



**Testimony of Stephen Amitay, Esq.  
Federal Legislative Counsel**

**National Association of Security Companies (NASCO)**

**Before the  
House Homeland Security Subcommittee on  
Transportation Security**

**Hearing on  
“Screening Partnership Program: Why is a Job-Creating,  
Public-Private Partnership Meeting Resistance at TSA?”**

**February 7, 2012**

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**“Screening Partnership Program: Why is a Job-Creating, Public-Private Partnership Meeting Resistance at TSA?”**

**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 almost two million private security officers, both contract and proprietary are at work protecting (and often screening persons and bags) at federal buildings, courthouses, military installations, critical infrastructure facilities, businesses, schools and public areas. In addition, as the Screening Partnership Program (SPP) has demonstrated, private companies are also effectively providing passenger and baggage screening services to U.S. airports. 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. At every level of government, NASCO has worked with legislators and officials 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 issues and activities affecting the private security industry. NASCO recently formed a “Government Security Contractor Caucus” to widen and strengthen its efforts to improve the working relationship between federal agencies and private security companies and since the inception of the SPP, NASCO has worked with companies and policy-makers involved and interested in the program. Most significantly, over the past several years NASCO has been very active in working with Congress and the Federal Protective Service (FPS) to strengthen the “public-private partnership” that is the FPS Contract Guard Program.

**Background on the SPP**

After 9/11 Congress passed the Aviation and Transportation Security Act (ATSA), which stood up TSA and authorized it to assume responsibility for security in all modes of transportation, including the creation of a federal workforce to conduct passenger and baggage screening at U.S. airports. However, Congress did not make a blanket judgment that in going forward with more stringent airport screening only a federal workforce could provide effective screening. As such, the ATSA also required TSA to set up a parallel screening program (the SPP) that would allow airport operators to “opt out” of using federal screeners. Instead, these airports could have their screening conducted by personnel from a qualified private screening company chosen by TSA operating under strict federal standards, supervision and oversight. The SPP was made available

to all U.S. airports in November 2004, after a required two year SPP pilot program involving five airports, one from each of the five “airport security risk categories.”

Currently, sixteen airports, including all five of the airports in the original pilot program, have opted out of the use of federal screeners with the largest being San Francisco International Airport (SFO) in California and Kansas City International Airport (KCI) in Missouri.

For a company to be “qualified to provide screening services” under the SPP, the company must only employ individuals “who meet all the requirements...applicable to Federal Government personnel who perform screening services at airports.” The company must “provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel.” Finally, a private company can only provide screening at an airport if TSA determines and certifies to Congress that “the level of screening services and protection provided at the airport under the contract will be equal to or greater than the level that would be provided at the airport by Federal Government personnel.”<sup>1</sup>

To reiterate, at airports where private screening companies are used; (1) the screeners at a minimum have met the same employment screening, proficiency and training requirements of federal screeners, (2) the screeners are provided compensation and benefits at a level no less than federal screeners (in fact on its website TSA states that it has “conducted an extensive review of the private contractors and found overall the private screening companies are providing pay and benefits that equal or exceed the pay and benefits provided by the Federal Government”<sup>2</sup>), and (3) the level of screening services and protection provided by the company must be equal to or greater than the level that would be provided at the airport by federal screeners. Therefore, when John Gage, the head of the AFGE which represents “competing” federal screeners, characterizes the SPP as “a return to the pre-9/11 screening workforce of low paid and poorly trained non-federal employees” such criticism defies credulity and shows a complete lack of understanding of how the SPP operates and is governed.<sup>3</sup>

Furthermore, the inference that the use of private screeners at airports allowed for the tragedy of 9/11 to take place is plain wrong. FAA regulations in place on 9/11 permitted the weapons the terrorists used to take over the planes to be brought on board, and the 9/11 Commission Report found that each security layer relevant to hijackings—intelligence, passenger prescreening, checkpoint screening, and onboard security—was seriously flawed prior to 9/11.

