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National Association of Security Companies (NASCO)

Before the
House Homeland Security Subcommittee on Transportation Security

Hearing
"Examining TSA's Management of the Screening Partnership Program"

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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.

Over the past decade, NASCO has provided input to and worked with Congress, GAO, federal agencies and others on issues and programs related to the use of contract security by federal agencies. NASCO has been involved with the SPP virtually since its inception and NASCO has also been very active in working with Congress and the Federal Protective Service (FPS) to strengthen the "public-private partnership" that is the FPS Protective Security Officer Program which utilizes approximately 13,500 contract security officers to protect federal building within the GSA portfolio.

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. ATSA also required TSA to conduct a pilot program with up to five airports, one from each of the five "airport security risk categories," where the screening would be conducted by personnel from a qualified private screening company chosen by TSA operating under strict federal standards, supervision and oversight. At the conclusion of the successful pilot in 2004, TSA created the "Screening Partnership Program" which allows any airport to apply to "opt out" of using federal screeners and instead use a qualified private screening selected and overseen by TSA.

Currently, there are eighteen airports, including all five of the airports in the original pilot program, in the SPP. By far the largest in the program is San Francisco International Airport (SFO) in California and the second largest is Kansas City International Airport (KCI) in Missouri. It is expected that soon awards will be made for the Orlando Sanford (SFB) and Sarasota (SRQ) airports in Florida, which will be the largest airports in the program's history to transition from federal screeners to private screeners. (While SFO and MCI are larger airports, since they were in the pilot program, they never had federal screeners). NASCO hopes that for Orlando Sanford and Sarasota and any other airport joining the SPP, that the TSA will take the necessary steps and actions needed to provide for a smooth transition from federal screeners to private screeners (many of whom will likely make the transition to the private sector), and avoid causing problems for the airport, the screeners, and travelers.

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."[1]

[1] Aviation Transportation and Security Act Section 108 49 USC 44920.

To reiterate, at SPP airports where private screening companies are used it is required by law that; (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 such federal screeners 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.

TSA fully acknowledges that these requirements are being met. At a January congressional hearing on the SPP in the House Oversight and Government Reform Subcommittee on Government Operations, Kelly Hoggan, Assistant Administrator, Office of Security Operations for TSA testified that "These private sector employees [SPP screeners) were, and remain, subject to the qualification and compensation criteria of Federal Transportation Security Officers (TSOs)."[2] And on the TSA website in the material on the SPP, TSA states, "private screening airports use the same technology and follow the same procedures as federal screening airports. Data from covert testing has confirmed that the performance for federal and privatized screening is comparable."[3]

Therefore, when opponents of the program characterize the SPP as "a return to the pre-9/11 screening workforce of low paid and poorly trained non-federal employees" such criticisms are blatant falsehoods and/or show a complete lack of understanding of how the SPP operates and is governed.[4]

Furthermore, while equating present day SPP private screeners to pre-9/11 private screeners is specious comparison, the underlying accusation that private screeners are to blame for the tragedy of 9/11 is also blatantly 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 twelve years since airports have been using private screeners under the pre-SPP pilot and the SPP there is considerable evidence from covert testing results, GAO reports, independent evaluations, reports from airport operators, anecdotal information, and other sources that show that the public-private partnership of utilizing private screeners under federal regulation and oversight is a superior and more cost-effective screening option for airports than using federal screeners.[5]

Issues and Problems Related to TSA's Management of the SPP

In the decade the SPP has been in operation, airports and screening companies have encountered a variety of obstacles, mis-steps, and questionable statutory interpretations on the part of TSA that have hindered the program. Some of these problems have been addressed by Congress and/or TSA but others continue to impede the growth of the program and even threaten the viability of the program.

As will be discussed in detail the two major issues impacting the SPP are:

(1) TSA's questionable interpretation of the statutory language that requires TSA to estimate the costs of federal screening at an airport (called the Federal Cost Estimate) to set a "cost-efficiency" price ceiling for private screening at that airport. TSA believes that it only needs to consider federal screener costs borne by TSA and its budget, and not all the federal (taxpayer costs) of federal screening at an airport. In addition, the accuracy of the costs that TSA uses in calculating the FCE and doing federal/private cost comparisons are an issue.

(2) TSA's questionable interpretation of statutory language that requires private screening companies provide screeners with compensation "no less than such Government personnel." Here, TSA believes that the intent was not that screeners working for private screening companies must receive equal (or better) compensation than federal screeners, but essentially the opposite, private screening companies only are required to pay screeners the minimum/starting TSA wages.

Both these interpretations fly in the face of a plain reading of the statute, the intent of Congress, and good public safety and fiscal policy. They are both major threats to the program. If TSA will not address the problems associated with these

[2] Testimony of Kelly C. Hoggan, Asst. Administrator for Security Operations House Oversight and Government Reform Hearing "TSA Oversight: Examining the Screening Partnership Program" January 14, 2014 Serial Number 113-95
[3] TSA Website Screening Partnership Program FAQ's
[4] The TSO Voice; January 20, 2010, statement of former AFGE head John Gage
[5] See, House Committee on Transportation and Infrastructure Oversight and Investigations, Staff Report: TSA Ignores More Cost Effective Screening Model, June 3, 2011

issues, then Congress should step in, as it did in the past, when TSA took it upon itself to impede the program through a very questionable interpretation of the statutory language related to the application approval process.

