

GAO

Report to the Chairman, Subcommittee
on Aviation, Committee on
Transportation and Infrastructure,
House of Representatives

November 2004

AVIATION SECURITY

Preliminary Observations on TSA's Progress to Allow Airports to Use Private Passenger and Baggage Screening Services





Highlights of [GAO-05-126](#), a report to the Chairman, Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

Beginning on November 19, 2004, the Transportation Security Administration (TSA) is required by law to begin allowing commercial airports to apply to use private contractors to screen passengers and checked baggage. A federal workforce has performed this work since November 2002, in response to a congressional mandate that the federal government take over screening services after the terrorist attacks of September 11, 2001. A 2-year pilot program at five airports testing the effectiveness of private sector screening in a post-September 11 environment concluded on November 18, 2004.

This report contains GAO's preliminary observations related to TSA's progress in developing a private screening program that allows airports to apply to opt out of using federal screeners. GAO assessed: (1) the status of TSA's efforts to develop policies and procedures for the opt-out program, including operational plans and guidelines for selecting airports and contractors that may participate; (2) guidance about the opt-out program that TSA has provided to airport operators and private contractors, or plans to develop, and how the information is communicated; and (3) TSA's efforts to develop performance measures for evaluating the opt-out program and contractor performance.

www.gao.gov/cgi-bin/getrpt?GAO-05-126.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Cathleen A. Berrick at (202) 512-8777 or berrickc@gao.gov.

AVIATION SECURITY

Preliminary Observations on TSA's Progress to Allow Airports to Use Private Passenger and Baggage Screeners

What GAO Found

As of November 2004, TSA has completed or is developing key policies and procedures for the opt-out program. Specifically, TSA has completed and released guidelines for determining how and when private screening contractors will be evaluated and selected to participate in the opt-out program. TSA also has released supplemental information for evaluating potential contractors, such as their financial capabilities. TSA also has prepared a draft technical statement of work for the private screening contractors operating at the five airports that participated in the pilot program, which is to serve as a basis for contractors seeking to serve other airports. In addition, TSA has developed, or is currently developing, internal guidance for managing the opt-out program, such as a transition plan for helping airports to move from federal to private screeners. TSA expects to complete the remaining policies and procedures by mid-2005.

TSA is taking steps to communicate with stakeholders about the opt-out program by developing informational guidance and soliciting information and suggestions from them. For instance, since releasing initial summary guidance about the program in June 2004, TSA has posted an opt-out program application for airport operators that asks, among other things, the primary reason for wanting to participate in the opt-out program and the preferred timeline for transitioning to private screening operations. TSA also has posted lists of frequently asked questions and answers on its Web site, in response to questions from stakeholders about the airport application and contracting process. However, some airport operators, private screening contractors, and aviation industry representatives told GAO that they need additional information about how much leeway airports and contractors would have to manage the program, liability protection, and costs related to participating in the opt-out program.

TSA is developing performance measures both to assess the screening performance of airports that will participate in the opt-out program and individual contractors performing the screening services, but specific performance measures have not been finalized. TSA said measures for the opt-out program will be based on measures already developed by an independent consulting firm for the five airports that participated in the opt-out pilot program. These measures include how well screeners detect test threat objects, such as guns and knives, during screening operations. TSA is also developing performance measures to evaluate how well private screening contractors comply with the terms of their contracts, which will become part of a quality assurance plan. TSA expects to implement contractor-related performance measures in mid-2005, as contracts are being awarded.

A draft of this report was provided to TSA. TSA officials generally agreed with our findings and provided technical comments that have been incorporated as appropriate.

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Abbreviations

ATSA	Aviation and Transportation Security Act
DHS	Department of Homeland Security
FAQ	frequently asked questions
FSD	federal security director
TIP	threat image projection
TSA	Transportation Security Administration

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United States Government Accountability Office
Washington, DC 20548

November 19, 2004

The Honorable John L. Mica
Chairman
Subcommittee on Aviation
Committee on Transportation and Infrastructure
House of Representatives

Dear Mr. Chairman:

In an effort to improve aviation security after the terrorist attacks of September 11, 2001, the newly created Transportation Security Administration (TSA) was charged by Congress with, among other things, creating a federal workforce to assume the job of conducting passenger and checked baggage screening at commercial airports—work that had been performed by the private sector. The federalized workforce was to be in place by November 2002. At the same time, TSA was required by Section 108 of the Aviation and Transportation Security Act (ATSA) to conduct a 2-year Private Screening Pilot program. The mission of the pilot, as defined by TSA, was to test the effectiveness of using private screening contractors in a post-September 11 environment.¹ The pilot concluded on November 18, 2004.

Using the pilot program as a starting point, ATSA requires TSA to begin allowing airports to apply to opt out of using federal screeners in favor of private contractors beginning on November 19, 2004. Consistent with ATSA, TSA plans to begin receiving applications for this Screening Partnership Program (known as the opt-out program) on that date. TSA plans to begin selecting in early 2005 airports that can opt out, as well as selecting contractors that will conduct private passenger and checked baggage screening. TSA plans to begin transitioning selected airports to private screening operations later in 2005.