In fact, over the past nine years since airports have been using private screeners under the SPP there is considerable evidence from covert testing results, GAO reports, independent evaluations, reports from airport operators, anecdotal information, and other sources that the public-private partnership of utilizing private screeners under federal regulation and oversight is a superior and more cost-effective security option for airports than using federal screeners.<sup>4</sup>

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<sup>1</sup> Aviation Transportation and Security Act Section 108 49 USC 44920.

<sup>2</sup> TSA website, “Screening Partnership Program” FAQs. [http://www.tsa.gov/what\\_we\\_do/optout/spp\\_faqs.shtm](http://www.tsa.gov/what_we_do/optout/spp_faqs.shtm)

<sup>3</sup>The TSO Voice; January 20, 2010.

<sup>4</sup> See House Committee on Transportation and Infrastructure Oversight and Investigations, [Staff Report: TSA Ignores More Cost Effective Screening Model](#), June 3, 2011, [hereinafter T&I SPP Report].

## **TSA Resistance to the SPP**

TSA has described the SPP as a way “to benefit from private expertise and know how.”<sup>5</sup> Accordingly, during the pilot and the first several years of the program the screening companies involved truly felt the SPP was being used by TSA as a “laboratory” to see how the private sector could help improve and innovate airport screening and the management of screeners. TSA would both bring SPP company officials to Washington and send TSA “tiger teams” to SPP airports to observe and learn about the screening methods and operations of the companies. In 2007, TSA even encouraged some smaller airports in Montana to apply to join the SPP, as the rigid TSA staffing model was inefficient to staff those airports. Even as recently as 2009, in awarding an SPP contract to continue private screening for Roswell Air Center in New Mexico, the TSA Federal Security Director overseeing the airport called it an “excellent example of an effective public-private partnership” and he “looked forward to working” with the private screening company.<sup>6</sup> However, while TSA has never fully embraced the SPP, as the title of today’s hearing notes, this public-private partnership is now (and has been for the last couple years) encountering serious resistance at TSA.

TSA resistance related to the SPP and SPP companies has taken many forms. There are no more “lessons learned” meetings with SPP companies. The process for SPP companies to submit innovations to TSA, a component of SPP contracts, is now ignored or ideas are summarily dismissed as unworkable. While the level of communication between SPP companies and local TSA officials, program managers and contracting officials remains high, the flow of information from TSA headquarters to screening companies, and airports, has diminished. The ability for the screening companies, airports and TSA to work together has been limited by a lack of TSA sharing of important performance and service data and the agency often taking a “my way or the highway approach” to doing things. In addition, as TSA gets more secretive and guarded with its information, TSA is now seeking to limit the ability of SPP companies to share information. In a recent SPP contract, TSA, without any notice or explanation, inserted a provision that prohibits the SPP from publicly disseminating “any information, oral or written, concerning the results or conclusions made pursuant to the performance’ of the contract “without prior written consent of the Contracting Officer.” This includes seminars, professional society meeting/conferences and even requests for information from Congress. Before this “gag order” was put in place, SPP companies were already prohibited from releasing protected government information under both previous contract language and various federal laws. Given the broadness of this clause, SPP companies are now reticent to discuss almost any aspect of their performance with anyone without first receiving TSA’s written permission. This could severely restrict the amount of information available to airports, Congress and the public about the SPP.

TSA’s mishandling last year of the SPP contract award for the Kansas City airport could also be seen as resistance to the SPP or perhaps just incompetence. Either way it showed an irrational lack of consideration for quality service. TSA was required to make the award based on a “best-value analysis tradeoff” using price and six non-price factors. However, the U.S. Court of

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<sup>5</sup> [http://www.tsa.gov/what\\_we\\_do/optout/what\\_is\\_spp.shtm](http://www.tsa.gov/what_we_do/optout/what_is_spp.shtm)

<sup>6</sup> TSA Press Release; “Private Screening Contract Awarded for Roswell International Air Center” *July 16, 2009*.