While many airports are content with their federal screening force, and federal screeners by and large are performing their duties satisfactorily, airport screening is not an inherently government function, nor is it a unique security function. Many federal agencies, including other DHS agencies, are efficiently and effectively using contract security for screening and other security services.[6] As will be fully detailed, even when private screening companies are required to provide equivalent compensation package of wages and benefits to their screeners, and even accounting for profit, they can still be more cost-efficient and more effective than federal screeners.

SPP Application and RFP Process

As alluded to above, one of the greatest obstacles that faced that program that has now been resolved by Congress was TSA's former policy on application approvals. From around 2009 to 2012 TSA had an unstated and then stated policy to not approve new airports for the SPP unless "a clear and substantial advantage to do so emerges in the future." While the justifications for this policy were unsubstantiated and the policy seemed to contradict congressional intent; nonetheless, it led to 5 out 6 airport SPP applications being denied and/or held up for years during that period. The policy was overruled by Congress with the enactment of the 2012 FAA Modernization Act which required TSA to approve an application within 60 days unless the approval would "compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport.[7] However, TSA's interpretation of this language, which added the cost-efficiency element, created the follow on problem mentioned above and discussed later.

Currently, with the new application approval requirement in place and with TSA taking other steps to improve the application process (as recommended by Congress and GAO) the SPP application approval process is no longer problematic.

TSA and the new SPP leadership are also to be commended for their public commitment, made earlier this year, to award SPP contracts within one year of an application being approved. This goal is evidently in line with the wishes of Congress as in the House Report accompanying the FY 2015 DHS Appropriations Bill that was passed by the House last month, the Committee stated "The time taken by TSA to approve applications, issue contract solicitations, and make contract awards is unacceptable. Accordingly, TSA is directed to award applicable SPP contracts not later than 12 months from the date of receipt of such airport applications." [8] Currently, TSA is slated to make an award for Orlando Sanford Airport next month (26 months after application approval) and to make an award for Sarasota Bradenton Airport in September (17 months after application approval.) Obviously, the next SPP application approved will put the one year time requirement to the test.

Unfortunately, the solicitation and award process for the past several SPP RFP's have been plagued by problems involving questionable provisions, unexplainable adjustments, improper evaluations and other issues -- besides the underlying FCE and minimum pay issues -- that have caused serious confusion, delays, pre-award protests and set up the eventual awards for successful bid protests. These incidents raise concerns about TSA's ability to manage the procurement process and its commitment to the program.

TSA's handling of the SPP contract for Kansas City International (MCI) is a prime example. Kansas City was an original pilot SPP airport and in 2010 the airport's SPP contract was put out for bid. TSA made an award but it was then successfully protested and voided in the U.S. Court of Federal Claims in 2011. The Court found that TSA "failed to perform a best-value tradeoff analysis as required under the RFP; and (2) that the SSA failed to exercise and document her independent judgment in accordance with FAR 15.308." The TSA award was "essentially made on a lowest-cost technically acceptable basis not pursuant to the best-value determination required by the RFP." The procurement errors were "significant" and the Court found the award to be "'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[9]

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[6]Not including the military services, there are approximately 35,000 contract security officers deployed at federal facilities. The largest amount of contract security officers work for FPS (approx. 13,500), the United States Marshal Service (approx. 5,000), and the Department of Energy (approx. 5,000). Other federal agencies/instrumentalities that use contact security include: IRS, NASA, FAA, USDA, DOT, DOC, HHS, SSA, NARA, DOL, FDIC, US Coast Guard, State, DIA, NRC, Holocaust Museum, and Smithsonian. Federal agencies have consistently and successfully utilized private security and screening services at Level 4 and 5 secured facilities, DoD locations requiring Top Secret and above clearances, the Department of Homeland Security Headquarters, NASA launch sites, nuclear facilities, Federal Courts, military installations, and FBI offices around the country.

[7] See Pub. L. No. 112-95, § 830(a), 126 Stat. 11, 135 (2012) (codified at 49 U.S.C. § 44920(b))

[8] H. Rept. 113-481 – Department of Homeland Security Appropriations Bill, 2015

[9] FirstLine Transportation Security Inc. v. United States, 100 Fed Cl. 359 (2011)

In 2012 TSA issued a new RFP for Kansas City. In the new RFP, TSA included a small business participation "goal" of 40% of the total contract value. In all past SPP RFP's that included a small business participation goal the amount was a percentage of the sub-contracting total not total contract value. The Federal Acquisition Regulations (FAR) also reference small business goals in terms of a percentage of total subcontracting dollars. This unusual and excessive set- aside "goal" seemed to violate the FAR, and also contracting laws which require goals to be based on market research. More so, when TSA was asked for the RFP record "[i]s it the TSA's intent that all large businesses [be] mandated to have, as a minimum, 40% small business participation … as part of their overall bid?" TSA answered in the affirmative. And in other places too within the RFP the goal was characterized as mandatory. [10]

After the set aside provision was challenged in court in a pre-bid protest, TSA quickly changed its above mentioned answer to say the goal was not mandatory. And while the Court said it "agrees with Plaintiff that the placement of this language under the heading of "Compliance/Responsiveness" is in tension with TSA's otherwise abundantly clear assertion that the 40 percent small business participation standard constitutes a goal," the Court accepted TSA's word it would change that language too. [11]

The Court then looked at the issue of the amount of the "goal" and while the Court upheld it as being legal, the Court stated, "If the Court were issuing this solicitation instead of this agency, it may well have based the rather aggressive small business goals on more robust market research, and it likely would have stated the goals as a percentage of subcontracting dollars, as FAR Part 19 authorizes."[12]

In the next open solicitation that TSA put out (Sanford) the small business goal included was a percentage of subcontracting dollars (as it had been in past RFP's), and not total contracting dollars. Again, this example shows either sloppiness or a misunderstanding of the SPP RFP process on the part of TSA and caused unnecessary delays and litigation.