This report contains our preliminary observations related to TSA's progress in developing the opt-out program. Specifically, we assessed (1) the status of TSA's efforts to develop policies and procedures for the

¹The term "private screening contractor" pertains to any company that currently provides, or plans to provide, passenger and baggage screening services.

opt-out program, including operational plans and guidelines for selecting airports and contractors that may participate; (2) guidance about the opt-out program that TSA has provided to stakeholders,² or plans to develop, and how the information is communicated; and (3) TSA's efforts to develop performance measures for evaluating the opt-out program and contractor performance.

We plan to continue our evaluation of the opt-out program as TSA further develops and implements the program.

To address our objectives, we reviewed documentation related to TSA's opt-out program and pilot program and interviewed various officials. We analyzed TSA documents related to the opt-out program, including program guidance developed for airports. We reviewed an independent consulting study prepared for TSA that evaluated the pilot program. We interviewed officials from two aviation associations—the American Association of Airport Executives and the Airports Council International. We attended an aviation security conference in September 2004, where TSA officials and some airport operators discussed planning for the opt-out program, and we reviewed staff notes from two congressional subcommittee-sponsored roundtables on the program. We also reviewed ATSA provisions related to the opt-out program and related GAO reports. In addition, we conducted telephone interviews with the operators of randomly selected commercial airports from each of the five security risk categories—X, I, II, III, and IV.³ We interviewed the airport operators of 4 to 6 airports in each category, for a total of 26 interviews (one official per airport). We also conducted telephone interviews with officials from 6 private security contractors that we were able to contact from a listing of 10 contractors. The listing included private security contractors that expressed an interest in providing passenger and checked baggage screening services. Because of the small sample size, the results of our interviews with airport operators and contractors cannot be generalized. TSA released significant details on its opt-out program guidance after our interviews; therefore, the interviewees' responses were based only on the

²Stakeholders for the opt-out program include airport operators and private screening contractors, among others.

³TSA classifies the over 400 commercial airports in the United States into one of five airport security categories (X, I, II, III, and IV) based on various factors, such as the total number of take-offs and landings annually, the extent to which passengers are screened at the airport, and other special security considerations. In general, category X airports have the largest number of passenger boardings and category IV airports have the smallest.

information TSA had released at that point. Additional information on our scope and methodology is contained in appendix I. We conducted our work between September and November 2004 in accordance with generally accepted government auditing standards.

Results in Brief

As of November 2004, TSA has completed or is developing key policies and procedures for the opt-out program. TSA has completed and released guidelines for determining how and when private screening contractors will be evaluated and selected to participate in the opt-out program. The contractor selection process is to take place in three phases between November 2004 and May 2005, which is when TSA expects to award contracts. As part of Phase I, TSA has released a presolicitation notice in accordance with standard government contracting practices, as well as supplemental information on what is expected of potential contractors with respect to financial capabilities and other areas. TSA also has prepared a draft technical statement of work for the private screening contractors that participated in the opt-out pilot program, which is to serve as a basis for contractors seeking to serve other airports. In addition, TSA has developed, or is currently developing, internal guidance for managing the opt-out program, including an activity-based cost study that reviews screening costs at privately and federally screened airports; a transition plan; and a draft communications plan defining roles and responsibilities of key stakeholders.

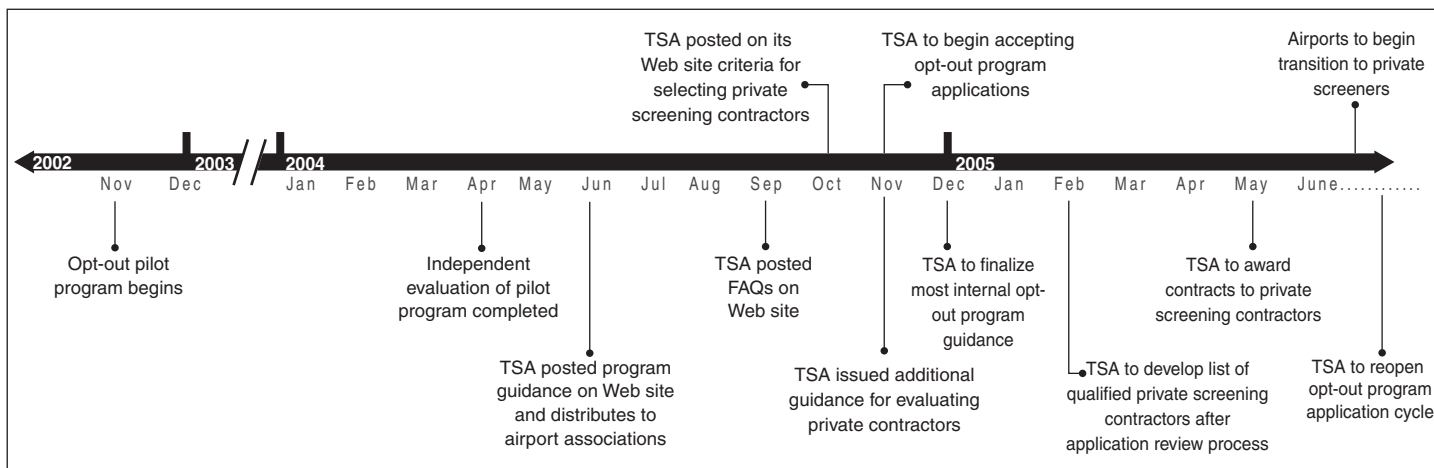
TSA is taking steps to communicate with stakeholders about the opt-out program by developing informational guidance and soliciting information and suggestions from them. For instance, since releasing initial summary guidance about the program in June 2004, TSA posted an opt-out program application for airport operators that asks, among other things, the primary reason for wanting to participate in the opt-out program and the preferred timeline for transitioning to private screening operations. TSA also has posted lists of frequently asked questions and answers on its Web site, in response to questions from stakeholders about the airport application and contracting process. However, some airport operators, private screening contractors, and aviation industry representatives told us they still need additional information from TSA about operational flexibilities (how much leeway airports and contractors would have to manage the program), liability protection, and costs related to participating in the opt-out program. For example, both airport operators and private screening contractors cited the need for additional information on whether and to what extent they would be liable in the event that a