Federal Claims determined that the TSA award was “essentially made on a lowest-cost technically acceptable basis not pursuant to the best-value determination required by the RFP.”<sup>7</sup>

In ordering the award to be stopped, the Court concluded that it was “clear that the Source Selection Evaluation Board failed to account for the significant differences between the competing proposals with respect to technical quality including the four most important technical evaluation factors in the tradeoff analysis (Management Approach, Screening Services, Security Training, and Pre-Transition/Transition).” In addition, the losing proposal was assigned thirty-three strengths and not a single weakness, while winning proposal received only one strength and one weakness. It goes without saying that it is in the public’s best interest for TSA to properly award airport screening contracts using a “best value” analysis, which places a premium on performance capabilities as opposed to a “low price technically acceptable” basis.

The greatest TSA “resistance” though related to the SPP though is the now year old TSA policy that it will not approve new airports for the SPP unless there can be demonstrated a “clear and substantial advantage” to do so. This new policy was announced in the wake of the denial of 5 SPP airport applications for which TSA provided no details. It was also preceded by attempts of TSA officials, from the Administrator on down, to discourage airports from joining the SPP.<sup>8</sup>

While a plain reading of ATSA language governing the SPP gives TSA complete discretion in approving application (“The Under Secretary may approve any application submitted...”); nonetheless, the intent of Congress seemed clear that if a screening company could provide a level of services and protection equal to or greater than that of federal screeners, and the airport making an application had a good safety and security record, then that airport would be accepted into the program. While TSA never embraced the SPP, this interpretation of the SPP statutory language was followed by TSA –until last January. Essentially now, airports are cut off from the SPP.

The vague justifications provided for the new policy relating to agility, cohesive and intelligence sharing, as will be discussed later, are alternatively unsubstantiated or can be addressed through TSA working with SPP companies and modifying SPP contracts. And to no surprise, credit for this new dubious policy was not claimed by aviation security experts but by the union now representing federal screeners.

Fortunately though, help is on the way for new airports wishing to join the SPP and benefit from more effective, efficient, and customer service oriented private screening companies. Under the FAA Reauthorization bill about to be enacted, Congress has amended the ATSA to add criteria and timelines under which the Administrator must act in considering SPP applications. Specifically, TSA:

---- “Shall approve an application submitted by an airport operator under subsection (a) if the Under Secretary determines that the approval would not compromise security or detrimentally

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<sup>7</sup> FirstLine Transportation Security Inc. v. United States, 2011 U.S. Claims LEXIS 1945 (September 27, 2011)

<sup>8</sup> Even though the current TSA Administrator has not been known to have ever visited any SPP airport since assuming his position, as documented in the House T&I SPP Report, he did make a visit to the Sanford Orlando Airport to try to personally talk the airport director out of joining the SPP.

affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport.”

---- “Shall provide to the airport operator, not later than 60 days following the date of the denial, a written report that sets forth the findings that served as the basis for the denial; the results of any cost or security analysis conducted in considering the application; and recommendations on how the airport operator can address the reasons for the denial.’<sup>9</sup>

The Act also give airports a voice as to which qualified screening company would best meet its screening needs and the Act gives the Administrator the discretion to waive the SPP requirement that a screening company be “owned and controlled by a citizen of the U.S.” in the case of U.S. subsidiaries “with a parent company that has implemented a foreign ownership, control, or influence mitigation plan that has been approved by the Defense Security Service of the Department of Defense.”

The expected results of these changes to the SPP seem clear. More applying airports will be accepted into the SPP in a timely fashion with more qualified screening companies available to them. As described below, it seems virtually impossible based on the past and current performance of screening companies in the SPP that the Administrator will reasonably determine that using a private screening company will “compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening” at an airport. We will soon find out though as FAA bill also requires the TSA to reconsider those applications that were pending before it limited the program and denied five applications last January.

### **Merits of the Screening Partnership Program**

The merits and effectiveness of the Screening Partnership Program and a public-private partnership for airport screening can be viewed on policy, operational and other levels.