The Kansas City contract was finally awarded earlier this year, but once again it has been protested in the U.S. Court of Federal Claims where it is currently being litigated.

The Kansas City contract award has not been the only troubled SPP award. In its June 2013 Report on the SPP, the DHS OIG found that "From January 2011 to August 2012, TSA did not comply fully with Federal Acquisition Regulation Section 15.308 when documenting its decisions in awarding four SPP contracts. Specifically, in this time period, TSA's documentation on proposal evaluations and decisions related to these contract awards was missing details and included inaccuracies. TSA did not formalize and implement procedures to ensure that SPP procurements were fully documented, and it did not have quality control procedures to verify the accuracy of data used for contract decisions. As a result, TSA risks not selecting the best contractor offer and not ensuring that it provides the best screening services. In four of the five procurement files for contracts awarded between January 2011 and August 2012, the rationale for TSA's final decisions on contractor selection was not fully described in supporting documentation."[13]

One troubling theme in TSA's SPP procurement process that was identified by the Court in the first rejected Kansas City award and is an issue in the second protest, is TSA's conduct of a "best value" analysis. As stated in the first Kansas City award protest ruling, in a "Best Value" determination a government agency must compare the relative costs and benefits of the "competing proposals, including both price and non-price factors . . ."[14]

In the second RFP for Kansas City, TSA stated that "Security is paramount" and that "security is always TSA's most important objective" and that "security is a "non-negotiable" issue.[15] However, while not doubting the ability of the winning company to provide the level of screening services required by the contract, it is worth noting that both Kansas City awards went to the lowest bid. This is not surprising though given how TSA conduct its "best value" analysis. Obviously, if "security is paramount" and the "most important objective" one would think that a company's record of performance would be a considerable factor. However, in TSA's "best value analysis" price is the single most important factor. Price alone is equal to a combination of technical factors that include IN ORDER OF IMPORTANCE (1) Operational Screening Management; (2) Program Management; (3) Logistics and Training; (4) Transition and (5) Past Performance. So "Past Performance" is the least important factor in TSA's "security is the most important objective" best value analysis. In addition, while Factors 1 through 4 above are evaluated and provided an adjectival rating, past performance is rated on a pass/fail basis. [16]

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[10] Firstline Transportation Security, Inc v. U.S. USCFC NO, 12-601 Nov 2012
[11] Ibid.
[12] Ibid.
[13] DHS Office of Inspector General "TSA Screening Partnership Program" OIG-13-99 June 2013
[14] See Footnote 9.
[15] Airport Security Screening Services at MCI, Solicitation No. HST S05-12-R-SPP038 July 2012
[16] Ibid. This evaluation analysis is the same in subsequent SPP solicitations.

It is understandable that "costs must be competitive" and the award cost-efficient for the Government. As discussed already and will be further discussed, ATSA requires private screeners to be no more expensive than the cost of federal screeners, and so as threshold matter, in order for a company's bid to considered, it must be lower that than cost of using federal screeners at the airport (which is the FCE). However, once it is determined that bidders are under the FCE, meaning they are less expensive than federal screeners, and if "security is paramount" should price still trump all the technical factors combined? It goes without saying that it is in the public's best interest for TSA to properly award airport screening contracts using a true "best value" analysis which places a premium on performance capabilities as opposed making awards that are essentially (as Court decisions have shown) being made on a "low price technically acceptable" basis.

Other recent RFP issues include:

In the RFP for Sanford-Orlando six weeks after it was issued, TSA amended the solicitation to add over 10,000 hours for Behavior Detection Officer activities. However, in the Q&A for the solicitation, TSA stated that BDO activities were "not requirement of the contract." It is estimated that the additional BDO hours added would $15M in contractor costs. Accordingly, it was expected that TSA would also adjust the maximum bid amount (the FCE) to reflect the added costs of the added BDO hours. However, in subsequent amendments to the RFP, TSA stated that the FCE would remain "unchanged" and then further explained "there is no change to the FCE is because the BDO level of effort is included in the original FCE as written in the Request for Proposal (RFP)."[17] That's some glaring omission!

TSA's Interpretation of SPP Screener Compensation Requirement under ATSA

As noted in the introduction, ATSA requires that for a company to be "qualified to provide screening services," 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." Accordingly, in SPP RFP's under the "Compensation and Benefits" clause TSA states that "TSA has interpreted the statute (ATSA) to require contract-screening companies to provide pay and benefits at a loaded cost (direct hour plus percentage cost of fringe benefits) to all screeners that equals or exceeds the loaded cost of the pay and benefits provided by the Federal Government. This approach: (1) provides the contractor with flexibility to trade additional pay against other benefits, or to enhance certain benefits and reduce others; (2) enables the contractor to determine and provide the best package necessary for the recruitment and retention of quality private security screeners; and (3) increases flexibility while permitting recruitment and retention of quality private security screeners."[18] This interpretation seems plainly accurate – pay the same to screeners as would be provided by the Federal Government. It also recognizes the flexibility that the private sector has --- which the federal government does not have --- to balance wages and benefits to create a more a cost-efficient its labor force (which is discussed later).