privately contracted screener should fail to detect a threat object that leads to a terrorist incident.

TSA is developing performance measures to both assess the screening performance of airports that will participate in the opt-out program and individual contractors performing the screening services, but specific performance measures have not been finalized. TSA said measures for the opt-out program will be based on measures already developed by an independent consulting firm for the five airports that participated in the opt-out pilot program. These measures include how well screeners detect test threat objects, such as guns and knives, during screening operations. TSA is also developing performance measures to evaluate how well private screening contractors comply with the terms of their contracts, which will become part of a quality assurance plan. TSA expects to implement the contractor-related performance measures in mid-2005, as contracts are being awarded.

Figure 1 presents a timeline of TSA’s key milestone for implementing the opt-out program and awarding contracts to private screening contractors.

Figure 1: Timeline for Implementation of Selected Steps in the Opt-Out Program



Source: GAO analysis of TSA data.

TSA received a draft of this report and generally agreed with our findings. We incorporated TSA’s technical comments where appropriate.

Background

Opt-Out Provision of ATSA

Section 108 of ATSA (Pub. L. No. 107-71) required TSA to establish a program permitting the more than 400 commercial airports using federal passenger and checked baggage screeners to apply to use private, rather than federal screeners. Beginning on November 19, 2004, all commercial airports with federal security screening will be eligible to apply to opt-out of using federal screeners. In addition to assessing airport applications for using private screeners, TSA will select qualified private screening contractors to conduct screening (including airports that seek to apply to be private contractor screening companies), which meets ATSA's and TSA's requirements. Nongovernmental employees, such as airport directors or their representatives, would be able to participate as advisors in the selection process, as long as the airport is not participating as a qualified screening company. ATSA requires private screeners selected to handle screening to meet the same hiring and training qualifications as federal screeners. ATSA also mandated that the private screeners' pay and benefit levels should be not less than their federal counterparts. Furthermore, ATSA required that the contractor companies be owned and controlled by U.S. citizens.

ATSA also required TSA to establish a 2-year pilot program using qualified private contractors to screen passengers and checked baggage at not more than one airport from each security category. TSA selected five airports to participate in the pilot program. The private passenger and checked baggage screening contractors selected for the pilot program had to comply with federal passenger and checked baggage screening standard operating procedures.

In order to obtain an objective evaluation of the pilot program, TSA retained the services of an independent consulting firm. The consultants were charged with developing an evaluation methodology; conducting performance evaluations and comparisons between the five participating pilot program airports and federally screened airports; and developing a process to help TSA determine if a private screening company can meet ATSA's performance standard for the opt-out program, which is to provide a level of screening services and protection equal to or better than that provided by federal screeners. The consultants found that, in general, the private screening contractors met ATSA's performance standard. However, the consultants cautioned that the findings must be viewed in light of several key factors. For example, the consultants reported that the small number of pilot airports seriously limited the program's usefulness

as a true scientific pilot and the ability of the findings to be generalizable to apply to future privately screened airports. Additionally, the performance data available for review and analysis were limited, according to the consultants.

Outside of the pilot program, any commercial airport may apply to opt out beginning on November 19, 2004. In accordance with ATSA, an airport operator may submit to TSA an application to have the screening of passengers and checked baggage at an airport be carried out by the screening personnel of a qualified private screening company, under a contract entered into with TSA. TSA will make the final approval of any application submitted and reserves the right to consider airport-specific threat intelligence and an airport's record of compliance with security regulations and security requirements to determine the timing of the transition to private screening. TSA may also impose a delay on when an airport can transition to private screening based on such factors as peak travel season and the total cost of providing screening services at an airport. The five airports selected to participate in the pilot program have decided to continue using private screeners and will not have to apply for the opt-out program beginning in November 2004.