On a policy level, with private companies doing airport screening, TSA is not both the regulator and operator. The reasons supporting lessening TSA’s direct role and conflicting mission in screening are two-fold. First, the enormous task of managing the 50,000 or more TSA employees involved in airport screening diverts and denigrates TSA’s ability to focus on critical transportation security related functions such as setting security standards, technology adoption, conducting risk management analyses, performing oversight, enforcing standards and regulations, analyzing intelligence, auditing screening operations, and doing more to stop aviation related terror before the terrorists get to the airport. Second, as the entity both conducting the screening and overseeing the screening, there are inherently greater risks of poor screener performance going uncorrected or even worse being encouraged or covered up by management.

Last year an investigation at Hawaii’s Honolulu International Airport uncovered a massive ongoing security breach involving improper (lack of) screening of checked bags for explosives. Forty-five TSA workers at the airport were fired or suspended including screeners, their

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<sup>9</sup> H.R. 658, FAA Reauthorization and Reform Act of 2011, Section 830. APPROVAL OF APPLICATIONS FOR THE AIRPORT SECURITY SCREENING OPT-OUT PROGRAM.

supervisors, and the Federal Security Director. The TSA screeners claimed they were forced to abandon required screening practices because of TSA management pressure. Could TSA managers at an SPP airport, operating at “arm’s length”, be able to pressure a private screening company to abandon required screening practices putting the company in clear default of its entire contract? Not likely. The potential loss of a contract and hundreds of jobs is a strong incentive for a company, and everyone in the company, to make sure that all employees are compliant with the requirements of the contract. At the Hawaii airport, the malfeasant federal screeners, managers and security director were simply replaced by other federal employees.

On an operational level, the reasons why using private screeners is more effective and efficient are numerous and well documented. While private and federal screeners are required to meet the same minimum training/screening standards and are compensated comparably, there are many advantages in using private screeners and private screening companies. In providing many services, the private sector is much more innovative, efficient and effective than the federal sector and airport screening is no exception. The same can be said for the managing of such services.

Private screening companies at SPP airports have come up with numerous innovations, some which TSA adopted nationwide, and are doing things to improve screener quality and performance (and airport satisfaction) that TSA does not or cannot do. SPP companies came up with better configurations for processing passengers through screening. An SPP company came up with dual functioning screeners (certified for both checkpoint and baggage screening), which facilitated flexibility in scheduling. To address widespread baggage screener injuries and related costs, an SPP company created a non-certified position assigned only to lift bags for the certified baggage screeners (significantly reducing screener injuries and workers compensation costs). At a federalized airport a new OPM job classification would first be required. SPP companies employ full time health and safety professionals on site to investigate and study injuries and devise ways to mitigate them. SPP companies competitively bid for materials and support services. Screeners that are better at image recognition are paired with new screeners in a “mentor” arrangement. SPP companies do their own covert testing of screeners in addition to TSA covert tests and provide remedial training on site – something that TSA cannot provide.

In terms of better hiring and retention of screeners, SPP companies also do many things that TSA does not or cannot do. In hiring screeners, SPP companies do their own local recruiting and screen applicants before submitting them for the formal TSA screening process. Even after a prospective screener passes the TSA screening process, he or she can still go through a company interview with supervisors before being hired. At airports using federal screeners, screeners can show up for work, sight unseen already hired. The additional screening that SPP companies apply to the recruitment process results in more successful new hire completion rates and ongoing on-the-job success. At federal airports, TSA headquarters sets compensation for screeners and managers and screeners have no real financial incentives to perform beyond the minimum requirements and barring the commission of a crime or serious violation of standards, federal screeners and managers -- like all federal workers -- have great job security.<sup>10</sup>

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<sup>10</sup> Dennis Cauchon “Some federal workers more likely to die than lose jobs” USA TODAY July 19, 2011. Recently, a TSA screener who was caught on tape stealing \$5000 in cash from an air passenger’s jacket at a TSA screening checkpoint and was arrested for grand larceny was “suspended pending investigation.” At an SPP

