

GAO

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

March 2006

AVIATION SECURITY

Progress Made to Set Up Program Using Private-Sector Airport Screeners, but More Work Remains





Highlights of [GAO-06-166](#), a report to the Chairman, Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

In November 2004, as required by law, the Transportation Security Administration (TSA) began allowing all commercial airports to apply to use private screeners in lieu of federal screeners as part of its Screening Partnership Program (SPP). GAO's prior work found that airports and potential private screening contractors had concerns about the SPP, including whether they would be liable in the event of a terrorist attack and how roles and responsibilities would be divided among TSA airport staff and private screening contractors. This report addresses TSA's efforts to (1) provide liability protection to private screening contractors and airports and address other SPP stakeholder concerns; (2) achieve cost-savings through the SPP; and (3) establish performance goals and measures for the SPP.

What GAO Recommends

GAO is recommending that the Department of Homeland Security (DHS) direct TSA to document and communicate roles and responsibilities for managing screener operations under the SPP, and establish a time frame for finalizing the SPP performance measures and targets.

DHS reviewed a draft of this report and generally concurred with GAO's findings and recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-166.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Cathleen Berrick at (202) 512-3404 or berrickc@gao.gov.

AVIATION SECURITY

Progress Made to Set Up Program Using Private-Sector Airport Screeners, but More Work Remains

What GAO Found

DHS and Congress have begun to address whether liability protection may be offered to current and prospective private screening contractors and airports using private screeners. DHS has already provided some liability protection to three of the four current private screening contractors. However, DHS officials stated that they cannot provide additional coverage, which would render contractors virtually immune from all pertinent claims, because TSA has not finalized performance standards that would allow DHS to determine if contractors will perform as intended—a criterion that must be satisfied before providing such additional protection. Recently enacted legislation shields airports from virtually all liability resulting from the negligence or wrongdoing committed by a private screening company or its employees. TSA has also taken action to improve the screener hiring process by granting contractors and TSA airport officials more input and flexibility in the hiring process. Additionally, TSA has defined the roles and responsibilities for SPP stakeholders—TSA airport staff and private screening contractors, among others—in its August 2005 SPP transition plan. However, the details in this plan have not been shared with private screening contractors, and all four contractors we interviewed were unclear about TSA staff roles and responsibilities at the airports they served.

TSA has stated that the SPP will operate at a cost that is competitive with equivalent federal operations and will achieve cost-savings where possible. Over the last 3 years, TSA has awarded cost-reimbursement contracts with an award fee component for screening services at four of the five airports currently using private screeners. The award fee is based, in part, on contractor cost-savings. However, opportunities for TSA cost-savings may be limited because under the cost-reimbursement contracts TSA bears most of the cost risk—the risk of paying more than it expected. TSA plans to shift more cost risk to contractors by competitively awarding fixed-price-award fee contracts for screening services at the four smallest airports that will participate in the SPP. TSA also plans to competitively award fixed-price contracts for screening services at larger airports, but stated that they cannot do so for up to 2 years—when officials believe that screening costs at larger airports will be better known.

TSA has developed performance goals and has begun drafting related measures and targets to assess the performance of private screening contractors under the SPP in the areas of security, customer service, costs, workforce management, and innovation. For example, one of the measures would require contractors to ensure that new hires receive required training. TSA's related target for this measure is that 100 percent of new hires will complete required training. These same measures and targets will also be used by DHS to assess whether to award full liability coverage under the SAFETY Act. TSA officials stated that DHS must approve the draft performance measures and targets before they can be finalized. As of January 2006, DHS had not yet completed its review.

Contents

Letter		1
	Results in Brief	4
	Background	7
	DHS and Congress Have Begun to Address Liability Protection Issue at Airports Using Private Screeners, but Stakeholder Concerns about Liability and Other Program Issues Remain	15
	TSA Provides Some Incentives to Contractors to Achieve Cost-Savings and Plans to Shift More Cost Risk to Contractors at Larger Airports in 1 to 2 Years	24
	Performance Goals and Measures Developed by TSA to Assess SPP Contractors Have Not Been Approved by DHS	30
	Conclusions	34
	Recommendations for Executive Action	36
	Agency Comments and Our Evaluation	37
Appendix I	Scope and Methodology	39
Appendix II	Comments from the Department of Homeland Security	42
Appendix III	GAO Contact and Staff Acknowledgments	45
Related GAO Reports		46
Tables		
	Table 1: Airports That Participated in the 2-Year Private Screener Pilot Program	8
	Table 2: Non-Pilot Program Airports That Applied to Use Private Screeners to Conduct Screening Operations from November 2004 through January 2006	10
	Table 3: Type of Contract and Contract Amount for the Four Private Screening Contractors for the Period November 19, 2004, through May 18, 2006	27
	Table 4: TSA Performance Measures for Evaluating SPP Contractors	32

Abbreviations

ATSA	Aviation and Transportation Security Act
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FSD	Federal security director
GPRA	Government Performance Results Act
SAFETY Act	Support of Anti-terrorism by Fostering Effective Technologies Act
SPP	Screening Partnership Program
TIP	threat image projection
TSA	Transportation Security Administration

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, DC 20548

March 31, 2006

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

Dear Mr. Chairman:

The Aviation and Transportation Security Act (ATSA), enacted after the terrorist attacks of 2001, required the federal government to take over the job of screening airline passengers and their checked baggage from the private sector.¹ Among other things, ATSA further required that the Transportation Security Administration (TSA) initiate a 2-year security screening pilot program at up to five commercial U.S. airports. The purpose of this pilot program, as defined by TSA, was to test the feasibility of utilizing private-sector screeners to screen passengers and their checked baggage in a post-9/11 environment, by allowing private-sector screeners—hired and managed by private screening companies under contract to TSA—to provide screening services in lieu of federal screeners at selected airports, with TSA oversight. The pilot program ran from November 2002 to November 2004. During that time, four private screening contractors served the five pilot program airports (one contractor served two airports).

In November 2004, as the private screener pilot program concluded, ATSA required that TSA begin allowing all commercial airports to apply to TSA to transition from a federal to a private screener workforce. To support this effort, TSA created the Screening Partnership Program (SPP) to allow all commercial airports an opportunity to apply to TSA for permission to use qualified private screening contractors and private-sector screeners. Currently, the four contractors that participated in the private screener pilot program are under contract to TSA to provide screening services at the five airports they have already been serving, and all five airports that participated in the pilot program have applied and been accepted to participate in the SPP. In February 2006, TSA competitively awarded a new contract for screening services for one of the five pilot program

¹Pub. L. No. 107-71, 115 Stat. 597 (2001).

airports. Also, during the 16 months since the SPP was initiated, two additional airports have applied to the SPP. TSA approved one of these airport's application and in December 2005 awarded a contract to a private screening contractor—a contractor currently providing screening services at two of the five pilot program airports—that enabled this airport to transition from federal to private screeners in February 2006. The other airport withdrew its application.

In November 2004, we reported on TSA's preliminary efforts to allow airports to apply to use private screening contractors to perform passenger and checked baggage screening services through the SPP, and how private screening contractors would compete to provide those services. We reported that key stakeholders we interviewed—private screening contractors, airport operators, and aviation associations—were concerned about several aspects of the program. Specifically, stakeholders expressed concerns about liability protection—whether and to what extent private screening contractors and airports would be liable in the event that threat objects or weapons were not detected at passenger screening checkpoints or in checked baggage, leading to a terrorist incident. At issue was whether the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act) would offer private screening contractors and airport operators federal protection from potential lawsuits arising out of or resulting from aviation-related acts of terrorism.² These stakeholders also were concerned about the degree of management control they would have over various aspects of screening services, including how roles and responsibilities would be divided among Federal Security Directors (FSD)³ and their staff and private screening contractor managers and staff.⁴

In this report, we address (1) TSA's and the Department of Homeland Security's efforts to determine whether and how liability protection will be provided to private screening contractors and airports that participate in the SPP, and actions taken on other stakeholder concerns related to participation in the SPP; (2) how TSA has determined it will achieve cost-savings goals for screener operations through the SPP, specifically with

²Pub. L. No. 107-296, §§ 861-65, 116 Stat. 2135, 2238-42 (2002); 6 C.F.R. §§ 25.1-25.9 (2005).

³FSDs are the ranking TSA authorities responsible for leading and coordinating TSA security activities at the nation's more than 440 commercial airports.

⁴GAO, *Aviation Security: Preliminary Observations on TSA's Progress to Allow Airports to Use Private Passenger and Baggage Screening Services*, [GAO-05-126](#) (Washington, D.C.: Nov. 19, 2004).

respect to the choice of contract used, and contract terms; and (3) TSA's progress in developing and implementing performance goals, measures, and targets to assess the performance of the private screening contractors who will participate in the SPP.

To satisfy our objectives, we analyzed documentation related to TSA's SPP and the 2-year private screener pilot program that preceded the SPP and interviewed various officials. Specifically, we interviewed 24 federal aviation officials within the Department of Homeland Security (DHS) and TSA, including FSDs at seven airports (the five pilot program airports and two airports that applied to participate in the SPP, namely, Elko Regional Airport in Elko, Nevada, and Sioux Falls Regional Airport in Sioux Falls, South Dakota); airport operators at all five airports with private screeners and the private screening contractors at these airports; officials with the two airports that have applied to participate in the SPP; officials with two aviation associations that represent hundreds of airports, including many large commercial airports; and a major liability insurance provider. To determine how TSA responded to stakeholder concerns about liability protection and other issues related to participation in the SPP, we reviewed SPP program guidance developed for airports, the SAFETY Act, and related documents obtained from DHS. Additionally, we reviewed ATSA provisions related to the SPP and our related reports, and interviewed DHS officials about the SAFETY Act's applicability to the SPP. To assess the status of TSA's efforts to achieve cost-savings in screener operations through the SPP, we reviewed the contracts and pilot program extension contracts TSA executed with the current private screening contractors, TSA's contracting policies and guidance, and the Federal Acquisition Regulation. We also reviewed an independent consultant's study prepared for TSA that evaluated the costs of screening at 15 airports, including all 5 pilot program airports. In addition, we interviewed TSA officials about their choice of contract type to award for the SPP. To assess TSA's progress in developing and implementing performance goals and measures to assess the performance of the private screening contractors that participate in the SPP, we reviewed TSA's draft performance quality assurance surveillance and award fee plan for the SPP. We also reviewed our work on the Government Performance and Results Act (GPRA) and on TSA's private sector screening pilot program and its efforts to implement the SPP. We also interviewed TSA officials about their efforts to develop performance goals, measures, and targets for the SPP. Additional information on our scope and methodology is contained in appendix I.