However, TSA then says in the "Compensation and Benefits" clause "Therefore, the contractors shall provide at least the minimum loaded wage rate" (emphasis added).[19] Minimum screener rate? Yes. For all screeners? Yes. Regardless of the actual "level of compensation and other such benefits provided to such personnel?" Yes.

Under TSA's interpretation of the above ATSA language, all screeners, regardless of how long they have been on the job, can receive the "minimum rate" or starting TSO rate in a new SPP contract. Does TSA really believe that Congress intended, by using the phrase "not less than… such Federal Government personnel" to mean just not less than those TSA screeners who are making the minimum, starting TSO wage? So Congress intended that a screener with 12 years of experience could have his or her pay reduced to the starting screener wage whenever a private screening company took over screening at airport or when an existing SPP contract was re-awarded? Really?

In ATSA Congress mandated that the training of private screeners be equal to federal screeners. Congress mandated that the level of screener performance be equal. And it seems logical and rational that Congress also mandated that the level of pay be equal. Yet, TSA believes Congress intended that the level of pay for private screeners, regardless of experience, only needs to be the "minimum rate." This seems quite illogical and irrational.

One would think in that given the legislative history and intent that sought to set up parallel/equivalent private and federal screening forces that less than "such Federal Government personnel" clearly connotes parallel/equivalent pay for private and federal screeners in the same situation or level of experience. In a job that supports an important homeland security mission and where ""security is always TSA's most important objective" and "security is a "non-negotiable" TSA indeed seems to be negotiating away security with this screener pay requirement interpretation. Is this good public policy?

[17] Airport Security Screening Services at Orlando Sanford International Solicitation No. HSTS05-SPP004 Airport (SFB) See amendments 4, and 5.
[18] Ibid. See Clause H.6. Compensation and Other Benefits.
[19] Ibid.

In other DHS agencies, such as the Federal Protective Service, where contract security personnel, like federal and private airport screeners, are being successfully utilized to provide screening services and serve the Department's homeland security mission, when a new contractor takes over a contract the incumbent security officer wages cannot be reduced. Contractors receive seniority lists that let them know what they will have to pay in wages and benefits to the screening force. Obviously keeping wages stable promotes retention, retention of more experienced personnel, reduces turnover, and overall helps maintain or increase performance in their security mission. Conversely, if wages are cut it could promote instability, greater turnover, and the loss of experienced personnel. Again, aside from it being bad policy, a plain reading of the ATSA language and the intent behind that language, clearly does not support TSA's interpretation.

When asked about the issue of screeners having to take a pay cut with a new SPP contract, TSA stated that "TSA only monitors minimum salary requirements by means of the Compensation and Other Benefits clause in the SPP contracts. Actual salaries and wages for employees supporting a SPP contract are determined, as they are with all federal contracts, by direct negotiation between the company and the employee. The Federal Government does not get involved in wages beyond ensuring that the compensation rate meets the requirements of the Aviation Transportation Security Act (PL 107-71)."[20]

Obviously, a company can still submit a bid for an SPP contract that would pay screeners the equivalent of their federal wages (with a new airport) or the equivalent of their current wages (with an existing SPP airport), and they are not required to bid starting screener wages. However, given that Price is the most important consideration that TSA uses in evaluating SPP bids, and the lowest bidders have been awarded the recent SPP contracts, for a screening company to submit a bid that provides "full pay"/"equivalent pay" seems to be a losing strategy.

By fostering a process where screeners, regardless of their experience/performance, must take a pay cut when an airport goes SPP or there is a new SPP contractor, TSA seems to have lost sight of its security mission. Are not airport screeners "front-line" homeland security personnel that play a vital role in transportation security? Does not TSA value the work of airport screeners? A forced pay cut will cause better performing and experienced screeners to leave and impact morale and could ultimately affect performance. In addition, no private company or the federal government has a surplus or alternative source of screeners so keeping incumbent screeners is vital and saves on training and hiring costs. Why is TSA trying to provide for security on the cheap at SPP airports?

If private screening companies, like contract security companies elsewhere in the federal government (and some companies are both), are required to bid equivalent wages and not minimum wages, and then such companies can beat the overall federal screening cost number at an airport as required, how is this not (1) what ATSA intended; (2) better for airports; (3) better for screeners; and (3) better for security? TSA and the federal government are still saving money!

The Federal Cost Estimate

TSA's definition and computation of the Federal Cost Estimate has been the subject of much inspection and investigation and is directly related to the "debate" as to whether the use of private screeners an airport is less expensive than using federal screener. As noted above, the FCE was born out language in the 2012 FAA Modernization Act that amended ATSA and mandated that TSA approve an airport's SPP application, if "the Under Secretary determines that the approval would not compromise security or **detrimentally affect the cost-efficiency** or the effectiveness of the screening of passengers or property at the airport." [21] (Emphasis added). Accordingly, from a plain reading of the statutory language, the FCE represents the total federal cost of using federal screeners for "screening of passengers or property at the airport" and sets a maximum bid limit for private screening. It makes complete sense that if a private screening company bid for screening at the airport is not equal to or lower to the federal costs, this would detrimentally affect the screening cost-efficiency at the airport which would violate ATSA and the bid should be considered unacceptable.