At SPP airports, the screening operation is a business, and better performance is good for business both tangibly (award fees) and intangibly (reputation and future business). SPP company site managers are very vested in hiring the right people, monitoring performance, and striving for better than average performance. Bonuses are provided for perfect attendance and robust attendance policies are maintained (recognizing that just one late screener can prevent the “critical mass” needed to open a check point). Does TSA even have an attendance policy for its screeners? Private screeners can also be immediately counseled and can be provided with remedial training if needed. A culture of cohesion and teamwork within the workforce and peer expectations are encouraged.

SPP companies also use a pre-hire physical testing protocol coupled with other working initiatives that minimize on the job injuries, and allow for faster return to work and lower workers compensation rates. SPP companies will provide monetary and other incentives to retain screeners. SPP companies fully realize that a stable workforce is more efficient, effective and motivated. The House T&I SPP Report calculated that the turnover rate at the non-SPP LAX airport was 13.8% compared to 8.7% at the SPP San Francisco (SFO) airport.<sup>11</sup> Supporting the notion that TSA is not as effective at managing/motivating/retaining its screener workforce is the recent ranking of TSA at 232 (out of 240) as the “Best Places to Work” in the federal government.<sup>12</sup>

A major advantage that SPP companies have over TSA is in scheduling and managing its screener force. At federally screened airports, the number of full time and part time screeners (actually FTE’s) is dictated to TSA airport directors by TSA headquarters. At SPP airports, the SPP company site manager can hire more screeners as needed in order to meet the contract requirement for total screener hours. They can more flexibly schedule screeners in ways to provide better service without increasing costs. For instance, at most larger airports, the terminals are open for 20 hours. Under TSA’s staffing model, this would require two full time screeners at 8 hours per shift and one part time screener for 4 hours to staff the position, with all three screeners receiving fixed benefits. On the other hand, at one SPP airport with such terminal operating hours, the SPP company is able to schedule two screeners at two ten hour shifts reducing personnel and costs. TSA does not utilize such an option.

For most airports, the number one concern is wait time and SPP companies are much attuned to this concern. SPP companies use sophisticated airline industry-based scheduling tools, which efficiently schedule and manage staffing in real-time. They make the screening schedules and can make pinpoint adjustments using optimization software and airline data. They have decision support systems that allow managers to be proactive. Scheduling is also tied in directly with payroll, HR and training systems, which ensure full visibility of manpower resources. For TSA,

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company, that screener would be “suspended pending termination” and likely be fired much sooner than at TSA. SPP companies, while in compliance with all DoL standards, have considerably more capability to discipline progressively and remove ineffective employees than TSA.

<sup>11</sup>Id at Appendix I.

<sup>12</sup> <http://bestplacestowork.org/BPTW/rankings/detail/HS10>

effective and efficient scheduling is a problem due to centralization of the scheduling system and institutional inflexibility. Airports are told when to open lanes and checkpoints with little local TSA (or airport) input. As evidence of the scheduling problems at TSA, in 2008 the DHS Inspector General found that “TSA is “overly reliant on the (national mobile) deployment force to fill chronic staffing shortages at specific airports in lieu of more cost effective strategies and solutions to handle screening demands.”<sup>13</sup> In the House T&I SPP Report, it was estimated that SPP screeners (based on a comparison between two similarly sized airports) are 65 percent more efficient than their TSA federal counterparts.