Opt-Out Program Staffing and Budgeting

TSA created a program office in October 2004 to provide financial oversight, ongoing operational support, communications, and transition planning for airports that apply to opt out of using federal screeners. This office was allocated 12 full-time-equivalent staff and, as of November 4, 2004, had 10 full-time staff on board. TSA plans to fund the opt-out program from the same budget line items as federal screening operations in order to provide flexibility on the number of airports that can participate in the program. The costs for contracts with private screening companies are to be funded by the cost of the federal operations that are being displaced. The conference report accompanying the fiscal year 2005 Department of Homeland Security Appropriations Act (H.R. Conf. Rep. No. 108-774) allocated appropriations of \$2.424 billion to cover personnel, compensation, and benefits for passenger and checked baggage screeners and to cover screeners at the five pilot airports. This allocation represents an increase of more than \$200 million over the fiscal year 2004 enacted level of \$2.2 billion. According to TSA, this increase is necessary to fully fund compensation and benefits at the identified staffing levels. The requested level of funding will support screener salaries and management at all commercial airports, whether federalized or privatized. Also, the conference report allocated just under \$130 million for the five pilot airports, an increase from \$119 million in fiscal year 2004. This

funding is based on an estimate of resources necessary to maintain screening at the current five pilot airports.

TSA's June 2004 Guidance Describes Program Requirements

TSA issued its first written guidance for the opt-out program in June 2004, in an effort to provide airport operators and the aviation community with information to gauge their level of interest in applying to participate in the program. The guidance, posted on TSA's Web site and distributed to airport associations, provides information in three broad areas: legislative requirements, program planning approach, and guidance on key issues. A summary of the guidance follows.

ATSA Legislative Requirements

TSA's guidance addresses ATSA legislative requirements, including how applications from qualified private screening contractors would be approved by applying the statutory standards of ATSA, including the level of screening services and protection provided at the airport, and that private contractor companies be owned and controlled by U.S. citizens. TSA's guidance also included information for airports on how TSA's screening pilot program was conducted, how the pilot program was evaluated by a private consulting organization, and suggested program improvements made by the consultants.

Program Planning Approach

The guidance discussed program structure, including costs. The guidance notes, for instance, that federal and contract screeners would be funded from the same pool of money and that costs for airports enrolled in the program would be determined based on current federal screener operations and TSA's activity-based cost studies that estimate costs of running an airport's screening operations. TSA's guidance states that these cost studies would ensure that proposed costs by potential contractors are in line with federal estimates. The guidance also states that airport security screeners do not have the right to strike, whether TSA or a private contractor employs them.

Guidance on Key Issues

ATSA directs TSA to receive applications from airports intending to apply to opt out beginning November 19, 2004. The guidance states that TSA intends to close the application period within 3 weeks of that time and will re-open the application cycle in November 2005. The guidance states that because ATSA does not identify specific criteria by which TSA is to evaluate the airport application, TSA is currently developing and reviewing potential specific criteria for determining which airports will be approved and the sequence for their transition from federal to private screeners. The guidance notes that TSA reserves the right to consider participation in the program in light of an airport's record of compliance on security regulations and requirements.

TSA outlines three steps related to selecting contractors to perform screening services: (1) TSA submits requests for information to the aviation industry requesting input on acquisition issues, qualification criteria, and information contractors would need as part of a proposal process; (2) TSA develops a qualified vendors list⁴ to facilitate the vendor selection process; and (3) TSA selects a private contractor to provide screening services in airports selected for the screening partnership program.

The guidance describes the roles and responsibilities of all major stakeholders, including airport directors and federal security directors (FSDs).⁵ TSA envisions both FSDs and airport authority as having “important roles” in the selection of the private contractor. The technical aspects of each private contractor’s screener contract will be managed locally by the FSDs. TSA will set performance measurement standards and each contractor will implement the standards. TSA seeks to give private contractors “a significant amount” of operational control in such areas as assessment and screener technical training, scheduling, recurrent training, and administrative functions.⁶

TSA said it would take “necessary steps” to enable FSDs and private contractors to implement operational flexibilities, including conducting recruiting, assessment, and screener technical training at the local level while ensuring that national standards are met and within TSA’s parameters.⁷ TSA is also in the process of developing a performance measurement approach for the opt-out program and contractors. TSA is considering several types of performance measures related to security effectiveness, customer service, and cost. Specific measures and baselines have not been finalized.

⁴TSA uses the term “vendor” here in lieu of “contractor,” but both terms refer to any private entity that undertakes passenger and baggage screening. TSA uses the term “contractor” throughout its June 2004 guidance.

⁵FSDs are responsible for providing day-to-day operational direction for federal security at airports. Additionally, FSDs are the ranking TSA authority responsible for the leadership and coordination of TSA security activities at airports.

⁶The assessment process for screener candidates consists of testing and interviews, among other things.

⁷TSA’s draft technical statement of work, issued after the June 2004 guidance, describes some operational flexibility, including screener applicant assessment, credentialing, and training that will be provided to private contractors in the pilot program.