However, as is clearly apparent, and as TSA now readily admits, their computation of the FCE does not represent the complete/true cost of federal screeners at an airport. It only represents an estimate of the costs to TSA, not the entire federal government (aka taxpayers). As stated by TSA, "*In assessing cost-efficiency, TSA (only) compares costs within its appropriation to private sector costs. While TSA computes imputed costs such as potential retirement it does not include those costs as part of its cost comparison for efficiency those prospective obligations are not are not provided in the agency's appropriation.*" [22]

[20] Responses to Screening Partnership Program (SPP) Questions for the Record Submitted by the House Committee on Appropriations Subcommittee on Homeland Security March 25, 2014
[21] See Footnote 1.
[22] DHS Response to Questions from House Homeland Security Committee Chairman Michael McCaul, January 2014.

Of course besides retirement, there are worker's compensation, legal, HR, administrative and other direct federal (screener) costs being paid by taxpayers through other federal agencies for "screening of passengers or property" at a federalized airport. However, according to TSA's interpretation of the law, Congress intended "detrimentally affect cost-efficiency" to just apply to TSA's costs. For a short time, TSA could justify this interpretation of the law by referencing the Report accompanying the FY '13 Continuing Resolution where there was language that said TSA should not approve new contract applications if "the annual cost of the contract exceeds the annual cost to TSA of providing Federal screening services."[23] Unfortunately for TSA, Report language is not statutory language, that Report language expired after FY '13, and that language has been thoroughly reputed in subsequent Appropriations Reports.

In the Explanatory Statement for the FY '14 Consolidated Appropriations Act, TSA was directed "to implement generally accepted accounting methodologies for cost and performance comparisons. As detailed in the House report, this includes, but is not limited to, comprehensive and accurate comparisons of Federal employee retirement costs and the administrative overhead associated with Federal screening services…. With respect to TSA cost estimates, the study shall include indirect costs as recommended by GAO (GAO-09-27R)" [24]

This year the House's FY '15 DHS Appropriations Bill Report language is even more stern stating that TSA's use of an "FCE that utilizes faulty methodology and ignores significant costs to the federal government is unacceptable. " [25]
TSA also recently told the House Appropriations Committee in responses to questions on how TSA calculates its (TSA cost-only) FCE that "TSA is able to account for actual costs incurred for the majority of airport specific costs." So what airport specific costs are not being accounted for? And TSA said it is "confident the methodology is accurately capturing the most significant cost factors for federal cost estimates." So what is not capturing or not accurately capturing?[26]

In TSA's last public iteration of a federal-private cost comparison in 2011 – which was done after numerous corrective recommendations by GAO --- TSA alleged that private screeners were 3% more expensive. However, even after making numerous changes to its cost-methodology at the recommendation of GAO (which brought the TSA figure down from 17% to 9% to 3%) GAO still said of that comparison "we did not have confidence in the 3% figure because one of the issues that was still unresolved at that time was the question of uncertainty about the underlying estimate and the underlying assumptions going into the estimate."[27]

The DHS OIG has also found fault with TSA's cost comparisons. In a 2013 report on the SPP the OIG reviewed five contracts awarded between January 2011 and August 2012 for eight airport. The OIG office said "we reviewed two of eight cost estimates that TSA prepared for the five procurements and identified discrepancies in both cost estimates. Specifically, there were differences in labor hours and overtime rates. Inaccurate cost estimates could affect TSA's evaluation of offerors. A document included an incorrect figure, which resulted in a $162,057 overstatement of the cost to use private screeners. A document used to compare the estimated cost of private screening to the estimated cost of Federal screening showed TSA understated an estimate of the cost savings of private screening by $423,572."[28]

Given that TSA readily admits it does consider all the non-TSA costs associated with federal screeners when it comes up with federal screener cost estimates, and given the lack of confidence and accuracy even in those costs, and given the lack of confidence in TSA's cost-comparison methodology, it is really disingenuous to say that TSA has found the cost of private screeners to be more expensive that federal screeners. And, even with TSA only using an incomplete TSA-only FCE, that may or may not even capture or capture accurately the TSA airport specific costs, because of the many cost-efficient and cost-saving policies and practices that private screening companies utilize, private screening companies are still able to beat the TSA's incomplete FCE in SPP RFP's!

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[23] Explanatory Statement accompanying H.R. 933' Consolidated and Further Continuing Appropriations Act, 2013 see page S1552.
[24] Explanatory Statement on H.R. 3547, Consolidated Appropriations Act, 2014 See Page H932
[25] House Report 113-481 - DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS BILL, 2015
Footnote 25 – continued – Privatized Screening. "Further, the Committee remains concerned with TSA's use, as it is currently construed, of a Federal Cost Estimate (FCE). Using a FCE that utilizes faulty methodology and ignores significant costs to the federal government is unacceptable. The Committee expects TSA to implement generally accepted accounting methodologies for cost and performance comparisons, as described in Public Law 113-76, which includes, but is not limited to, proper, comprehensive, and accurate comparisons of federal employee retirement costs and the administrative overhead associated with federal screening services."
[26] See Footnote 20.
[27] Ms. Jennifer Grover, Homeland Security and Justice, Response to a question at the January 14, 2014 Hearing of the Committee on Government Reform Subcommittee on Government Operations "TSA Oversight: Examining the Screening Partnership Program. (See Footnote 2).
[28] See Footnote 13.