While private screeners and private screening companies are more efficient, there is also a strong case to be made that they are more effective. While not much data is publicly made available, from what is available, screener performance is better at SPP airports than non-SPP airports. In 2007, USA Today uncovered covert TSA tests results that showed significantly higher screener detection capabilities at an SPP airport (SFO) than at a comparably sized non-SPP airport (LAX). According to the test results, investigators successfully smuggled 75 percent of fake bombs through checkpoints at Los Angeles International Airport ... and 20 percent at San Francisco International Airport.”<sup>14</sup> As reported by the GAO in a 2009 report, in December of 2007, Catapult Consultants issued a report to TSA (which was never publically released) that found private screeners performed at a level that was “equal to or greater” than that of the average federal screeners. TSA was also advised to “explore the use of the SPP model as a tool to improve performance at low-performing fully federal airports.”<sup>15</sup> In addition, in SPP contracts, TSA measures a company’s performance against the average performance of airports in the same category through a quality assurance surveillance plan. (QASP) In order for a company to get an award fee they must score higher than the federal average. In other words, SPP companies simply cannot meet the goal, they must exceed the performance metric in order to earn their award fee. SPP companies consistently earn award fees meaning they are consistently exceeding the average performance of similar non-SPP airports. This accords with the ATSA requirement that in order for an SPP company to maintain its contracts/certification it must be equal to or better in performance than similar federal airports.

Private screening companies are also cost-efficient. A commonly cited, yet thoroughly debunked, alleged disadvantage of the SPP is that it costs more to use screening companies at federal airports than it does federal screeners. The source of this allegation is a 2007 internal TSA estimate that SPP airports would cost about 17 percent more to operate than airports using federal screeners. A GAO review of that estimate found its methodology to be severely flawed and TSA agreed to redo the estimate using better data and methods. In January 2011, TSA released a revised estimate that SPP airports would cost 3 percent more to operate SPP airports.<sup>16</sup> Even then, the renewed estimate only partially addressed four of seven “cost analysis

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<sup>13</sup> DHS OIG Report “The TSA National Deployment Force” April 2008. OIG-08-09.

<sup>14</sup> Thomas Frank, “Most Fake Bombs Missed by Screeners”, USA Today, Oct. 22, 2007.

<sup>15</sup> Government Accountability Office, Aviation Security: TSA’s Cost and Performance Study of Private-Sector Airport Screening (Jan. 9, 2009) (GAO-09-27R).

<sup>16</sup> To no surprise, even after TSA revised its estimate to 3% the AFGE continued to use the discredited 17% figure. See AFGE press release “AFGE’s Efforts Put SPP on Ice TSA Ends Expansion of Airport Privatization Program” January 19, 2011.

limitations” that the GAO had identified.<sup>17</sup> In addition, adjustments TSA made to calculate workers compensation, liability insurance, retirement cost and revenue generated from corporate income taxes were only “generally accepted” by GAO and never substantiated. Data on the costs of deploying TSA National Deployment Force was also lacking from the estimate. In fact, TSA has no idea of the exact costs of screener operations at federally screened airports while SPP companies know their costs to the penny.

TSA also has refused to address the wasteful issue of duplicative staff at SPP airports. In 2007, an independent evaluator hired by TSA recommended that TSA “(e)xplore reducing the redundant general and administrative and overhead costs at SPP airports.” However, a 2009 GAO study found that TSA has “not consider[ed] the impact of overlapping administrative personnel on the costs of SPP airports.”<sup>18</sup> And while TSA has told Congress more recently that it has addressed the issue of duplicative staffing, congressional investigators continue to find multiple instances of TSA employees holding similar or identical positions to those held by the private screening company at the airport.<sup>19</sup>

It is very likely that under a detailed analysis, TSA would find the cost of operating an SPP airport to be less expensive than a non-SPP airport, and in fact House T&I SPP Report found that taxpayers would save \$1 billion over five years if the Nation’s top 35 airports operated as efficiently as the San Francisco International airport under the SPP program.