We conducted our work from March 2005 through March 2006 in accordance with generally accepted government auditing standards.

Results in Brief

DHS and Congress have begun to address whether and how liability protection may be offered to three of the four current private screening contractors (the fourth has not applied for coverage) and airports, at airports where private screeners are used. Specifically, DHS has provided contractors with some of the liability protections available under the SAFETY Act, including a limit on the damages a plaintiff may recover to the extent of the contractor's insurance coverage.⁵ DHS SAFETY Act officials stated that the department cannot provide the most extensive level of protection available under the SAFETY Act, rendering contractors virtually immune from all pertinent claims, because DHS cannot ascertain whether contractors are performing as intended—a criteria that the SAFETY Act requires before awarding such coverage. DHS officials stated they could not determine this because—as we discuss below—TSA has not yet finalized a standard of performance that would serve as the basis for DHS's evaluation. While none of the private screening contractors we interviewed stated that the lack of this additional coverage would preclude their participation in the SPP, all four stated that some form of SAFETY Act coverage was an essential supplement to their commercial liability insurance policies. Regarding airport liability under the SPP, Congress has granted airports legal protection from lawsuits. Specifically, under the fiscal year 2006 DHS Appropriations Act, airport operators are shielded from virtually all liability resulting from the negligence or wrongdoing committed by a private screening company, its employees, or federal screeners. On an additional issue of concern to stakeholders—the screener hiring process—TSA has made an effort to improve this process by granting contractors and FSDs more input and flexibility in the process, such as providing two options for assessing screener candidates and conducting more frequent screener assessments. Although TSA made improvements to the hiring process, however, some stakeholders, as well as FSDs at airports with federal screeners, remain concerned about the timing of the assessments and the length of time the assessment process takes. Stakeholders also expressed concern about the roles and responsibilities of federal and private-sector staff at airports using private screeners. TSA has since defined roles for FSDs, their staff, and private screening contractors, among others, in its August 2005 SPP transition plan, though TSA has not communicated to or shared the details of the plan with private screening contractors. TSA headquarters officials stated that they presumed that FSDs had communicated this information to private screening contractors. Furthermore, TSA officials stated that they communicated stakeholder roles in the SPP's June 2004 guidance.

⁵The SAFETY Act does not provide insurance; rather, sellers are required to purchase liability insurance from the commercial market in an amount determined by DHS.

However, our review of the guidance found that it did not clearly delineate the roles and responsibilities of TSA airport staff and the private screening contractors. For example, the guidance did not provide any information on the roles and responsibilities of some TSA airport staff, such as screening managers and training coordinators, or clarify how their roles and responsibilities would differ from those of the private screening contractors. Additionally, the four private screening contractors we interviewed stated that the roles of TSA staff had not been clearly defined, and 18 of 25 FSDs we interviewed in the past, as well as an independent consulting firm hired by TSA to assess the pilot program, have concurred.⁶ According to our standards for internal controls, agency management should ensure there are adequate means of communicating with external stakeholders on issues that may have a significant impact on the agency's ability to achieve its goals. By not sharing detailed information on the roles and authorities described in the SPP transition plan with private screening contractors, TSA may be missing an opportunity to support the effective performance and management of essential functions related to the screening process. TSA officials stated that they plan to clearly delineate roles and responsibilities of the FSD, FSD staff, and private screening contractors in future SPP contracts.

TSA has documented its intention that the SPP will operate at a cost that is competitive with equivalent federal operations and will achieve cost-savings where possible. TSA's cost reimbursement-based contracts for screening services at four of the five airports currently using private screeners provide some cost incentives in the form of an award fee tied in part to the contractor's ability to achieve cost efficiencies and innovations. TSA could shift more cost risk from the government to the contractors, as federal acquisition policy suggests, by competitively awarding a different type of contract—specifically, a fixed-price contract—which provides for a price based on the contractor's cost experience and is not subject to any adjustment. To this end, TSA is in the process of awarding or planning to award fixed-price contracts to the contractors that will provide screening services at three of the four smallest airports that will participate in the SPP (and has already done so at the fourth airport on a non-competitive basis). TSA officials stated that they cannot award this type of contract for screening services at larger airports for another 1 to 2 years because they stated that they do not know the costs of screening at these airports. Officials stated that TSA would therefore be at greater risk of awarding a fixed-price contract for a higher cost than might actually be incurred. TSA

⁶See GAO, *Transportation Security Administration: More Clarity on the Authority of Federal Security Directors Is Needed*, [GAO-05-935](#) (Washington, D.C.: Sept. 23, 2005).

officials acknowledged that TSA had already identified and collected some cost and performance data on passenger and checked baggage screening operations at 15 airports with private and federal screeners, including all five pilot airports, and completed a study in 2004 that estimated how much TSA spent for screening operations at each of the five pilot screening program airports. However, they stated that additional cost information based on the actual costs of participating in the SPP is needed for larger airports because the SPP contracts differ from the pilot and extension contracts that TSA previously awarded. For example, the SPP contracts will allow for contractors to recommend and, if approved, implement innovations, and to select among options for assessing screener candidates and training screeners. TSA officials said that it would be difficult for prospective SPP contractors for larger airports to accurately estimate the costs of providing screening services for a fixed-price contract. As a result, TSA plans to continue using cost-reimbursement contracts for screening services at the two largest airports for up to 2 additional years in order to determine estimated costs under the SPP contracts.

TSA developed performance goals and began drafting related measures and targets to assess the performance of private screening contractors under the SPP in the areas of security, customer service, costs, workforce management, and innovation. However, DHS, which is currently reviewing the performance goals, measures, and targets developed by TSA, has not yet completed its review nor set a time frame for doing so. According to TSA's draft quality assurance and award fee plan for the SPP, 14 separate performance measures have been established and performance targets—a tangible objective against which actual achievement will be compared—have been developed for 10 of the 14 measures. For example, 1 of the 14 measures would require contractors to ensure that new hires receive required training before assuming screener duties. TSA's related target for this measure is that 100 percent of new hires will receive required training. TSA officials stated that contractors will be required to meet the performance targets set by TSA specific to the airports they serve. Working with these airports, TSA stated that it has already established a baseline describing how federal screeners or private screening contractors have actually performed at individual airports, and these baseline data are being used to set performance targets for each airport. Officials further stated that TSA is considering providing financial incentives to contractors for a limited time in an effort to move their airports to meet TSA's baseline performance level. In March 2005, TSA officials stated that they had recently submitted the performance goals, measures, and targets to DHS. However, as of January 30, 2006, DHS had not yet approved the SPP performance metrics, and had not set a deadline for doing so. We asked

TSA and DHS officials which office within DHS was responsible for approving these performance metrics, but the officials were not able to provide us with this information. Until these goals, measures and targets are approved by DHS, TSA will not be able to implement performance measures to evaluate private screening contractors under the SPP. Further, these same measures and targets will be used by DHS to determine whether to award private screening contractors with certification status, the highest level of liability protection available under the SAFETY Act. Until the SPP measures and targets are finalized, DHS officials stated that they cannot determine whether contractors will perform as intended—a criterion that must be satisfied before awarding certification status.

To help address stakeholder concerns, we are recommending that the Secretary of DHS direct the Assistant Secretary, TSA, to formally document and communicate to federal and private-sector stakeholders the roles and responsibilities for managing screener operations under the SPP. In addition, to help ensure the completion of a performance management framework for the SPP and to promote accountability of SPP contractors for achieving desired program outcomes, we recommend that the Secretary of DHS establish a time frame for completing its review of the performance goals, measures, and targets for the SPP so that TSA may apply them at the earliest possible opportunity.

We provided a draft copy of this report to DHS for review. DHS, in its written comments, generally concurred with our findings and recommendations and stated that efforts to implement our recommendations will help to develop a more effective, efficient, and economical administration of TSA's SPP. The full text of DHS's comments is included in appendix II.

Background

Statutory Provisions Related to SPP

ATSA was enacted on November 19, 2001, in response to the September 11, 2001, terrorist attacks. ATSA established the TSA and charged it with responsibility for strengthening security in all modes of transportation, including aviation. One of the most significant changes mandated by ATSA was the shift from the use of private-sector screeners to perform airport screening operations to the use of federal screeners. Prior to ATSA, passenger and checked baggage screening had been performed by private screening companies under contract to airlines. ATSA required TSA to create a federal workforce to assume the job of conducting passenger and

checked baggage screening at commercial airports. The federal workforce was to be in place by November 2002. At the same time, ATSA mandated that TSA establish a 2-year pilot program using qualified private screening companies to screen passengers and checked baggage, with TSA oversight.⁷ Pursuant to section 108 of ATSA, TSA selected five airports, one from each airport security category, to participate in the pilot program.⁸ TSA also competitively selected four contractors (one contractor serves two airports) to conduct screening at the pilot airports. Table 1 lists the airports and private screening contractors that participated in the pilot program.

Table 1: Airports That Participated in the 2-Year Private Screener Pilot Program

Airport and location	Security category	Contractor
San Francisco International, Calif.	X	Covenant Aviation Security
Kansas City International, Mo.	I	FirstLine Transportation Security
Greater Rochester International, N.Y.	II	McNeil Security International
Jackson Hole Airport, Wyo.	III	Jackson Hole Airport Board
Tupelo Airport, Miss.	IV	Covenant Aviation Security

Source: TSA.

Section 108 further permitted the more than 400 commercial airports using federal passenger and checked baggage screeners to apply to TSA to use private rather than federal screeners at the conclusion of the pilot.⁹ Beginning on November 19, 2004, all commercial airports with federal security screening became eligible to apply to opt-out of using federal screeners through the newly established SPP. 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

⁷The 2-year pilot concluded on November 18, 2004. For purposes of this report, we refer to these five airports as the pilot program airports.

⁸TSA classifies the over 400 commercial airports in the United States into one of five security risk categories (X, I, II, III, and IV) based on various factors, such as the total number of takeoffs 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.