TSA Is Finalizing Policies and Procedures Governing the Opt-Out Program

TSA Has Developed Criteria for Qualifying Private Contractors, with Additional Information under Development

In late October 2004, TSA finalized and publicly released guidelines providing criteria for determining how and when private screening contractors will be evaluated and selected to participate in the opt-out program. Any contractor that meets TSA and ATSA criteria (such as owned and controlled by U.S. citizens) may apply to the program. While TSA does not require companies seeking to become screening contractors to have prior experience in the business, such experience is preferred. Because TSA does not know how many airports will apply to participate in the opt-out program in 2004, the agency cannot yet determine how many private contractors may be hired to perform screening services. The contractor-selection process involves three phases, to be completed between November 2004 and May 2005. The phases and key milestones included in the guidelines are as follows:

Phase I: Develop qualified offeror list (November 2004-January 2005).

- Offerors seeking to be pre-qualified by TSA as potential contractors must meet TSA and ATSA requirements (including owned and controlled by U.S. citizens and ability to provide screening services at a level equal to or greater than that provided by the federal government).
- Offerors must agree to provide compensation and benefits at a level that is not less than that provided by the federal government to the federal screener workforce.
- Offerors must agree to abide by TSA's workforce transition rules, including compliance with priority employment rules for TSA's federal employees displaced by privatization.

Phase II: Develop qualified vendor list (February 2005).

- TSA issues request for proposal to contractors pre-qualified under Phase I.
- TSA will develop a qualified vendor list based on this population.

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- Offerors will be required to present technical and cost capabilities.
 - Qualified offerors will be selected based on ability to provide service in a given geographical region.
 - Contractor proposals will not be evaluated until TSA determines how many airports have applied to the opt-out program.

Phase III: TSA awards contracts to private screening contractors (May 2005).

TSA will award competitive task orders, or contracts, based on cost/price analysis, among other things. TSA reserves the right to proceed with other alternatives for contractor selection as appropriate.

TSA initiated Phase I on November 5, 2004, by posting a presolicitation notice on www.fedbizopps.gov, in accordance with standard government contracting practices. Contractors have until November 29, 2004, to provide the information, such as financial capabilities, requested in the presolicitation.⁸ Concurrently, TSA publicly released a presolicitation synopsis for the opt-out program that supplements the October guidelines on contractor criteria. This document provides additional evaluation criteria on screener compensation and benefits, hiring preferences for displaced government employees, financial capabilities of contractors, and other areas.

Five of six private screening contractors we interviewed prior to TSA's release of the presolicitation synopsis identified that they wanted more information on workforce transition rules, which govern how federal screeners displaced by private screening contractors should be dealt with. The October guidelines also identified that contractors must abide by TSA's workforce transition rules—but do not specify what the rules are. The presolicitation synopsis states that federal screeners must be given hiring preference, but no additional information is provided. All six private screening contractors said that they did not know how TSA will make its determination about whether 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 the federal

⁸TSA will not accept questions from contractors about the solicitation after November 15 and indicated it may modify the solicitation based on questions raised by contractors.

government. TSA officials said they would use the information provided by contractors in response to the presolicitation notice to make this determination.

In addition to the guidelines on criteria and the presolicitation synopsis, TSA prepared a draft statement of work for the contractors that participated in the opt-out pilot program and are continuing to provide screening services. This document describes technical requirements that private screening contractors must meet for performing screening operations, support, and administration.⁹ According to TSA, the draft statement of work is meant to give potential private contractors an idea of the service requirements in the private screening pilot program, which are likely to be similar to those for the opt-out program. TSA posted the document on its opt-out Web site in early November 2004.

The contractors we interviewed also sought information on whether contractors will be able to use the same companies TSA has relied on to assess screener candidates and conduct initial screener training. The draft statement of work prepared for contractors that participated in the pilot program addresses this issue and has been posted on TSA's Web site for all interested parties to review.

Finally, private screening contractors told us they do not have an industry trade association through which TSA can channel information about its program activities. Five of six private screening contractors we interviewed cited a need for a more direct line of communication between TSA and their organizations beyond TSA's Web site. For example, some contractors suggested that TSA sponsor a forum specifically to address contractors' issues about the opt-out program. In addition, it was suggested that TSA appoint a liaison, or point of contact, to help ensure that information is communicated to contractors in a timely fashion.

⁹The statement of work includes five task areas covering the scope of services to be provided by the contractor, including human resources support services, training for screeners, screening services, management support and miscellaneous requirements, such as standards of conduct, uniforms, and maintenance, use and inventory of equipment, property and materials.

TSA's Internal Policies and Procedures for the Opt-Out Program Are under Development

TSA developed draft procedures to document how opt-out program applications will be processed. These draft procedures—for internal use only—describe opt-out program parameters, a descriptive narrative of the application process, a matrix for each step in the process, an application template, sample notification letter template, an application checklist, and an application processing system template. TSA officials said that this approach is under review and expects the application procedures to be finalized in November 2004.

TSA developed a draft activity-based cost study, which is also an internal document, not intended for public release. TSA plans to use the results of the study to explain how TSA will determine the unit cost of screening passengers in terms of the activities performed, review screening costs at both privately screened and federally screened airports in order to identify key cost drivers and best practices, and develop an efficient and repeatable data collection method for future studies. This study is currently under review within TSA. TSA expects to finalize this study later in November 2004.