Greater effectiveness and efficiency are not the only advantages in using private screeners, another demonstrable advantage --- one that TSA does consider a performance metric --- is customer service and accountability. At SPP airports, while TSA is the client, the airport is the customer as are the passengers. Better customer service also has a security benefit. Avoiding incidents and maintaining a calmer passenger base makes it easier for screeners and behavior detection officers to spot aberrant behavior. SPP companies realize the value of customer service and they teach and reinforce customer service constantly. Even with the difficult protocols, SPP screeners are taught to implement them with customer service empathy. It is no surprise that Kansas City International Airport, an SPP location has earned the J.D. Power and Associates award for highest customer satisfaction of all medium sized North American airports twice in the last four years. Security checks provided by the SPP contractor were cited as a critical factor in making both awards. That airport’s screening services as well as other SPP companies have garnered much praise from their airport directors for customer service and other innovations that have improved screening operations.<sup>20</sup> For those airports wanting to join the SPP, greater customer service and greater accountability are major reasons. Said one airport official whose airport had applied to the SPP, “As we have documented, TSA employees frequently have no concern for customer service. We feel that participating in the SPP will increase screening efficiency and flexibility and improve the customer service experience.”<sup>21</sup>

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<sup>17</sup> GAO Letter to Congress “Aviation Security: TSA’s Revised Cost Comparison Provides a More Reasonable Basis for Comparing the Costs of Private Sector and TSA Screeners” March 4, 2011.

<sup>18</sup> See footnote 9, GAO-09-27R).

<sup>19</sup> T&I SPP Report, page 25.

<sup>20</sup> See T&I SPP Report. Appendix 12 SPP Testimonials.

<sup>21</sup> May 20, 2011 Letter to House T&I Committee from Springfield-Branson National Airport.

Critics of the SPP also try to fall back on the dubious claim that airport screening is an inherently governmental function “so intimately related to the public interest” that federal personnel must provide it.<sup>22</sup> Putting aside that allowing airports to use non-federal screeners is required under the ATSA, and putting aside the evidence that private screeners are more effective than federal screeners, there is virtually no legal, policy or practical support for the argument that passenger and baggage screening is inherently governmental.

First off, assertions that a private screening company’s desire to make a profit and reduce costs means its screeners will not perform as well as “non-profit” federal screeners are not only outright false, but a specious accusation. While seeking to reduce costs and eliminate waste in operations is one way for a contractor to increase profits, what also increases a contractor’s profits is better performance. Better performance translates into award fees and more contracts. Also, in the private sector, constant competition from other contractors creates an incentive to perform well, employ best practices, reduce waste, and seek to constantly improve. These performance and cost containment drivers (especially in the area of reducing overtime costs) are not present in the federal sector and the federal workplace is beset with its own host of employee performance and motivation issues.

Secondly, in the area of security services, OMB has specifically defined as “inherently governmental” security operations in certain situations connected with combat or potential combat.<sup>23</sup> Accordingly, below this very high threshold, many types of security and screening services can and are being performed by contractors on behalf of the U.S. Government. Federal agencies have consistently and successfully utilized private security and screening services at government facilities (including Level 4 and 5 secured facilities) and to protect federally regulated critical infrastructure sites. From DoD locations requiring Top Secret and above clearances to the Department of Homeland Security Headquarters, NASA launch sites, nuclear facilities, Federal Courts, military installations, and FBI offices around the country, the US Government has relied upon contractors to provide security and screening across the spectrum of sites. Everyday, contracted officers protect, screen and provide access control at sensitive sites to millions of visitors, US Government employees and invited guests each day.<sup>24</sup>

Also, as documented in the House T&I SPP Report, in other countries where the danger of aviation terrorism is equally of great national concern “federal oversight of qualified private contract screeners has shown to be effective all over the world (and) almost all western countries operate civil aviation security through the use of federal oversight of private contract screeners. Other than Romania, Poland and Bulgaria, the United States has the only government in the

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<sup>22</sup> As defined in Section 5 of the Federal Activities Inventory Reform Act “inherently governmental function” means a function that is so intimately related to the public interest as to require performance by Federal Government. (P.L. 105-270).

<sup>23</sup> OMB Office of Federal Procurement Policy Publication of the Office of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions.