⁹ATSA codified the requirements that TSA institute a pilot program at 49 U.S.C. § 44919 and that an opt-out option be available under the SPP at § 44920.

between the private screening contractor and TSA. In addition to assessing airport applications for using private screeners, as part of the SPP, TSA plans to select qualified private screening companies that apply and meet ATSA and TSA requirements to conduct screening, including airports that seek to apply to serve as the private screening contractor.

The five airports selected to participate in the pilot program have applied and been accepted to the SPP. TSA awarded, on a non-competitive basis, new extension contracts (that replaced the original pilot program contracts) to the incumbent private screening contractors at the five pilot program airports effective November 19, 2004. The contracts enable the four private screening contractors to continue performing screening operations through May 18, 2006.¹⁰ As in the original pilot program contracts, the new contracts require private screening contractors to adhere to several ATSA provisions, including 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;
- the private screening company be owned and controlled by a citizen of the United States;
- the private screening company, at a minimum, meet employment standards, compensation and benefits rates, and performance requirements that apply to federal screeners; and
- all private screener candidates meet the same minimum qualifications as federal screeners, including U.S. citizenship (or being a national of the United States), high school diploma or equivalent, English proficiency, and pass a criminal background check.

TSA will make the final decision to approve any application submitted for participation in the SPP 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 any 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.

¹⁰The base period of these new contracts expired on September 30, 2005; an option period was exercised by TSA to extend them through May 18, 2006.

Applicants to the SPP as of January 2006

During the period November 2004 through January 2006, 7 out of the more than 400 commercial airports had applied to participate in the SPP. In addition to the five airports that participated in the pilot program, as of January 30, 2006, two additional airports that did not participate in the pilot program had applied to use private screeners—Elko Regional Airport in Nevada and Sioux Falls Regional Airport in South Dakota.¹¹ However, after discussions with TSA officials, Elko Regional Airport submitted a letter to TSA on September 30, 2005, seeking to withdraw its application on the grounds that the City of Elko could not qualify as a private screening company, thereby mooting its intention that the airport would serve as the contractor.¹² On October 17, 2005, TSA replied back to Elko, acknowledging Elko’s withdrawal of its application to participate in the SPP. Table 2 provides information on the two airports that applied to the SPP, as of January 2006.

Table 2: Non-Pilot Program Airports That Applied to Use Private Screeners to Conduct Screening Operations from November 2004 through January 2006

Selected airport characteristics	Elko Regional Airport	Sioux Falls Regional Airport
Security category	III	II
Screeners authorized in FY 2005^a	17	37
Application date	November 2004	April 2005
Reason for applying	To act as provider of private screening services to achieve cost-savings and staff efficiencies.	To have a private screening company provide screening services to enhance customer service.
Status of application	Application withdrawn	Application approved and contract awarded

Source: TSA.

^aThe number of screeners authorized is based on full-time equivalents (FTE). One FTE is equal to 1 work year or 2,080 non-overtime hours.

¹¹Elko Regional Airport applied with the intention of serving directly as a private screening contractor. Sioux Falls Regional Airport applied to have screening carried out separately by a private screening contractor.

¹²TSA interprets “private screening company,” as utilized in 49 U.S.C. § 44920, to exclude public companies that do not possess the attributes of a private company or corporation and that are not independent from the city or county in which it operates. TSA officials stated that under this interpretation, affiliates established by airports to provide private screening services cannot compete for and obtain screening contracts let by TSA if TSA determines that they do not possess the above attributes. TSA officials also stated that whether or not an airport qualifies as a private screening company depends upon a case-by-case factual analysis as well as the application of state law.

We did not attempt to identify the reasons that only 7 of more than 400 commercial airports that were eligible to participate in the SPP had submitted an application. However, in our November 2004 report on the SPP, we reported that of the 26 airport operators we interviewed, 20 said their airport would not apply to participate in the SPP in the first year of the program, 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.¹³ Among the 20, 16 said they were satisfied with federal screeners or did not see any benefit to applying to participate in the SPP and 13 cited concerns about airport liability in the event of a terrorist attack.¹⁴

In May 2005, TSA approved the SPP application for the Sioux Falls airport, and in December 2005, TSA awarded a contract for passenger and checked baggage screening services at Sioux Falls to a private screening contractor. In February 2006, this award enabled Sioux Falls airport to transition from TSA federal screeners to private screeners employed by the contractor. According to the contractor, it will use 30 FTEs, 7 less than TSA's screener allocation for Sioux Falls airport, without compromising security or customer service. The contractor expects to achieve operational efficiencies and cost savings for its screening operations at this airport due to the reduction in FTEs.¹⁵

In addition, during February 2006, TSA awarded a contract to a private screening contractor at one of the five pilot program airports.¹⁶ TSA is in the process of awarding contracts to the remaining four airports that applied to use private screeners. As of February 28, 2006, TSA received proposals from private screening companies for the Greater Rochester International, Tupelo, Kansas City, and San Francisco International airports. TSA also released the request for proposals for San Francisco International airport.

¹³The 26 airport operators we interviewed do not include the 7 airport operators that applied to participate in the SPP.

¹⁴GAO-05-126.

¹⁵We did not verify that the contractor is actually using seven fewer FTEs than TSA's screener allocation for Sioux Falls.

¹⁶At the time we interviewed this contractor, TSA had not awarded the contract to conduct private screening in the SPP. Thus, the contractor's responses are based on its experiences prior to this contract award.

TSA also approved 34 private screening companies for listing on a qualified vendors list, which identifies that these companies are eligible to perform passenger and checked baggage screening services in the SPP.

Overview of TSA Budget for SPP

DHS's fiscal year 2006 appropriations provides nearly \$2.54 billion to fund the screener workforce—about \$2.4 billion for federal passenger and checked baggage screener full-time equivalents¹⁷ and an additional \$139.6 million to pay for screening contractors at the five pilot program airports. In accordance with its appropriations, TSA plans to fund the SPP from the same budget line item as federal screening operations to provide flexibility on the number of airports that can participate in the program. In this manner, the costs for contracts with private screening contractors are to be funded by the cost of the federal operations that are being displaced.

Overview of the SAFETY Act

The SAFETY Act, enacted as part of the Homeland Security Act of 2002, offers liability and other protections to sellers of qualified anti-terrorism technologies.¹⁸ According to DHS, services, such as screening services, are eligible to receive liability protection under the SAFETY Act if designated as qualified anti-terrorism technologies, thus limiting liability risks for the private screening contractor and its subcontractors, suppliers, vendors, and customers.¹⁹ SAFETY Act protection pertains to “claims arising out of, relating to, or resulting from an act of terrorism” where qualified anti-terrorism technologies have been deployed.²⁰ According to DHS, the SAFETY Act reflects the intent of Congress to ensure that the threat of liability does not deter the potential manufacturers or sellers of anti-terrorism technologies from developing and commercializing technologies that could significantly reduce the risks or mitigate the effects of large-

¹⁷A statute caps the number of full-time equivalent screeners available to TSA at 45,000. See Pub. No. 109-90, 119 Stat. 2064, 2070 (2005). According to TSA, this cap does not include screeners at the five pilot program airports.

¹⁸Aside from its liability protections, the SAFETY Act limits the types of damages available to a plaintiff and establishes the venue in which a plaintiff may raise such claims.

¹⁹The amount of liability will be capped at an amount equal to the level of insurance DHS requires the service contractor to purchase.

²⁰DHS only recognizes an anti-terrorism technology as a “qualified antiterrorism technology” if designated under the SAFETY Act, which requires that DHS evaluate the technology against criteria set out in § 862 (b) the act.

scale acts of terrorism.²¹ The SAFETY Act does not offer indemnification (compensation for losses incurred) to sellers of qualified anti-terrorism technology but rather limits, and in some instances may completely bar, claims brought against sellers of anti-terrorism technologies that have been deployed in defense against or response or recovery from a terrorist incident.²² If a seller of a potential anti-terrorism technology wishes to be awarded SAFETY Act protections, the seller must formally apply to the department using the forms provided by DHS, furnish the entire requisite supporting data and information, and successfully demonstrate compliance with the act's requirements.

Types of Contracts Awarded by TSA

TSA awarded one of two types of contracts for extending contractor performance at the five pilot program airports. Both these types of contracts were awarded on a non-competitive basis to the private screening contractors. TSA awarded the first type of contract—cost-plus-award-fee contracts (a type of cost-reimbursement contract)—to the four private screening contractors providing screening services at four of the five pilot program airports. These contracts, which are generally used when the costs are not known, provide for payment of allowable incurred costs, to the extent prescribed in the contract. A cost-plus-award-fee contract provides for a fee consisting of (1) a base amount that is a percentage of the estimated cost fixed at inception of the contract and (2) an award amount that the contractor may earn in whole or in part during the contract period and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The actual award amount is based upon an evaluation by TSA compared against criteria spelled out in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the government.

TSA awarded the second type of contract—a fixed-price-award-fee contract—to one private screening contractor. This type of contract is generally used when the requirements are reasonably known and a reasonable basis for firm pricing by the contractor exists. A fixed-price

²¹The SAFETY Act defines “act of terrorism” as an unlawful act causing harm to a person, property or entity in the United States (or, in the case of a domestic U.S. air carrier, in or outside the U.S.) by using or attempting to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

²²According to DHS, the SAFETY Act does not limit liability for harm caused by anti-terrorism technologies when no act of terrorism has occurred.

award fee contract establishes a fixed price (including normal profit) for the effort, which will be paid for satisfactory contract performance, and an award fee. The award fee earned (if any) will be paid in addition to that fixed-price based on periodic evaluations of the contractor's performance against an award-fee plan. TSA awarded a fixed-price-award-fee contract to a private screening contractor at Tupelo airport, a security category IV airport, the smallest airport.

