issue that FPS is working on is to get the results of Operation Shield exercises to the contractors more quickly. Currently, results may follow by a few days, making it difficult to determine who was posted on which equipment during the test and even harder to determine corrective action for individual officers.

FPS is also moving in the right direction with mid-year reviews and the administrative process associated with suitability determinations for new hires. FPS is coming close to meeting the standard for response times. By FPS facilitating the process efficiently, PSOs are getting out to the field and on post faster. This cuts down on the number of potential PSOs who find other jobs in the midst of the process due to the time lag between conditional job offers and actual posting. It also reduces the number of backgrounds performed since we put fewer potential candidates through the system.

In the area of audits, there is still a lot of inconsistency. One problem is that sometimes COTRS use contractors on audits who do not understand the contract.

### Data Management

Much has been reported on RAMP and a GAO Report is due out soon. While RAMP may turn out to be a failure, what still remains is the need to better manage and store contractor and PSO related data. More so, FPS should be the central repository for all certification records. It is hard to understand why FPS does not maintain the documentation regarding all the PSO’s qualifications. They are essentially “licensing” the PSOs but they don’t have any evidence other than an “entry” in RAMP.

Another issue that has been a persistent problem is how the security of individual federal buildings is managed. Building security is managed by what is referred to as a Facility Security Committee (FSC) made up of building tenant representatives, who more often than not do have

any security background. The FSC is commonly chaired by a primary tenant agency of the building. Often, the FSC is more interested in “customer service” than building security. This forces the security contractor to answer to two masters when the FSC does not want to cause any hindrance to the access to the building through the now more stringent access control processes as advocated by the FPS. In the Senate bill, S.772 there is language that requires basic security training to be provided to all members of an FSC, and outlines its responsibilities. Security companies should also be allowed to participate in Facility Security Committees. While this subject matter may not be under the jurisdiction of the Homeland Security Committee, it is an important issue. Of note, the Interagency Security Committee will soon be coming out with a Standard for Facility Security Committees.

### Conclusion

While I have outlined a host of issue and problems at FPS related to the Contract Guard Program, it is important to note that FPS has come a long way since its troubled time within ICE, and by partnering with quality private companies; the security of federal buildings will improve. FPS’ relationship with security contractors is definitely on the rise with greater communication between FPS and contractors and a willingness by FPS to work with contractors on Contract Guard Program issues. FPS is taking strides toward national standards that work, they are focusing more on training and contracting and it is getting more efficient. Clearly there is work to be done, but under the stewardship of Director Patterson, FPS is definitely going in the right direction.

NASCO and federal security contractor stand ready to work FPS and this Committee to improve the performance of FPS and the 15,000 contract Protective Security Officers deployed by FPS at federal facilities.