In addition, TSA developed a draft transition plan, which will serve as internal guidance for the agency and is not intended for public release. This is to be an operations plan designed to support TSA's efforts to transition airports from federal to private screeners. The plan is to address, for example, TSA's approach to giving federal screeners priority for employment with private screening contractors. In addition, this plan is to describe the roles and responsibilities of the TSA opt-out program office, FSD staff, and private screening contractors. Activities to be addressed in the plan include human resources, training, communication, logistics, performance measurement, and field support. TSA expects to refine the draft guide in December 2004 and plans to revise the plan on an ongoing basis as it gains more experience with the transition to private screening.

A draft communications plan is also under development and remains in draft form. The purpose of this internal document is to reflect a strategy for communicating key program events and developments to both internal and external stakeholders. TSA told us the plan will contain information on roles and responsibilities of key stakeholders, among other things. The draft is undergoing final review within TSA. TSA has not set a date for finalizing this plan.

TSA Is Taking Steps to Communicate with Stakeholders about the Opt-Out Program, but Some Say Additional Information Is Needed

Stakeholders Seek Additional Information from TSA on Operational Flexibilities, Liability, and Cost Issues

In addition to the June 2004 initial guidance, statement of work for the pilot program contractors, and presolicitation synopsis, TSA has finalized other informational guidance for airport operators and private screening contractors. In October 2004, TSA posted the final version of its opt-out application form for airports seeking to apply. TSA will use the application to collect information on potential airports' intentions regarding opting out. For instance, in addition to asking airports to provide basic information, such as point of contact, TSA seeks to learn whether airports want to be the qualifying contractor performing the screening services. TSA also asks airport officials to provide information on the airport authority's primary reason for wanting to participate in the opt-out program, whether the airport has a preferred timeline for when the transition to private screening should occur, and to list scheduled activities that could interfere with the transition, such as peak travel season and major construction.

TSA originally set a 3-week application window, from November 19, 2004, to December 10, 2004, for accepting application from airports interested in opting out of using federal screeners. However, based on input from stakeholders, TSA decided less than 1 month before the application cycle was to begin to extend the application deadline. As of November 15, 2004, TSA had not established a final deadline.

Also, in October, TSA created an e-mail address to enable interested parties to submit questions and request additional information about how the opt-out program would be implemented. The goal of this effort was to provide supplemental guidance for stakeholders that reflected issues they wanted to know more about. A TSA official said the agency received approximately 100 e-mails between late August and early November. Based in part on these e-mails, in early September 2004, TSA developed

and posted on its Web site an initial list of responses to frequently asked questions (FAQ). In early November 2004, TSA updated the FAQs to reflect three separate topics: questions for the overall program, questions about the airport application process, and questions about the contracting process. TSA plans to continue to update these lists as needed. Some of the information contained in the FAQs is new—that is, it is not addressed in the June 2004 written guidance. Some of TSA’s FAQ responses, however, restate the information in the written guidance, without additional elaboration.

While these guidance documents have provided airport operators with information on the basic parameters and legislative requirements of the opt-out program, some airport operators, private screening contractors, and airport industry representatives told us TSA has not yet addressed all of their questions and concerns.¹⁰ The information that stakeholders told TSA and us that they needed falls into three categories: operational flexibility with respect to how much leeway airports and private screening contractors would have to manage the program; liability protection in the event that a screener fails to detect a threat object; and costs related to participating in the opt-out program.

Operational Flexibility

Eight of the 20 airport operators we interviewed who said they would not apply to opt out of using federal screeners in 2004 said that they needed additional information about the range of flexibility private screening contractors would be provided in terms of, for instance, their ability to deploy screeners where they are needed most at a given airport. Some airport industry representatives we spoke with raised operational flexibility as a concern as well. All of the private screening contractors we interviewed also said that they needed additional information on operational flexibilities, including

- whether contractors could collaborate with airport management without having to involve TSA directly;

¹⁰Of the airport operators we interviewed, 20 of 26 said their airport would not apply to opt out this year, 5 were uncertain whether to apply for the 2004 cycle, and 1 said his airport planned to apply, but only for its international passenger terminal. Among the 20, 16 said they were satisfied with federal screeners or saw no benefit to opting out. Six of the airport operators we interviewed had not reviewed the initial June guidance.

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- whether they would have the flexibility to determine appropriate screener staffing levels at their airports and to assess screener candidates and hire screeners on an as needed basis;¹¹ and
 - whether they could develop and/or deliver screener training.

Among the questions e-mailed to TSA directly, some address operational flexibilities, such as screener staffing levels. For example, one of the questions pertained to whether an airport would be provided the same number of contract screeners as are currently authorized under the federal screener program. TSA responded in its FAQs that a qualified private contractor will determine the number of contract screeners needed and that TSA will provide guidelines for the contractors. TSA further noted that it is seeking to provide flexibility to the contractors to manage the operations as efficiently as possible and will look to them to identify possible efficiencies in areas such as scheduling and use of part-time employees as appropriate for the local airport.

The independent consulting firm under contract to TSA suggested that TSA allow contractors serving the opt-out pilot program airports to assess screener candidates and conduct screener training as a means of allowing greater operational flexibilities. The consultants stated that greater operational flexibilities would enable a more robust comparison of private and federal screening operations. TSA officials said that they would permit pilot program airports to pursue both options beginning in November 2004.