<sup>24</sup> The United States has multiple sites around the country that are American Heritage sites and potential targets for terrorists interested in “making a statement.” One such site is the Statue of Liberty. This site is controlled by the US Park Police in concert with a contract security firm who provides unarmed screeners to efficiently process up to 15,000 visitors per day. This requirement has multiple lanes of visitors flowing through magnetometers, hand wands, and x-ray machines, very similar to those processes used by TSA.

western world that functions as the airport security operator, administrator, regulator, and auditor.”<sup>25</sup>

And if the TSA and critics of the SPP do not feel that private companies are as effective as federal screeners to prevent a terrorist act on an airplane, then why are they not similarly concerned about cargo screening? Currently, all cargo screening is conducted by private screeners in compliance with TSA procedures, processes, certifications and standards – the same model of TSA oversight for passenger screening under the SPP. It would seem hypocritical for TSA to treat passenger and baggage screening as “inherently governmental” when the all of the cargo placed on commercial airlines is screened by private companies.

Finally, TSA can and does provide effective oversight of private screening services. Among the tools that TSA uses to track screener performance are daily TSA manager reports, monthly Performance Management Reviews calculated against challenging metrics, and twice yearly award fee reviews also calculated against challenging performance metrics. TSA can be assured, and indeed constantly assures itself, that SPP companies perform at a very high level.

### **TSA Concerns with the SPP**

In the House T&I SPP Report, the operational justifications that Administrator Pistole and TSA used to limit the scope of the SPP program to the current airports are reviewed. They included: Administrative burden – disproportionate amount of resources are spent on SPP airports; Intelligence – TSA can tailor and provide direct information to Federal employees; Direct control – another layer is involved when FSDs order direction action; Flexibility and use of resources – TSA can use its own resources for emergency events, but cannot utilize SPP; and Impact on workforce – TSOs at potential SPP airports face uncertainty about their job status, benefits, leave, and salary.

While the T&I Committee staff notes that SPP Program Office officials have informed them that TSA was amending SPP contracts to eliminate any existing challenges related to the operational concerns, some of these concerns are not even substantiated by the facts. For example, the “intelligence concern” is negated by the fact that the managers employed by the SPP companies undergo the same SECRET clearance process as TSA employees and are capable of receiving the same intelligence as their federal counterparts. The question of the flexibility of resources for emergency events is negated by the fact that the SPP contracts currently include programs such as the TSA VIPR program that allows SPP contractors to provide additional security outside of the airports where they work and that TSA’s SPP contracts already include a “surge clause” that allows the TSA to direct SPP contractors to immediately support emergency situations.

As to the concern that allowing more SPP airports will hinder the “agility” of TSA, SPP companies vigorously disagree with this notion. While perhaps their screeners cannot, “on paper” be currently deployed directly by TSA, in many past instances SPP companies have demonstrated their agility and responsiveness to address staffing emergencies and a change in

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<sup>25</sup> House T&I SPP Report, page 15.

procedures due to a heightened security risk. In fact, neither the TSA nor SPP critics can point to a single actual situation where a SPP contractor has been less agile than the TSA. And although anyone can come up with fanciful “what if” scenarios, there is absolutely no tangible evidence in the almost 10 year history of the SPP where an SPP contractor has not served the needs of the TSA and the flying public completely and absolutely. Finally, as with other federal security service contracts, additional deployment of staff to meet emergency requirements can be built into those contracts to facilitate additional agility in meeting unforeseen needs.

## **Conclusion**

Many airports are satisfied with their federal screening force and the ATSA language establishing the SPP in no way pushes or even encourages airports to use private screening companies. However, it is clear that Congress wanted airports to at least have the opportunity to utilize private screening which by law has to be equal to or greater in the level of security provided. From the experiences and lessons learned in the SPP, it is clear that the use of private screening companies has proven to be a viable and effective option for airports, and private screening can be effectively overseen by TSA. It is therefore unfortunate and indeed ironic that at a time with unprecedented interest and emphasis on government efficiency and sustained and meaningful job growth, the TSA continues its attempts to limit and marginalize a successful public-private partnership program that is exceedingly efficient, effective, and customer-focused. Far from ignoring the SPP, in its mission to provide the best possible aviation security, the TSA should be embracing it.