According to the Federal Acquisition Regulation (FAR), which generally governs federal government procurement activities, the negotiation of contract type and price (or estimated cost and fee) should result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.²³ A firm-fixed-price contract, which best utilizes the basic profit motive of a business enterprise, shall be used when the contractor risk involved is minimal or can be predicted with an acceptable degree of certainty. The FAR provides that when a reasonable basis for firm pricing does not exist, other contract types (such as cost reimbursement) should be considered, and negotiations should be directed toward selecting a contract type that will appropriately tie profit to contractor performance.²⁴ As a service continues to be contracted over time, however, and after experience provides a basis for firmer pricing, the FAR advises that cost risk should shift to the contractor and a fixed-price contract should be considered.²⁵ The FAR specifically states that contracting officers should avoid protracted use of a cost-reimbursement contract after experience provides a basis for firmer pricing. Additionally, under the FAA acquisition policy followed by TSA, "[t]he use of fixed-price contracts is strongly encouraged whenever appropriate."²⁶

²³FAR, 48 C.F.R. § 16.103. TSA is exempt from the FAR and most acquisition laws. Instead, ATSA directed TSA to adopt the Federal Aviation Administration's acquisition management system and authorized TSA to modify it as appropriate. 49 U.S.C. § 114(o) (Supp. II 2002). The FAA's management system, which establishes policy, processes, and guidance for all aspects of the acquisition life cycle, and authorized TSA to modify it as appropriate. See 49 U.S.C. § 114(o). The acquisition laws from which FAA is exempt are listed at 49 U.S.C. § 40110(d)(2). While TSA is exempt from the FAR, the FAR provides useful guidance for our analysis of TSA's contracting approach. The SPP transition plan states that the criteria contained in FAR, and the size of the airport choosing to apply to use private screeners, dictate the type of contract vehicle.

²⁴FAR, 48 C.F.R. § 16.103(b).

²⁵FAR, 48 C.F.R. §§ 16.103(c), 16.104(d).

²⁶FAA Acquisition Management System policy 3.2.4.2.

DHS and Congress Have Begun to Address Liability Protection Issue at Airports Using Private Screeners, but Stakeholder Concerns about Liability and Other Program Issues Remain

DHS awarded some of the liability protections available under the SAFETY Act to three of the four private screening contractors that applied for it and stated that it will decide the status of future applications on a case-by-case basis in accordance with criteria described in the act. However, DHS cannot award the most extensive level of protection under the SAFETY Act, certification status, until it can determine whether contractors will perform as intended—a criterion that must be satisfied before awarding such coverage. DHS officials stated that DHS has not been able to award SAFETY Act certification status to contractors because TSA has not yet finalized performance standards for assessing whether contractors have performed as intended. While all four current screening contractors we interviewed stated that SAFETY Act protection was important, they did not state that they would be unwilling to participate in the SPP without certification under the SAFETY Act. For example, one contractor said it had too much time and money invested in providing private screening services to not participate in the SPP. Congress has since granted legal protection from lawsuits to all airports where TSA conducts or oversees passenger and checked baggage screening. Specifically, the fiscal year 2006 DHS appropriations act shields airports from, among other things, virtually all liability related to negligence or wrongdoing by private screening contractors, their employees, or federal screeners. In addition, TSA made an effort to improve the screener hiring process by granting contractors and FSDs more input and flexibility in the hiring process, though some contractors, as well as FSDs at airports with federal screeners, remain concerned about the timing of the assessments and the length of time the assessment process takes. TSA has also taken steps to clarify SPP roles and responsibilities between federal and private sectors, but the four private screening contractors we interviewed still had questions about the roles and responsibilities of TSA staff at the airports they served.

DHS Has Provided SAFETY Act Protection to Three of the Four Current Private Screening Contractors and Will Decide Future Coverage on a Case-by-Case Basis

Officials at DHS' Science and Technology Division stated that all anti-terrorism technologies submitted to the department for protection under the SAFETY Act are evaluated—including screener services—on a case-by-case basis, in accordance with the criteria defined by the act's two-tiered protection status, as follows:

Designation status. Designation status protects a seller of anti-terrorism technology in the event the technology fails to thwart an act of terrorism by limiting the type and amount of damages a plaintiff may recover such that a seller's potential liability cannot exceed the amount of insurance

coverage maintained by the seller.²⁷ To receive designation status, anti-terrorism technologies, including screening services, must be evaluated by DHS against the seven criteria set out in the SAFETY Act: (1) prior U.S. government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment in public and private settings; (3) existence of extraordinarily large or unquantifiable risk of exposing the seller or other provider of such anti-terrorism technology to potential liability; (4) substantial likelihood that the technology will not be deployed unless the risk management protections of the SAFETY Act (limited liability) are conferred; (5) the magnitude of risk to the public if the technology is not deployed; (6) evaluation of all scientific studies that can be feasibly conducted to assess the capability of the technology to substantially reduce risks of harm; and (7) anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.²⁸

Certification status. Once designated, qualified anti-terrorism technologies become eligible for certification under the SAFETY Act, which gives the seller the legal status of a government contractor and renders the seller virtually immune from any claims that might arise in the event the technology fails to thwart an act of terrorism, provided the seller does not act fraudulently or with willful misconduct in submitting information to DHS.²⁹ To certify, DHS must determine if the qualified anti-terrorism technology will (1) perform as intended, (2) conform to the

²⁷Qualifying for protection under the SAFETY Act requires that the seller obtain liability insurance at a level determined by DHS to satisfy otherwise compensable third-party claims but that would not exceed the maximum amount of liability insurance reasonably available from private sources at prices and terms that will not unreasonably distort the sale price of the seller's antiterrorism technology. The SAFETY Act does not provide insurance; rather, sellers are required to purchase liability insurance from the commercial market in an amount determined by DHS.

²⁸According to DHS, the department applies the criteria flexibly, assigning different weights depending on the circumstances, and may consider additional relevant facts if necessary.

²⁹The United States Supreme Court, in *Boyle v United Technologies Corp.*, 487 U.S. 500 (1987), articulated the "government contractor defense," which, in general and in certain circumstances, shields government contractors from liability for design defects in equipment if (1) the United States approved reasonably precise specifications, (2) the equipment conformed to those specifications, and (3) the supplier warned the United States about dangers in the use of the equipment known to the supplier but not to the United States. The SAFETY Act essentially codifies and makes applicable the government contractor defense to sellers of certified qualified anti-terrorism technologies that have been deployed in defense against or response or recovery from and act of terrorism and from which claims that result or may result in loss to the seller arise.

seller's specifications, and (3) be safe for use as intended. Certification status cannot be awarded unless these three criteria have been met. DHS places certified anti-terrorism technologies and services on an Approved Product List for Homeland Security.³⁰

DHS determined that the four private screening contractors serving the five pilot program airports were eligible for SAFETY Act protection. Once this determination was made, after November 2004, three of the four current private screening contractors applied for and were provided designation status under the SAFETY Act.³¹ Contractors that apply to the SPP in the future are to be evaluated individually, as their applications to the program are processed. TSA awarded a contract for private screening services at Sioux Falls and Jackson Hole airports. The status of SAFETY Act coverage for these airports, if the contractors apply for coverage, will be determined at a later point in time.

Contractors' Concerns about Liability Not Yet Resolved

As of January 2006, one issue pertaining to how the SAFETY Act would be applied to contractors remained unresolved and is a cause for concern for one of the four contractors we interviewed. Specifically, DHS officials stated that they have not been able to award SAFETY Act certification status to contractors because TSA has not yet finalized performance standards for assessing whether contractors have performed as intended. DHS SAFETY Act officials stated that once TSA finalizes its performance standards, the contractors that previously received designation status may submit an application for SAFETY Act certification. The application is to include evidence demonstrating that they are meeting the TSA-defined performance standards. DHS will evaluate the material submitted by the applicant against the TSA standards. According to DHS officials, assuming the applicant is able to demonstrate that it is performing as TSA intends, there should be no impediment to granting certification. When the three contractors that already have SAFETY Act designation status were asked to comment on whether they would continue to participate in the SPP without certification status, two contractors told us they would. One of these two contractors said it had too much time and money invested in providing private screening services to not participate in the SPP. The

³⁰Technologies and services designated for protection pursuant to this evaluation become known as "qualified anti-terrorism technologies." Only qualified anti-terrorism technologies are eligible for certification.

³¹One of the four current private screening contractors—Jackson Hole Airport Board—has not applied for SAFETY Act protection.

third contractor said that its company's \$50 million in general liability insurance coverage excludes acts of terrorism,³² thus the company believed it "would remain exposed to serious liability concerns related to terrorist threats [or] risks." This contractor did not, however, explicitly state that it would not participate in the SPP going forward, if certification status were not awarded.

In general, contractors may offset potential liability arising from acts of terrorism by purchasing commercially available liability insurance.³³ Two of the four private screening contractors currently under contract to TSA purchased insurance policies that protect them from acts of terrorism. Both contractors stated that their policies were inadequate to cover the liability resulting from a major terrorism attack and that SAFETY Act protection was, therefore, additionally necessary to provide protection to the contractor.³⁴ As to the importance of SAFETY Act protection to potential future participants in the SPP, in November 2004, we reported that five of six prospective SPP private screening contractors we interviewed—those not currently serving airports—stated that the issue of whether they would receive liability protection was important and would greatly affect whether they would participate in the SPP if selected by TSA as a qualified contractor.³⁵ In addition, officials with two aviation associations representing hundreds of airports, whom we interviewed, stated that their members believed that SAFETY Act protection—both designation and certification—was necessary for contractors to participate in the SPP.

³²This policy reportedly excludes acts of terrorism, such as "any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage therefrom is accidental or intentional."

³³According to TSA, the premiums paid for insurance are considered an allowable cost for reimbursement under the contracts, assuming the costs are reasonable and allocable in accordance with TSA cost principles.

³⁴The two contractors purchased insurance without the protections of the SAFETY Act or the promise of indemnification at the time of purchase.

³⁵According to TSA, the premiums paid for insurance are considered an allowable cost for reimbursement under the contracts, assuming the costs are reasonable and allocable in accordance with TSA cost principles.

DHS Appropriations Act Addresses Airports' Concerns about Liability Exposure Issue

The status of SAFETY Act coverage for airports, and liability coverage in general for airports using private screeners, differs from coverage for contractors. While DHS has determined that contractors performing screening services are eligible to receive liability protection under the SAFETY Act, the department has not determined whether airports that do not perform screening services are eligible for liability coverage under the act. In October 2005, however, Congress enacted legislation that granted airports legal protection from lawsuits. Specifically, section 547 of the Department of Homeland Security Appropriations Act, 2006, shields airport operators from virtually all liability relating to the airport operator's decision on whether or not to apply to opt-out of using federal screening, and any acts of negligence, gross negligence, or intentional wrongdoing by either a qualified private screening company under contract to DHS, its employees, or by a federal screener.³⁶ Prior to the enactment of this act, three of the seven airport operators we interviewed expressed concerns about whether the government would extend liability protection to them.³⁷ They were concerned that if a security incident arose that resulted in litigation, they may become a party to a lawsuit. Officials with two aviation associations, whom we also interviewed at that time, also expressed concerns about airport liability. After the enactment of the 2006 appropriations act, one of the three airport operators that had expressed concerns about liability told us that the protection available under section 547 of the act had addressed its concerns about its airport's liability. A second airport operator that we contacted after enactment of section 547 had not yet reviewed the provision and stated that it could not confirm whether its airport would be protected from liability.³⁸

³⁶Codified at 49 U.S.C. § 44920(g). This provision does not relieve an airport operator from liability for its own acts or omissions related to its security responsibilities.