Why Private Screening Companies are More Cost-Efficient than the Federal Government in Providing Airport Screening

Even paying the same (equivalent) wages, private companies can beat the total cost of screening relative to TSA's actual costs, and of course, relative to total federal costs. There are many reasons for this greater cost-efficiency. First as mentioned above, TSA allows contractors to provide pay and benefits at a loaded cost (direct hour plus percentage cost of fringe benefits) and as TSA admits "This approach: (1) provides the contractor with flexibility to trade additional pay against other benefits…that enables the contractor to determine and provide the best package necessary for the recruitment and retention of quality private security screeners."[29] Through this flexibility on balancing wages and benefits, which the federal government does not have with TSA screeners, contractors are able to create incentives and disincentives for its workers that result in better attendance, timeliness, performance which all can save money. Take sick leave. When a screener calls in sick the usual response is to have to pay another screener overtime to cover the shift. It can also lead to lanes being opened late. To reduce such incidents private companies can trade sick leave for increased wages. There are other ways too for private employers to balance wages and benefits that will increase cost-efficiency.

Another area where cost-efficiencies can be realized is by reducing absenteeism. In a 2013 GAO Report on screener misconduct, of the 9,600 cases of employee misconduct investigated and adjudicated from fiscal years 2010 through 2012, the number one category that accounted for 32 percent of the cases was attendance and leave related misconduct.[30] This backed up a 2011 OPM finding that "Attendance issues are among the most common challenges for federal supervisors." The OPM report noted that "Employees' failure to report to work as scheduled can have a negative impact on an organization's ability to complete the mission." (What is interesting is that there is no mention in the Report of any "negative impact" of additional costs associated with federal employee absenteeism.)

As private screening companies have to pay for absenteeism out of their set contract amount they are very motivated prevent and discourage absenteeism. As such, bonuses are provided for perfect attendance and robust attendance policies are maintained. There is little doubt that the punishment for an unexcused absence is greater in the private sector than in the federal sector. In addition, not only does absenteeism cost money, but just one late screener can prevent the "critical mass" needed to open a check point which affects performance. If during the "morning rush" at airport there are screening lanes not being used, it is probably a result of an unexcused or excused (call in sick) absence.

Another significant cost driver is injury rates and workers compensation claims. While TSA does not bear the full cost of paying federal screener worker compensation claims, and has no incentive to reduce or question those claims, again, it is the opposite with private screening companies. Again, SPP companies must pay for all their screener worker's compensation claims out of the fixed contract amount. Accordingly, SPP companies employ a variety of methods to reduce, mitigate, manage, and limit worker compensation claims. Companies use pre-hire physical testing protocols coupled with other at-work initiatives that minimize on the job injuries, and allow for faster return to work and lower workers compensation rates.

To address widespread baggage screener injuries, one 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 for a solution. SPP companies also employ full time health and safety professionals on site to investigate and study injuries and devise ways to mitigate them.

Reducing attrition is another way to save money. In terms of hiring and retention of screeners, SPP companies 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. SPP companies will also provide monetary and other incentives to retain screeners. At airports using federal screeners, screeners can show up for work, sight unseen already hired. The additional steps that SPP companies apply to the recruitment process results in more successful new hire completion rates and ongoing on-the-job success. SPP companies fully realize that a stable workforce is more efficient, effective and motivated. In the 2011 Report by the House Transportation and Infrastructure Committee on the SPP, it was 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. [31]

How does TSA stack up with SPP companies in the areas of attrition, absenteeism and injury rates? As GAO reported at the January 2014 OGR GO Subcommittee hearing on the SPP it found out while doing its 2012 Report comparing federal

[29] See Footnotes 17 and 18.
[30]. GAO: TRANSPORTATION SECURITY "TSA Could Strengthen Monitoring of Allegations of Employee Misconduct" GAO-13-624 July 2013
[31] See Footnote 5.

and private screener performance, that even though contractors collect and report this information to the SPP PMO, the TSA Office of Human Capital does not collect the data and TSA does not require contractors to use the same human capital metrics as TSA, and comparisons are not conducted.[32] In a follow up to this finding, in a question for the record of the hearing, the Ranking Member of the Subcommittee, Gerry Connolly the DHS OIG if TSA planned to collect this data "in a consistent manner so that comparisons can be made between airports?" The Response was "Cost and screening performance are the two areas where the Transportation Security Administration (TSA) compares the Screening Partnership Program (SPP) airports and non-SPP airports. Metrics such as attrition, absenteeism, or injury rates are not included as germane to the definitions of either cost or screening performance and, thus, are not monitored on a consistent basis."[33] Maybe they should be. These human capital measures are huge cost factors and a measure of an efficient and effective workforce.

A major cost-saving advantage that SPP companies have over TSA is in scheduling and managing its screener force which creates cost-savings compared to federal screening. 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 schedule screeners as needed in order to meet the contract requirement for total screener hours. As stated in SPP RFP's "The Contractor shall schedule their workforce in a manner that meets demands for security screening and work closely with TSA staff to satisfy all operational requirements in the contract."[34] This scheduling flexibility results in numerous cost-efficiencies. 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. SPP companies also take steps that TSA does not to schedule breaks and "relief" more cost-efficiently.