Liability Insurance

A second issue raised by stakeholders, including airport industry representatives, pertained to liability—whether and to what extent airports and private screening contractors would be liable in the event that a privately contracted screener should fail to detect a threat object that leads to a terrorist incident or use of a weapon, or threat object, on board. Thirteen airport operators we interviewed cited concerns about liability. In addition, all of the private screening contractors we interviewed cited the need for additional guidance on liability protection. To address airport and industry officials' questions about liability issues, FAQs directs site visitors to a Department of Homeland Security (DHS) Web site for

¹¹Since the fiscal year 2004 DHS Appropriations Act (Pub. L. No.108-90), Congress has instituted a screener cap of 45,000 full-time equivalent screeners. One full-time equivalent is equal to 1 work year or 2,080 non-overtime hours.

information on how to apply for liability protection under the SAFETY Act of 2002.¹² The Web site, however, does not provide information on whether the SAFETY Act would cover private screening contractors that apply to the opt-out program. According to DHS officials, DHS has determined that the SAFETY Act will apply to private screening contractors in the opt-out program. DHS's Office of SAFETY Act Implementation has been working with TSA to develop an expedited review process for SAFETY Act applications from private screening contractors and plans to post specific instructions for applicants on the SAFETY Act Web site. As of November 15, 2004, this information had not been posted. Five of the screening contractors we interviewed said the issue of whether they would receive liability protection was important and would greatly affect whether they would participate in the program, if selected as a qualified contractor. Two of the contractors said that without liability protection, they would not participate in the program because it would be too risky, exposing them to potential lawsuits. TSA officials said that commercially available insurance is available and that under the current screening pilot program, each of the contract screening companies had procured some amount of liability insurance for terrorist activities.

Costs of Participation

A third issue pertained to the costs of participating in the program. Ten of the 20 airport officials we spoke with that have decided not to apply to opt out in 2004 cited questions about costs of participating in the program, and in at least one case said they did not have enough cost-related information. Representatives from two airport industry associations also mentioned this issue. The FAQs address cost issues in the context of budgets for federal and private screeners. For example, one question asks whether, if federal budget appropriations are not made in a timely manner, TSA will still be able to fund the private screening contractor during that period of time. TSA's response identified that it would fund screeners through a continuing budget resolution passed by Congress. In response to a question about whether budget limitations will apply to either federal or contracted screeners, TSA's response reiterates what is already stated in the written guidance—that all funding for the opt-out program will come

¹²The Support Anti-terrorism by Fostering Effective Technologies (SAFETY) Act of 2002 (Pub. L. No. 107-296) encourages the development and deployment of anti-terrorism technologies that will substantially enhance the protection of the nation. Specifically, the SAFETY Act creates certain liability limitations for "claims arising out of, relating to, or resulting from an act of terrorism" where qualified anti-terrorism technologies have been deployed. The Act extends certain liability protections to equipment, services, and other elements involved in preventing or deterring acts of terrorism.

from the same budget line items as federal screening operations. No additional information is provided.

Three private screening contractors we interviewed also cited a need for additional information on the requirement to provide at least equivalent compensation and benefits to screeners transitioning from federal to private screening contractors, as required by ATSA. The contractors said they did not know whether they would be required to offer dollar-for-dollar parity for salaries and benefits or whether contractors must offer the same health care and other benefits that federal screeners receive. FAQs address this question in general terms, noting that private contractors will have “some flexibility in fashioning their compensation and benefits packages,” but do not elaborate further. TSA’s presolicitation includes a compensation and benefits certification form that private screening contractors applying to be on the qualified offeror list must complete. The applicant has to certify that it will propose and pay at least the minimum labor rate that is paid to screeners for every \$1 of direct labor and that benefits will be not less than 44.75 percent—the current fringe benefits percentage as computed by TSA.¹³

In addition, TSA has interpreted ATSA to require qualified private screening companies to provide pay and benefits at a loaded cost (direct hour plus percentage cost of fringe benefits) that equals or exceeds the loaded cost of the pay and benefits provided to the federal government. According to TSA, this approach provides the contractor with flexibility to trade additional pay against other benefits, or to enhance certain benefits and reduce others; enables the contractor to determine and provide the best package necessary for the recruitment and retention of quality screeners; and increases flexibility while permitting recruitment and retention of quality screeners.

¹³If the applicant’s benefits are less than 44.75 percent, the applicant must certify that it will propose and pay at least the minimum labor rate that is paid to screeners and that adjustments will be made to the compensation and/or benefits prior to award so that the total compensation and other benefits will not be less than the compensation and other benefits provided to federal government personnel. The applicant must also explain how these adjustments will be made.