³⁷The seven airports include the five airports that participated in the pilot program and the two airports that applied to the SPP, but did not participate in the pilot program. One of the two airports that did not participate in the pilot program, Elko Regional Airport, has since withdrawn its application to the SPP.

³⁸We did not ask the third airport operator whether the 2006 appropriations act had addressed its concerns about liability because it had withdrawn its application.

TSA Granted Private Screening Contractors Flexibility in Hiring Process, but Contractor Concerns Remain

TSA made an effort to improve the screener hiring process by granting contractors and FSDs more input and flexibility in the hiring process, including more frequent assessments of screener candidates and two options for performing these assessments. Prior to November 2004, TSA had scheduled candidate assessment forums on a regional basis 1 to 2 times a year to evaluate a pool of candidates interested in screener positions. At that time, private screening contractors, like FSDs at airports with federal screeners, had to rely on TSA to authorize the hiring of screeners and establish candidate assessment forums—a process that could take several months.³⁹ Beginning in November 2004, as part of the contract extensions, TSA began requiring the pilot program private screening contractors to submit annual hiring plans to TSA for review, indicating their anticipated screener staffing needs. The intention was to use this information to plan for more frequent and timely screener assessments conducted regionally and locally—up to 6 times a year. Despite TSA’s planned increase in the frequency of assessments, private screening contractors, as well as FSDs at airports with federal screeners, remain concerned about their inability to conduct hiring on an as needed basis because TSA still controls the scheduling of assessment forums.⁴⁰ One contractor, for example, stated that despite the scheduling of more frequent assessment forums, it still could not fully implement its hiring plan because the assessments did not necessarily coincide with its hiring periods.

In response to contractor concerns about the candidate assessment process, in November 2004, TSA began allowing private screening contractors two options for evaluating screener candidates:⁴¹

³⁹At these forums, screener candidates undergo a credentialing process consisting of a series of physical and mental exams, drug tests, and a preliminary background check, among other things.

⁴⁰Concerns about the screener hiring process are shared by some FSDs at airports using federal screeners. In our September 2005 report on the ability of FSDs to address airport security needs, we reported that most of the 25 FSDs interviewed were satisfied with TSA’s hiring process, which provided more options for FSDs to be involved in hiring screeners, and most stated that the hiring process in place was better than the centralized process that existed previously. Nevertheless, 7 of the 25 FSDs said they were not satisfied because, among other things, the hiring process continues to take too long. See our report [GAO-05-935](#).

⁴¹TSA officials said they are working on two additional options for contractors to assess screener candidates and will notify contractors when the options are available so that contractors may submit a proposal to change the option they selected.

-
- Option 1: Contractors may draw screener candidates from a pool developed by a private company under contract with TSA, which is responsible for assessing potential screener candidates. This company administers a computer-based aptitude test, mental and physical tests, and conducts background checks at regional assessment centers. The contractor is under no obligation to accept these applicants.
 - Option 2: Contractors may use TSA's assessment company for the aptitude test alone, and develop and implement additional assessment activities on their own, provided they meet ATSA requirements and TSA guidance.⁴²

According to TSA officials, all four private screening contractors have selected from these two options for hiring screeners. The contractors' views about the hiring process were mixed. For example, one contractor we interviewed said that because TSA has allowed it to conduct its own assessments, the length of the entire assessment process has been reduced from several months to 2 weeks. This contractor, which was using option two, is now conducting key parts of the assessment process. According to this contractor, its use of option two has resulted in a more efficient, effective, and significantly less costly process. A second contractor using option two stated that it had established a new hire recruitment, assessment, and training program. According to this contractor, its use of option two has resulted in its ability to identify more qualified screener candidates, improve screener retention, and fill screener vacancies on an as needed basis. However, the other two contractors remained concerned about the length of time the assessment process lasts. One of these contractors stated that the duration of the process was still so long that potential screeners found other jobs first and dropped out of consideration. This contractor, which was using option two, proposed using FSD staff to conduct the assessments to streamline and shorten the assessment process.⁴³ According to TSA officials, TSA did not accept this suggestion because TSA's Office of Human Resources determined it would have been too costly to allow FSD staff to conduct the assessments. TSA officials stated that they offered the contractor the same assessment options that are available to all airports with federal screeners. Officials

⁴²These guidelines describe working conditions that passenger and checked baggage screeners must be willing and able to function in, physical requirements of the job (lifting heavy objects, for example), and a requirement that applicants successfully complete a background investigation.

⁴³At the time we interviewed the contractors, the remaining contractor was using option one.

further stated that they will continue to examine all aspects of the assessment process in an effort to offer greater efficiency and flexibility in screener hiring for both federal and contract screeners.

TSA Has Taken Steps to Clarify SPP Roles and Responsibilities between Federal and Private Sectors, but Questions about Division of Labor Remain

While TSA has defined the roles and responsibilities for FSDs, FSD staff, and private screening contractors, among others, in its August 2005 SPP transition plan, the details contained in this plan have not been communicated to or shared with private screening contractors.⁴⁴ TSA and SPP procurement officials stated that they consider the transition plan to be an internal document that TSA does not intend to distribute outside of the agency. However, officials stated that the information on roles and responsibilities under the SPP would be available to prospective private screening contractors as part of the SPP contracting process. Additionally, TSA SPP officials stated that they presumed that FSDs had communicated this information to the current private screening contractors. Further, TSA officials stated that TSA's June 2004 guidance on the SPP provides information on roles and responsibilities of SPP stakeholders. However, our review of the guidance found that it did not clearly delineate the roles and responsibilities of TSA airport staff and the private screening contractors. For example, the guidance did not include any information on the roles and responsibilities of some TSA airport staff, such as screening managers and training coordinators, and did not clarify how their roles and responsibilities would differ from those of the private screening contractors. Additionally, the four private screening contractors we interviewed had questions about the roles and responsibilities of TSA staff at the airports they served, including screening managers and stated that, in their view, TSA had not clearly defined the roles and responsibilities of TSA staff at airports participating in the SPP.⁴⁵ When asked whether FSD and FSD staff roles and responsibilities were clear, one contractor stated that he did not believe that TSA had recognized that the roles of training managers and screening managers at airports using federal or private screeners are different. A second contractor stated that, in his view, TSA had not standardized the roles and responsibilities of TSA airport staff across the five airports currently using private screeners. Similarly, a third

⁴⁴TSA provided an early draft of the transition plan to the FSD and FSD staff at four of the five pilot program airports.

⁴⁵Screening managers at airports with federal screeners are responsible for (1) managing screener operations; (2) ensuring quality and consistency of screening procedures; (3) scheduling screening personnel to screening operations; (4) managing overall screening work force issues; (5) managing external relationships; and (6) interpreting technical aspects of TSA policies, regulations, and directives.

contractor stated that TSA roles and responsibilities need to be more well-defined, particularly the role of FSD airport staff and TSA local contract staff. Finally, the fourth contractor stated that the separation of roles and responsibilities has been a major challenge on a daily basis in part because TSA staff at screening checkpoints assert control and impose operational changes at the checkpoints—tasks that the contractor believes it is responsible for, rather than TSA staff. This contractor identified the need for TSA to clearly define the roles of the various stakeholders involved in the SPP and to establish guidelines on TSA’s oversight and regulatory responsibilities at airports participating in the SPP.

In September 2005, in reporting on the ability of FSDs to address airport security needs, we stated that TSA airport stakeholders (including airport operators)⁴⁶ at some of the airports we visited stated that the FSD’s role was not sufficiently clear, and at least one stakeholder at every airport we visited said such information had never been communicated to them.⁴⁷ We recommended that DHS direct TSA to communicate the authority of the FSD position, as warranted, to FSDs and all airport stakeholders. In response, TSA agreed to update the role of the FSD and communicate this information to airport stakeholders. As of December 2005, however, TSA had not yet implemented this recommendation, but stated that the matter is being considered by a TSA steering committee. In addition, a consulting firm that evaluated the private screening pilot program in April 2004 recommended that TSA clearly delineate the roles and responsibilities among federal and private screening managers and their staff and include this information in its contracts with the private screening contractors. Based on our review of the June 2004 guidance on the SPP and the contracts awarded to the current private screening contractors in November 2004, TSA had not included this information. TSA officials stated that they plan to clearly delineate roles and responsibilities of the FSD, FSD staff, and private screening contractors in the forthcoming SPP contracts.

According to our standards for internal controls, agency management should ensure there are adequate means of communicating with external stakeholders on issues that may have a significant impact on the agency’s

⁴⁶ Airport stakeholders interviewed for this report were airport managers, airport law enforcement, station managers representing air carriers, and FBI airport liaison airports, among others.

⁴⁷ [GAO-05-935](#).

ability to achieve its goals.⁴⁸ By not sharing detailed information on roles, responsibilities, and authorities described in the SPP transition plan with all FSDs and private screening contractors, TSA may be missing an opportunity to support the effective performance and management of essential functions related to the screening process. Additionally, without clear and specific information on roles and responsibilities under the SPP, it may be difficult for prospective SPP contractors to develop an informed estimate of the costs of providing screener services.

TSA Provides Some Incentives to Contractors to Achieve Cost-Savings and Plans to Shift More Cost Risk to Contractors at Larger Airports in 1 to 2 Years

Through its contracts, TSA offers the private screening contractors some incentives to decrease costs. Specifically, TSA's cost reimbursement contracts for screening services at four of the five airports currently using private screeners provide some incentives in the form of an award fee tied in part to the contractor's ability to achieve cost efficiencies and innovations. However, despite TSA's use of cost-savings as a basis for a portion of the award fees, opportunities for government cost-savings may be limited because under the cost-reimbursement contracts the government bears most of the cost risk—the risk of paying more than it expected. TSA plans to shift more cost risk to contractors by competitively awarding fixed-price-award fee contracts for screening services at the four smallest airports that will participate in the SPP. TSA officials said they also plan to competitively award fixed-price contracts for screening services at larger airports, but will not do so for another 1 to 2 years—when they believe that screening costs at larger airports will be better known.