SPP companies also use sophisticated airline industry-based scheduling tools, which further efficiently schedule and manage staffing in real-time. In making their screening schedules companies 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, effective and efficient scheduling is a problem due to centralization of the scheduling system and institutional inflexibility. In 2008, the DHS Office of 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."[35]

All the above mentioned cost-efficiency activities – reducing "sick leave", reducing attendance/absentee rates, reducing and mitigating injuries, efficient scheduling as well as efficient use of part-time screeners --- also all contribute to one of the greatest cost-savers: reducing screener overtime. Overtime costs are huge and it would great to see an apples to apples comparison of TSA and SPP overtime costs.

While personnel and compensation costs represent by far the largest screening cost area, and as discussed private companies are finding cost-efficiencies in this area, the largest relative cost-efficiencies for the private sector over the federal sector is in administration and management functions that are not screener functions/positions. This includes recruiting, on-boarding, certain training, administration of payroll, administration of workplace injuries, administration of HR related employment matters (a big area), benefits administration, labor relations, quality control inspections, staffing management, IT support, accounting and budget management, and many more. While TSA (and other federal agencies supporting federal screener) also do these tasks, private companies are more experienced and motivated to save costs in these areas and, like with scheduling, they utilize the most efficient methods, technologies, and staff to accomplish these tasks. In addition, private companies control the compensation paid to its administrators. Also, the private sector is more cost-efficient in handling legal settlements and disputes (as well as workplace injuries as mentioned above). In April of this year, TSA just settled a case that started in 2010 involving the harassment and humiliation of a woman who, in accordance with TSA guidelines asked that her breast milk not be x-rayed, but instead on two successive occasions was harassed and humiliated by TSA screeners. It cost the federal government $75,000 and who know how many hours of legal work.[36]

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[32] Testimony of Jennifer Grover, See Footnote 2.
[33] Question for the Record. See Footnote 2 (Page 65).
[34] See Footnote 17. Clause C.4.2.3 Scheduling
[35] DHS Office of Inspector General, The Transportation Security Administration's National Deployment Force (April 2008) (OIG-08-49)
[36] http://www.dailybreeze.com/general-news/20140422/hermosa-beach-mom-wins-settlement-from-tsa-over-airport-breast-feeding-incident

What motivates private companies to find cost-efficiencies in their screening operations and administration? First, constant competition from other contractors forces companies to perform well, employ best practices, reduce waste, and seek to constantly improve. Second, there is profit. And if screening companies can, as required by ATSA, "provide a level of screening services and protection equal to or greater" than TSA screeners using private screeners "who meet all the requirements…applicable to" TSA screeners, and at the same time make a profit, then what is the problem?

In addition, while seeking to find cost-efficiencies in operations and administration is one way to earn a profit, another way is through better performance. At SPP airports, the screening operation is indeed a business, and better performance is good for business both tangibly (award fees) and intangibly (reputation and future business). SPP company site mangers are very vested in hiring the right people, monitoring performance, and striving for better than average performance. Bonuses are provided based on merit, not simply seniority. Employees are well aware that if they do not perform they could be out of a job and a culture of cohesion and teamwork within the workforce and peer expectations are encouraged. These employee performance and cost containment drivers (especially in the areas of absenteeism and overtime as mentioned above) are not present in the federal sector and DHS (and TSA) are beset with its own host of employee performance and motivation issues.[37] 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. [38]

TSA Should not be both the Regulator and Operator of Airport Screening

One of the SPP's Guiding Principles is to "Create a partnership that leverages strengths of the private and public sectors: TSA believes the SPP can only achieve its objectives if contract operators and TSA work in close partnership, leveraging private sector innovations and efficiencies with government security oversight."[39] Amen. Such a cost-efficient partnership is how screening is conducted at virtually every other industrialized/Western nation in the world. 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 western world that functions as the airport security operator, administrator, regulator, and auditor."[40]

There are sound policy and operational reasons for not wanting TSA to be both the regulator and operator of airport screening. First, the enormous task of managing the 55,000 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.

In 2011, this latter concern came to full fruition where an investigation at Hawaii's Honolulu International Airport uncovered a massive ongoing security breech involving improper (lack of) screening of checked bags for explosives. About TSA workers at the airport were fired and another 15 suspended including screeners, their supervisors, and the Federal Security Director. The TSA screeners claimed they were forced to abandon required screening practices because of TSA management pressure.[41] 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.

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[37] In the December 2013 OPM Survey DHS ranked tied for the worst out of 37 federal agencies in "Intrinsic Work Experience" which reflects the employees' feelings of motivation and competency relating to their role in the workplace. 2013 Federal Employee Viewpoint Survey Results; Employees Influencing Change; Governmentwide Management Report United States Office of Personnel Management In a December 2012 Merit Systems Protection Board Report, DHS ranked tied for 23rd out of 25 agencies in an employee motivation survey. Federal Employee Engagement: The Motivating Potential of Job Characteristics and Rewards" A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, December 2012.

[38] Dennis Cauchon "Some federal workers more likely to die than lose jobs" USA TODAY July 19, 2011.

[39] See Footnote 17. Orlando-Sanford RFP. Section C – Statement of Work, C.1 Introduction

[40] See Footnote 6.

[41] http://www.hawaiinewsnow.com/story/19778673/homeland-security-probes-unscreened-bags-in-hawaii

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.