TSA Is Developing Performance Measures for the Opt-Out Program, but More Work Remains To Be Done

TSA is developing measures to assess the screening performance of airports that will participate in the opt-out program and individual contractors performing the screening services, but specific performance measures have not been finalized. In June 2004, TSA developed a draft of the performance measurement principles and actual measures that TSA is considering to measure the performance of the entire opt-out program and private screening operations. For example, TSA plans to measure the results of annual screener proficiency reviews, customer satisfaction and complaints, and screening costs. TSA may also evaluate the program in terms of how well screeners perform using the threat image projection (TIP) system to detect threat objects.¹⁴ (TIP projects images of threat objects on an x-ray screen during actual operations and records whether screeners identify threat objects.)¹⁵ These measures will be similar to those used by the independent consulting firm to compare the performance of private screening contractors operating at the five pilot program airports against federal screening services. TSA expects to complete a preliminary draft of a performance measurement plan later this month and to finalize this plan by February 2005.

In addition to assessing how the performance of federal and private screening services compare, TSA is working to develop performance measures for evaluating how well private screening contractors comply with the terms of their contracts. TSA officials said that the opt-out program office is in the process of determining whether quantifiable measures are available, how to collect relevant data, and the best way to establish baseline measures. TSA expects to complete its data collection plan later this month and to complete the final plan by February 2005.

The contractor-related performance measures TSA plans to develop are to be included in a quality assurance plan. This plan is an element in TSA's draft statement of work specifically for the five airports that participated in the pilot program, which are continuing to use private screeners. The plan includes general information on how TSA will measure and assess their performance and how TSA will use the performance data to make decisions on performance awards, extension of contracts, and termination of contracts. Contractors may, for example, be evaluated—and their

¹⁴TIP scores may be used to measure the performance of private contract screeners at opt-out airports compared to their federally screened counterparts.

¹⁵Once prompted, TIP identifies to the screener whether the threat is real and then records the screener's performance in a database that could be analyzed for performance trends.

contracts extended—based on their screeners' performance on TIP scores. TSA officials said that the measures included in the draft statement of work are not as sophisticated or rigorous as those that TSA will adopt in the future. TSA expects to implement these measures in mid-2005, as contracts are being awarded.

We plan to continue to collect and analyze TSA documentation on the opt-out program and to follow-up with airports and private security contractors on their views of TSA's development and implementation of the program.

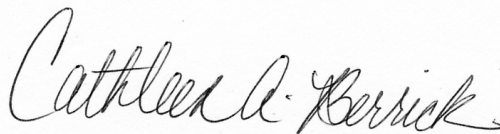
Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Homeland Security and the Transportation Security Administration for review and comment. The agencies generally agreed with our findings, and we incorporated their technical comments where appropriate.

We are sending copies of this report to the Secretary of the Department of Homeland Security and interested congressional committees. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions about this report, or wish to discuss it further, please contact me at (202) 512-8777 or by e-mail at berrickc@gao.gov. Key contributors to this report were David Alexander, Amy Bernstein, Lisa Brown, Elizabeth Curda, Thomas Lombardi, Jobenia Odum, Lisa Shibata, Maria Strudwick, Nicole Volchko, and Nicolas Zitelli.

Sincerely yours,



Cathleen A. Berrick
Director, Homeland Security and Justice Issues

Appendix I: Scope and Methodology

Our preliminary observations are based on our review of documentation related to the Transportation Security Administration's (TSA) Screening Partnership Program (opt-out program) and contract screening pilot program and interviews with various officials. We reviewed documents including:

- all guidance-related materials TSA had developed to date for airports;
- reports from an independent consulting study prepared for TSA that evaluated the contract screening pilot program and made suggested improvements to the program;
- information from two congressional committee-sponsored roundtables on the program;
- testimony at congressional hearings on the program;
- provisions of the Aviation and Transportation Security Act;
- our prior reports that addressed issues related to the opt-out program, including the performance of airport passenger and checked baggage screeners.

In addition, we interviewed TSA headquarters officials, officials from two aviation associations—the American Association of Airport Executives and the Airports Council International and TSA's private contractor that is assisting TSA in its development of the opt-out program. We conducted semistructured telephone interviews with the operators of 26 randomly selected commercial airports nationwide. The 26 airports were selected randomly from all airports in each of the five airport categories—X, I, II, III, and IV. Category X airports generally have the largest number of enplanements, and category IV airports have the smallest number. We interviewed one official at each of 4 to 6 airports in each category. Although the airports were selected randomly, because of the small sample size in each category the results of these interviews may not be generalized to other airports. We conducted telephone interviews with officials from 6 of 10 private security contractors selected from a listing of private security contractors that had expressed interest in the opt-out program. The listing of private security contractors that expressed interest in the opt-out program is included in *Airport Security Report*, (Potomac, MD: Air Safety Week), September 22, 2004, Volume 11, Number 19. The views and opinions of these contractors may not be representative of those of other contractors and, therefore, should not be generalized. TSA

released significant details on its opt-out program guidance after our interviews; therefore, the interviewees' responses (airport operators' and contractors') were based only on the information TSA had released at that point. We conducted our work from September to November 2004 in accordance with generally accepted government auditing standards. Because our review is still ongoing, the results presented in this report are preliminary.

To complete our work, we plan to continue to collect and analyze TSA documentation related to each of our three objectives and to follow-up with airports and private security contractors on their views of TSA's development and implementation of the opt-out program.

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