TSA Plans to Transition from Cost-Reimbursement to Fixed-Priced Contracts, but Stated That an Additional 1 to 2 Years Was Needed to Do So at Larger Airports

TSA expects that the SPP will operate at a cost that is competitive with equivalent federal operations and will achieve cost-savings, where possible. However, opportunities for cost savings are somewhat limited because of various requirements that contractors must meet in performing the contract. Specifically, under ATSA, private screening companies must provide compensation and other benefits to contract screeners at a level not less than that provided to federal screeners.⁴⁹ Further, the contracts require that contractors ensure that security checkpoints are staffed in accordance with TSA's standard operating procedures and other

⁴⁸GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

⁴⁹Pub. L. No. 107-71, § 108, codified at 49 U.S.C. § 44919(f) (screening pilot program) and 49 U.S.C. § 44920(c) (opt-out program).

government requirements and that the screeners have the qualifications and training established by the government. While these government airport security standards must be met, TSA has structured its existing contracts to provide some incentives to contractors for cost savings. Specifically, over the last 3 years, TSA has awarded cost-reimbursement contracts with an award fee component for screening services at four of the five airports currently using private screeners.⁵⁰ These contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract (typically up to a specified cost ceiling). In addition, the government also agrees to award a separate amount (base fee) fixed at inception of the contract and an award amount (award fee) that the contractor may earn in whole or in part during performance that is sufficient to provide motivation for excellence in such areas as quality, technical approach, and cost-effective management. The amount of the award fee to be paid is determined by the government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract.

Because cost-savings and contract management account for 20 percent of the award fee determination for the current screening services contracts, these contracts do provide some incentive for contractor cost efficiency. Specifically, the award fee plan establishes the expectation that contractors will provide screening services with cost efficiencies and innovation, while meeting the security standards, mission objectives, and compensation levels required by ATSA and TSA, respectively.⁵¹ These cost and contract management factors include:

- Overtime/personnel costs—evaluates the contractor's ability to control overtime and personnel costs.
- Innovation/continuous improvement—evaluates the contractor's ability to build on previous experiences/accomplishments and utilize innovative approaches, techniques and tools.
- Other direct/indirect cost⁵²—evaluates the contractor's ability to control direct labor cost and overtime costs and its ability to effectively

⁵⁰All five contracts awarded to private screening contractors to date were awarded and extended as part of the original private screener pilot program, not as part of the SPP.

⁵¹According to TSA, contractors must ensure that security checkpoints are staffed in accordance with TSA's standard operating procedures and other government requirements, and that screeners meet government qualifications and training requirements.

⁵²Indirect costs include the contractor's overhead costs.

manage its subcontract costs through use of competition to the greatest extent practicable and through documented cost analysis substantiating the reasonableness of subcontract costs. Indirect cost control evaluates the contractor's ability to control its indirect costs.⁵³

Despite TSA's use of cost-savings as a basis for a portion of the award fees, opportunities for government cost-savings may be limited in part because under the cost-reimbursement contracts the government bears most of the cost risk—the risk of paying more than it expected. Specifically, under cost-reimbursement contracts, the government must reimburse the contractor for all allowable costs as provided in the contract. TSA plans to shift most cost risk to its contractors by moving to a fixed-price-award fee contract in the next 1 to 2 years. A fixed-price type of contract places upon the contractor the maximum risk and full responsibility for all costs and resulting profit or loss, providing maximum incentive for the contractor to control costs and perform efficiently. Further, in a competitive environment, pricing by contractors for a fixed-price contract would be subject to marketplace pressures that would provide incentives for the contractor to control costs and reduce prices in order to win the contract. The award fee component of a fixed-price contract is used to motivate the contractor by relating the amount of profit or fee payable under the contract to the contractor's performance in the areas of operations, management, contract compliance, and human resources. Because the contract is fixed-priced, the award fee portion does not assess cost management.

TSA has awarded a fixed-price-award-fee contract to the contractor providing screening services at the smallest of the five airports using private screeners, while the contracts for screening services for the other four airports remain as cost-reimbursement contracts. TSA officials stated that the fixed-price contract was awarded for the one airport (on a noncompetitive basis) because costs there were considered predictable and therefore a reasonable basis for firm pricing by the contractor existed. Table 3 provides information on TSA's contracts with current private screening contractors.

⁵³An additional contract management factor not listed above is the contractor's compliance with the contract's terms and conditions.

Table 3: Type of Contract and Contract Amount for the Four Private Screening Contractors for the Period November 19, 2004, through May 18, 2006

Private screening contractor	Type of contract		Contract amount ^a		Airport security category
	Cost-plus-award-fee	Fixed-price-award-fee	Base year ^b	Option period ^c	
Covenant Aviation Security	✓		\$79,423,995	\$58,354,170	X
Covenant Aviation Security		✓	698,005	506,168	IV
FirstLine Transportation Security	✓		34,574,108	25,933,623	I
McNeil Security International	✓		8,983,957	6,793,001	II
Jackson Hole Airport Board	✓		3,601,457	2,484,297	III

Source: TSA.

^aThe contract amounts include base fees and potential award fees and are estimated amounts, not actual costs incurred under the cost-plus award fee contracts.

^bThe base year is the first year of the contract.

^cThe option period is for year 2-5 of the contract.

TSA officials stated that as of February 2006, TSA had awarded, was planning to award, or was in the process of awarding, additional fixed-price contracts on a competitive basis for screening services at three other small airports (categories II, III, and IV) under the SPP.⁵⁴ TSA officials acknowledged that cost-reimbursement contracts place most of the cost risk on the government, rather than the contractor, but said the agency would not award fixed-price contracts for screening services at the two larger airports using private screening contractors for another 1 to 2 years. TSA officials stated that they would not award fixed-price contracts to these contractors because they did not know the costs of screening at the larger airports, where they believe costs are variable, and therefore they believe that TSA would be at greater risk of awarding a contract for a

⁵⁴The draft SPP contracts for Jackson Hole airport (category III) and Sioux Falls (category II) airport state that TSA will award a combination cost-plus-fixed-fee and fixed-price-award-fee contract for these airports. Specifically, the pre-transition and transition phases, such as screener assessments, leasing, travel, consumables, uniforms, and other direct costs will be performed under the cost-plus-fixed-fee portion of the contract. Once the SPP contractors have attained full operational capability—full transition to private-sector screeners—the screening services will be performed under a fixed-price award fee contract. In December 2005, TSA awarded such a contract to a private screening contractor to provide screening services at Sioux Falls airport. On February 5, 2006, the contractor received a certificate of full operational capability from TSA.

higher cost than might actually be necessary.⁵⁵ TSA officials acknowledged that TSA already had, through an independent cost-data study, identified and collected some cost and performance data on passengers and checked baggage screening operations at 15 airports with private and federal screeners, including four category X and four category I airports and all five pilot program airports.⁵⁶ This study, which was completed in October 2004, looked in particular at cost drivers—factors that contribute to overall expenses.⁵⁷ Moreover, an April 2004 study⁵⁸ conducted for TSA by a consulting firm estimated how much TSA spent for screening operations at each of the five pilot program airports—including contract payments as well as costs borne by TSA—and compared the results with estimates of how much TSA would have spent had it actually conducted the screening operations at those airports.

TSA officials stated that the cost information identified in these two studies provided useful data to help determine the costs of screening at airports currently using private screeners, but said additional information is needed to assist in transitioning to fixed-price contracts for screening

⁵⁵TSA officials stated, however, that they are considering adding some fixed-price line items to the new cost-reimbursement contracts that will be awarded at the two larger airports.

⁵⁶TSA plans to gather cost data at up to 15 additional airports with federal screeners, but no deadline has been set. These airports could be, but are not necessarily, future SPP participants. Additionally, TSA's SPP transition plan indicates that TSA has developed a model they plan to use to estimate the federal costs of screening at specific airports for comparison purposes. The costs included in this model are the federal costs associated with those tasks that the private contractor would perform at a specific airport, such as screener labor costs, including overtime; and uniforms, consumables, recruiting, assessment, credentialing, training, and workers compensation. The data for this model will be obtained from TSA's Office of Budget and Performance for each specific airport that applies to participate in the SPP.

⁵⁷The cost drivers included in the study were redundant screenings, equipment availability, absenteeism, and training effectiveness. According to TSA, redundant screening occurs when a passenger undergoes secondary screening but does not possess a prohibited item. Reducing the number of redundant screenings will improve screening capacity and lower the cost of the passenger screening process. Equipment availability is the availability of screening machines. Screening cannot work effectively when a machine is down or not working efficiently. High absenteeism is a major cost driver; it requires TSA to employ a larger work force than would otherwise be required. Training effectiveness is characterized by mission focus, content, and minimum standards of the amount of time each employee must devote to it. Effective training results in high prohibited item detection rates, according to TSA.

⁵⁸*Private Screening Operations Performance Evaluation Report, Summary Report*; Transportation Security Administration; April 16, 2004.

services at larger airports. Specifically, TSA officials stated that additional cost information based on the actual costs of participating in the SPP is needed for the larger airports because the SPP contracts differ in two key ways from the pilot and extension contracts that TSA previously awarded. First, the SPP contracts will include specific performance measures and targets that the contractors must meet. Second, the contracts will allow for contractors to recommend and, if approved, implement innovations, and to select among options for assessing screener candidates and training screeners. The officials stated that it would therefore be difficult for prospective SPP contractors for the larger airports to accurately estimate the costs of providing screening services for a fixed-price contract for larger airports. As a result, TSA officials stated that they needed up to 2 additional years to determine estimated costs in order to potentially transition to fixed-price contracts, and therefore would continue using cost-reimbursement contracts with the largest airports (categories X and I) for that period.⁵⁹ By using competitive bidding procedures to award fixed-price contracts to qualified firms, as TSA contemplates, TSA will also help to bring marketplace pressures to bear on competitors' proposed costs and fees or prices and could enable TSA to maximize contractors' incentives to control costs and ensure that the contractor, rather than the government, will bear more of the cost risk associated with performance of private screening operations.