Federal v. Private Screener Performance Comparisons

As to the issue of accurate performance comparisons between federal screeners and private screeners, as noted earlier this year by GAO at a House Oversight Subcommittee hearing, GAO said that when it did its 2012 report on screener performance, it found that "while TSA had conducted or commissioned prior reports comparing the performance of SPP and non-SPP airports, TSA officials stated at the time that they did not plan to conduct similar analyses in the future. [42] Also, for the screener performance data that GAO analyzed, while they found that there were differences in performance between SPP and non-SPP airports, and those differences could not be exclusively attributed to the use of either federal or private screeners."[43] Not particularly helpful.

GAO recommended that TSA develop a mechanism to develop to regularly monitor private versus federal screener performance and TSA concurred with the recommendation. As a result, GAO reported at the January 2014 hearing, in January 2013, TSA issued its first SPP Annual Report covering FY 2012, which "compares the performance of SPP airports with the average performance of airports in their respective category, as well as the average performance for all airports, for three performance measures: TIP detection rates, recertification pass rates, and PACE evaluation results." [44] However, GAO did not elaborate on the performance comparisons (either the accuracy or results) nor is the SPP Annual Report in the public domain.

The lack of comparable performance or TSA's reluctance to share performance data that it considers to Sensitive Security Information (SSI) hinders the SPP. SPP companies believe that they would compare quite favorably in the major performance metric with federal screeners. Airports interested in the SPP should be able to see the performance data of SPP airports and TSA should share its monthly Office of Security Operations Executive Scorecard with airport Directors.

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 has become more secretive and guarded with its information, a few years ago TSA also took a significant step to limit the ability of SPP companies to share information. In SPP contracts there is now a clause that prohibits the SPP company from publicly disseminating "publicity releases…in connection with or referring to the contract" or "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."[45] 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 -- including those type of "good news" screener stories that TSA likes to publicize about federal screeners --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.

Better performance comparisons though could be on the way. In the Report accompanying the FY '14 Consolidated Appropriations Act, "TSA is directed to allocate resources for an independent study of the performance of federalized compared to privatized screening. The study shall include, but not be limited to, security effectiveness, cost, throughput, wait times, management efficiencies, and customer satisfaction."[46] As mentioned above, TSA was also directed to "implement generally accepted accounting methodologies" for its own future cost and performance comparison, and also to implement past GAO recommendations for comparing cost and performance. Of course, whether TSA makes the relevant data available to the study investigators, whether such data is accurate, whether such data is comparable, and then in what form the results can be provided remain to be seen.

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[42] Testimony of Jennifer Grover at January 2014 OGR GO SC hearing referring to GAO Report "SCREENING PARTNERSHIP PROGRAM: TSA Should Issue More Guidance to Airports and Monitor Private versus Federal Screener Performance" December 2012 GAO -13- 208

[43] Ibid.

[44] Ibid.

[45] TSA Clause H.5200.205.001 "Publicity and Dissemination of Contract Information"

[46] See Footnote 24.

The "customer satisfaction" comparisons should be quite interesting. SPP companies realize the value of customer service and they teach and reinforce customer service constantly. Treating passengers politely is not only the right thing to do, but avoiding incidents and maintaining a calmer passenger base makes it easier for screeners and behavior detection officers to spot aberrant behavior. 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 earned the J.D. Power and Associates award for highest customer satisfaction of all medium sized North American airports twice in recent years. 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.[47] 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."[48]

At the January 2014 House hearing on the SPP, TSA was sharply criticized for the continuing customer service failures of TSA officers. Ranking Dem Jerry Connelly, in recounting an incident he saw involving a federal screener stated that "there is no excuse that someone barking orders continuously at the public at any airport in America who is an employee of federal government…I'd lose my job if I treated the public that way. And rightfully so. My staff would be fired if I find that they treated my public that way. And we need to hold ourselves to that standard. And so, I fear it's beyond anecdotal." [49]

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 a fair 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, and when considering a true cost comparison it is clear that the use of private screening companies is viable and effective option for airports, and a cost-efficient option for TSA and the federal government. As TSA states, the SPP is about "leveraging private sector innovations and efficiencies with government security oversight."[50]

However, TSA's very questionable interpretations of SPP statutes, its faulty RFP and award process, as well as other actions related to the SPP is threatening the viability of program. While TSA's refusal to use a federal cost estimate that reflects the true cost to the federal government is makes for an unfair comparison between federal and private screener costs and seems to go against ATSA, it is understandable that TSA would not like to spend more of its budget on private screeners than it spends on federal screeners. However, even with a TSA cost-only FCE, private screening companies, because of greater flexibility and other cost-efficient reasons, can beat a TSA-cost only federal screening estimate. They can also beat the TSA cost-only price if they have to pay screeners "equivalent" wages. Yet TSA's dubious belief that ATSA only requires private screening companies to bid (pay) minimum TSA screener wages, and TSA's focus on price in its "best value" award analyzes, is setting up a situation that will effectively mean every time an SPP contract awarded, screeners will take a pay cut. This seems completely incongruous with the mission of maintaining an effective screening force, it flies in the face of how contract security personnel are treated by other DHS agencies, and it will only create dissatisfied screeners and airports.

It is therefore unfortunate and indeed ironic that at a time with unprecedented interest and emphasis on government efficiency and sustained and meaningful private sector job growth, the TSA is choking 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.

[47] See Footnote 5. T&I SPP Report. Appendix 12 SPP Testimonials.
[48] See Footnote 5. May 20, 2011 Letter to House T&I Committee from Springfield-Branson National Airport.
[49] See Footnote 2.
[50] See Footnote 39.