⁵⁹The contracts with the current four private screening contractors expire in May 2006, after which TSA intends to competitively award new cost-plus-award-fee contracts at the larger airports.

Performance Goals and Measures Developed by TSA to Assess SPP Contractors Have Not Been Approved by DHS

TSA Has Developed Performance Measures to Evaluate Security, Cost, Innovation, and Other Facets of Contractor Performance under the SPP, but DHS Has Not Approved These Measures

TSA has developed performance goals and draft measures and targets to assess the performance of private screening contractors under the SPP, but DHS has not yet approved them or established a time frame for doing so.⁶⁰ Until DHS approves these measures, TSA cannot finalize and implement them to assess performance. Performance goals are measurable objectives against which actual achievement can be compared. Performance measures are the yardsticks to assess an agency's success in meeting performance goals, while a performance target is a desired level of performance expressed as a tangible, measurable objective, against which actual achievement will be compared. Together, these performance metrics are used to assess an agency's progress toward achieving the results expected. We reported in April 2004 that without data to assess the performance of private screening operations, TSA and airport operators have limited information from which to plan for the possible transition of airports from a federal screening system to a private system. In our November 2004 report, we stated that TSA had begun drafting performance measures for this purpose. In the current contracts that TSA awarded to the four private screening contractors, TSA established an award fee process to motivate contractor performance.⁶¹ These contracts were modified in February and March 2005 to implement the award fee process.

TSA's draft quality assurance surveillance and award fee plan for the SPP, dated October 2005, identifies the performance measures TSA plans to use

⁶⁰TSA officials stated that these same performance goals and measures would be used to assess overall SPP program management as well.

⁶¹TSA awarded the contracts to the four private screening contractors in November 2004. The contractors were extended in November 2005 for an additional 6 months, in accordance with the terms of the contracts.

to assess the performance of private screening contractors against TSA's major goals for the program.⁶² According to TSA, the five goals for the SPP in the areas of security, customer service, costs, workforce management, and innovation, are:

- Ensure security.
- Provide world class customer service.
- Implement cost efficiencies.
- Respect the screening workforce.
- Create a partnership that leverages strengths of the private and public sector.

TSA's draft quality assurance surveillance and award fee plan for the SPP includes planned performance measures in 14 areas that are to be applied to all private screening companies that participate in the SPP. These performance measures, in addition to an innovation measure, are to be used to determine the award fee provided to contractors that participate in the SPP.⁶³ Table 4 describes the performance measures.

⁶²In March 2005, TSA officials said they had recently submitted SPP performance measures to DHS. TSA officials were not able to provide the date the performance measures were submitted to DHS.

⁶³As part of TSA's draft award fee plan for the private screening contractors that participate in the SPP, there is an award fee pool available for optional contractor-provided innovation submissions. Specifically, the contractor may submit innovative ideas that will improve security effectiveness, cost-efficiency, or customer satisfaction through the development of screener innovation submissions under the contract. The plan states that contractor submissions will be evaluated on a recurring basis by the airport FSD and submitted to the SPP program management office on a bi-annual basis.

Table 4: TSA Performance Measures for Evaluating SPP Contractors

Performance measure	Description	Performance target
1. Maintenance	Equipment, property, and materials are well kept and operational.	95% of inspected equipment, property, or materials are well kept, operational, and recorded
2. Reporting	Reports and notifications are accurate and submitted in a timely fashion.	95% of the reports submitted within 5 days of the due date
3. FSD evaluation	Contractor supports the FSD in ensuring an efficient, effective, and responsive operation.	Score of 50 or above out of a total possible 100 points
4. Demonstrate compliance with pre-transition activities	Contractor complies with pre-transition tasks, such as completing recruiting activities, providing preferential treatment for federal screeners, and completing assessments of screener candidates.	100% compliance
5. Demonstrate compliance with transition activities	Contractor complies with transition tasks, such as verifying that all equipment is fully functioning and ensuring that screeners completed all required on-the-job training.	100% compliance
6. Assessment	All persons designated to be deployed as screeners meet all statutory requirements for employment.	100% of screener personnel employed meet statutory assessment requirements
7. Credentialing	All persons meet TSA specified requirements for employment.	100% of contractor personnel meet credentialing requirements for employment
8. New hire training	New hires receive the required training before assuming screening responsibilities.	100% of new hires meet required training before assuming screening responsibilities
9. Recurrent training	Screeners must meet the minimum requirement of 3 hours of training per screener, per week, averaged over a calendar quarter.	100% of screeners meet recurrent training requirements
10. Remedial training	Screeners receive a minimum of 3 hours of remediation, provided by the contractor, for failing a national or local covert test (unannounced, undercover test).	100% of screeners who fail a covert test meet remedial training requirements
11. Passenger screening Threat Image Projection (TIP) detection	TIP systems project images of threat objects on an x-ray screen during actual operations and records whether screeners identify threat objects.	Target to be set by TSA
12. Passenger screening TIP false alarm rate	Measure of the rate of recognition of objects incorrectly detected during TIP testing.	Target to be set by TSA
13. Screener recertification pass rate (first attempt)	Measure of the percent of screeners passing, on their first attempt, TSA's annual screener recertification test, which assesses, among other things, screeners' ability to perform TSA's passenger and checked baggage screening standard operating procedures.	Target to be set by TSA
14. Customer satisfaction	Measure of performance on TSA's customer satisfaction surveys, which measure customer service and public confidence associated with TSA's aviation screening functions.	Target to be set by TSA

Source: TSA.

^aTIP projects images of threat objects on an x-ray screen during actual operations and records whether screeners identify threat objects.

TSA established draft performance targets for 10 of the 14 measures, which all SPP contractors will be required to meet. TSA officials said individual contractors that are accepted as SPP participants in the future will be required to meet TSA's performance targets for the remaining four measures—passenger screening threat image projection (TIP) detection rate; passenger screening TIP false alarm rate; screener recertification pass rates; and customer satisfaction. The performance indicators for the four measures for which targets have not yet been set by TSA are to be specific to each airport participating in the SPP. TSA stated that it has established baseline data for these four performance measures describing how federal screeners or private screening contractors have actually performed at individual airports, over time, as well as an overall average of performance. Using the baseline data as a starting point, performance targets would then be set for each airport. For example, if a baseline shows that historically, all airports met the performance measure for screener recertification pass rates 70 percent of the time, TSA would set the target measure at or above 70 percent. TSA officials stated that they are currently working to identify incentives to encourage better results at airports that have historically not met TSA's performance standards for passenger and checked baggage screening. TSA is considering providing financial incentives for a limited time in an effort to quickly move its airports to meet TSA's baseline level of performance.

TSA officials stated that DHS must approve the draft performance goals, measures, and targets before they can be finalized, but as of January 2006, DHS had not yet done so, and had not set a deadline for doing so. We asked TSA and DHS officials which office within DHS was responsible for approving these performance metrics, but the officials were not able to provide us with the information. Until the draft performance measures are finalized by DHS, TSA will not be able to implement its performance measures for the SPP. According to our standards for internal controls, agencies must have systems in place for measuring, reporting, and monitoring program performance.⁶⁴ In addition, as we have reported in our prior work on the importance of using the Government Performance Results Act (GPRA) to assist with oversight and decision making, credible performance information is essential for the Congress and the executive branch to accurately assess agencies' progress toward achieving their

⁶⁴GAO/AIMD-00-21.3.1.

goals.⁶⁵ Further, the draft measures and targets TSA developed for the SPP will also be used by DHS to determine whether to award private screening contractors certification status under the SAFETY Act. Until the SPP measures and targets are finalized, DHS officials stated that they cannot determine whether contractors will perform as intended—criteria that must be satisfied before awarding certification status.

Conclusions

Since initiating the SPP in November 2004, DHS and TSA have taken steps to develop a legal, contractual, and programmatic framework that enables the private sector to provide passenger and checked baggage screening services, with federal oversight in place to help ensure that security and screener performance is consistent and comparable at airports, whether federal or private screeners are used. As of January 2006, only 7 of over 400 airports that were eligible to apply to participate in the SPP had submitted an application. While we did not attempt to identify the reasons for the small number of applicants to the SPP, a contributing factor may be airports' concerns about liability. In November 2004, we reported that half of the airport operators we interviewed (13 of 26) were concerned about airport liability in the event that a private screener failed to detect a threat object that led to a terrorist incident. Aviation associations that represent hundreds of airports have also identified liability as a major concern among airports. Although Congress' recent effort to shield airports from liability in the fiscal year 2006 DHS appropriations act may address this concern, there have been no additional applicants since the act was passed. Furthermore, by extending a level of federal liability protection through the SAFETY Act to current private screening contractors, DHS has laid the groundwork for future contractors to potentially receive comparable protection. Ongoing concerns among prospective participants in the SPP regarding the availability of the most extensive level of protection under the SAFETY Act—certification—may be alleviated once TSA finalizes a standard of performance for private screening contractors that DHS can utilize to determine if contractors have demonstrated that they will perform as intended.

⁶⁵GAO, *Managing for Results: Using GPRA to Assist Oversight and Decisionmaking*, GAO-01-872T (Washington, D.C.: June 2001).

As TSA moves forward with implementing the SPP, several opportunities exist for strengthening the management and oversight of the program. First, SPP applicants need clear information on what their roles and responsibilities are to be at airports where a privatized screener workforce operates with federal oversight. The absence of such guidance may affect the ability of responsible officials to effectively and efficiently manage screening checkpoints and the screener program in general. Additionally, without clear and specific information on roles and responsibilities of private screening contractors under the SPP, it may be difficult for prospective SPP contractors to develop an informed estimate of their personnel needs and associated costs under the SPP—information that is needed for the competitive bidding process.

Second, in addition to concerns about liability protection, airports in the past expressed concerns about the degree of management control they would have over various aspects of screening services. Since then, TSA has provided additional operational flexibilities to private screening contractors, such as granting contractors and FSDs more input and flexibility in the screener hiring process. Contractors have reported efficiencies they have achieved as a result of these flexibilities, including using fewer screeners than authorized by TSA. Although steps have been taken to address concerns regarding airports' liability and the need for contractors to have additional management control over various aspects of screening services, only two additional airports, in addition to the five pilot program airports, applied to participate in the SPP. We believe that identifying the underlying reasons for the small number of applicants to the SPP may be helpful to TSA and others in assessing what, if any, changes may be needed to the program.

Third, while TSA is not required to adhere to the Federal Acquisition Regulation with respect to contracting practices, it has acknowledged the advantages of fixed-price contracts in situations where costs are reasonably understood. To this end, TSA has begun the contract award process for the four smaller airports using a fixed-price type of contract. TSA has decided to continue to use cost-plus-award-fee contracts rather than fixed-price contracts with private screening contractors providing services at the larger airports for at least an additional 1 to 2 years so that it can continue to collect information on the costs of screening operations at these airports. Using fixed-price contracts, as TSA plans to do, would result in the contractors assuming substantial cost responsibility from the government related to screener operations and help ensure that private screening contractors deliver the most cost-effective services, while ensuring that TSA and ATSA requirements related to maintaining airport security are met. The use of competitively awarded fixed-price contracts

should provide a built-in incentive for contractors to identify cost-saving opportunities and innovations, which in turn may help reduce costs of screening contracts at the larger airports using private screeners. TSA could make these cost-savings opportunities available to airports with federal screeners, as appropriate, thereby transferring the efficiencies identified by the private sector to the federal government.

Finally, until DHS approves the performance goals, measures, and targets for the SPP, it will not have a mechanism in place beyond the ongoing contracts for assessing the performance of private screening contractors. Without these performance goals, measures, and targets it may be difficult for TSA to identify areas of screener operations that contractors may be able to improve.

Recommendations for Executive Action

To strengthen its administration of the SPP and to help address stakeholder concerns, we recommend that the Secretary of DHS direct the Assistant Secretary, TSA, to take the following actions:

- Formally document and communicate with all FSDs, current private screening contractors, and entities that apply to the SPP, the roles and responsibilities of all stakeholders that participate in the SPP, pertaining to the management and deployment of screening services.

To help ensure the completion of a performance management framework for the SPP so that TSA can assess SPP contractors and to promote accountability of SPP contractors for achieving desired program outcomes, we recommend that the Secretary of the Department of Homeland Security take the following action:

- Establish a time frame for completing its review of the performance goals, measures, and targets for the SPP so that TSA may apply them at the earliest possible opportunity.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS and TSA for review and comment. On March 10, 2006, we received written comments on the draft report, which are reproduced in full in appendix II. DHS generally concurred with the findings and recommendations in the report, and stated that efforts to implement our recommendations will help them develop a more effective, efficient, and economical administration of TSA's SPP. With regard to our recommendation that TSA formally document and communicate with all FSDs, current private screening contractors, and entities that apply to the SPP, the roles and responsibilities of all stakeholders that participate in the SPP pertaining to the management and deployment of screening services, DHS identified steps that TSA is taking to this end. Specifically, DHS stated that TSA updated its SPP transition plan, which, among other things, further clarifies the relationships among the FSD, FSD staff, and private screening contractors, and other stakeholders as they relate to SPP program management. DHS also stated that TSA has assembled a transition team to work closely with SPP stakeholders to foster awareness and ensure communication regarding the roles and responsibilities of all involved parties working under the SPP. TSA's successful implementation of these ongoing efforts should address the concerns we raised regarding documenting and communicating roles and responsibilities under the SPP.

In addition, regarding our recommendation that DHS establish a time frame for completing its review of the performance goals, measures and targets for the SPP so that TSA may apply them at the earliest possible opportunity, DHS stated that TSA had established performance metrics and had provided it to DHS for its review. However, DHS did not specify a time frame for completing its review. We continue to believe that it is important for DHS to establish a time frame for completing its review of the performance goals, measures, and targets for the SPP. Without these performance metrics, TSA will not have a mechanism in place beyond the ongoing contracts for assessing the performance of private screening contractors. Further, until performance metrics are finalized, it remains unlikely that DHS will award such contractors certification under the SAFETY Act.

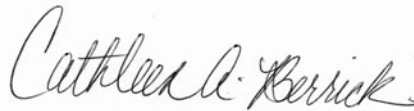
DHS also provided updated information on the status of the SPP, which we incorporated where appropriate.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of this report. At that time, we will send copies of this report to the Secretary of the Department of Homeland Security and the Administrator of the Transportation Security Administration and interested

congressional committees. We will also make copies available to others upon request. In addition, the report will be made available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3404 or berrickc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made major contributions to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in cursive script that reads "Cathleen A. Berrick". The signature is written in black ink on a light-colored background.

Cathleen A. Berrick
Director, Homeland Security and
Justice Issues

Appendix I: Scope and Methodology

To assess the Transportation Security Administration's (TSA) efforts to implement the Screening Partnership Program (SPP), we analyzed (1) the status of federal efforts to determine whether and to what extent liability protection will be provided to private screening contractors and airports, and actions taken on other stakeholder concerns related to participation in the SPP; (2) how TSA has determined it will achieve cost-savings goals for screener operations through the SPP, specifically through choice of contract used and contract terms; and (3) TSA's progress in developing and implementing performance goals, measures, and targets to assess the performance of the private screening contractors who will be participating in the SPP.

To assess the status of federal efforts to determine whether and to what extent liability protection should be provided to private screening contractors and airports, and actions taken on other stakeholder concerns related to participation in the SPP, we reviewed Department of Homeland Security (DHS) and TSA documentation on the Support of Anti-terrorism by Fostering Effective Technologies Act (SAFETY Act) and the SPP. Specifically, we reviewed DHS guidance posted on its Web site related to the SAFETY Act and other DHS documentation on this act. We also reviewed TSA's written responses to stakeholders frequently asked questions about the SPP, including information on liability protection; TSA's transition plan for the SPP, which documents internal guidance on transitioning an airport from a federal screener workforce to a private screener workforce; TSA's communications plan for the SPP; airport applications to the SPP; and other guidance-related materials TSA developed for airports and private-screening contractors. Additionally, we reviewed relevant legislation, such as Aviation and Transportation Security Act and the SAFETY Act, our prior reports that addressed issues related to the SPP and the use of private sector screeners, and testimony at congressional hearing on the SPP. Further, we interviewed DHS officials regarding the SAFETY Act and TSA headquarters officials responsible for implementing the SPP to determine efforts underway to address stakeholder concerns regarding the SPP. We also conducted semi-structured telephone interviews with the four private screening contractors currently providing passenger and checked baggage screening services, the airport directors at the seven airports that applied to participate in the SPP (the five pilot program airports and two airports that applied to participate in the SPP, namely, Elko Regional Airport in Elko, Nevada and Sioux Falls Regional Airport in Sioux Falls, South Dakota), and the federal security directors (FSD) at each of these airports to obtain their views on TSA's efforts to implement the SPP and to address stakeholders concerns. Finally, we interviewed officials from two aviation associations—the American Association of Airport Executives and the

Airports Council International, and a major liability insurance provider—to obtain information on the type of insurance available to private screening contractors.

To assess the status of TSA's efforts to achieve cost-savings in screener operations through the SPP, specifically with respect to the choice of contract used, and contract terms, we reviewed TSA's contracts for screening services for the four contractors currently providing passenger and checked baggage screening services. We did not review the contracts that TSA awarded in early 2006 to two contractors to provide private screening services in the SPP. Additionally, we reviewed TSA's acquisition policies and procedures, the Federal Acquisition Regulation, and the Federal Aviation Administration's acquisition management system, to identify standards and guidance for contracting practices of TSA and the federal government. Further, we reviewed TSA's transition plan and other SPP guidance to identify TSA's current and planned approaches for identifying screening program costs. We also reviewed TSA's activity-based costing study that assessed the cost of passenger and checked baggage screening operations at 15 airports, including the 5 that participated in the 2-year pilot program using private screeners. We determined that the results of the activity-based costing study were sufficiently reliable for the purpose of our review. Finally, to gather perspectives on opportunities for cost-savings under the SPP, we interviewed TSA SPP and contracting officials, the four contractors currently providing screening services, the seven airport directors who applied to the SPP and the FSDs at these airports, and representatives of the American Association of Airport Executives and the Airports Council International. We did not review TSA's actual determination of the amount of contractor award fee. Nor did we review the conduct of TSA's performance evaluation boards or fee determining official in evaluating contractor performance against award fee criteria (including cost-savings) and determining the amount of the contractors' award fee. However, we did verify that TSA had evaluated contractor performance (including cost-savings) in making award fee determinations.

To assess TSA's progress in developing and implementing performance goals, measures, and targets to assess the performance of the private screening contractors who will be participating in the SPP, we reviewed the terms of TSA's award fee process specified in the current contracts and TSA's draft quality assurance surveillance and award fee plan. We also reviewed TSA's June 2004 guidance on the SPP, other guidance-related material TSA developed for private screening contractors and airports regarding the SPP, TSA's contracts for the private screening contractors currently providing screening services, TSA testimony at congressional

hearings, and our prior reports that addressed issues related to the SPP and the use of private-sector screeners. A listing of our prior reports is contained in appendix IV. Additionally, we interviewed TSA headquarters officials responsible for the SPP.

We performed our work from March 2005 through March 2006 in accordance with generally accepted government auditing standards.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

March 10, 2006

Ms. Cathleen A. Berrick
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Berrick:

Thank you for the opportunity to comment on the draft report GAO-06-166, "Aviation Security: Progress Made to Set Up Program Using Private Sector Airport Screeners, but More Work Remains." The Department of Homeland Security (DHS) concurs with the recommendations and appreciates the time and resources that the GAO has devoted to this important review. The findings and recommendations in this report will aid in the development of a more effective, efficient, and economical administration of TSA's Screening Partnership Program (SPP).

Since GAO's last review in November 2004, the SPP has made significant advances in program goals and objectives. On December 16, 2005, TSA awarded a performance-based task order to Covenant Aviation Security, LLC at the Sioux Falls, South Dakota airport, to conduct private security screening operations. Covenant Aviation Security received its certificate of full operating capability on February 12, 2006. On February 2, 2006, TSA also awarded the Jackson Hole Airport Board a performance-based task order to conduct private security screening operations, after a successful competition for the contract. On March 1, 2006, Jackson Hole Airport Board received its new certificate of full operating capability. The move from federal to private security screening by Sioux Falls is particularly noteworthy as it represents the first airport to make this transition outside of the five airports participating in the original pilot program mandated by title 49 of the United States Code, section 44919. The Jackson Hole airport is one of the five original SPP airports. TSA is now in the process of awarding task orders to the remaining four SPP airports.

Regarding the use of private contractors, TSA has determined that the most appropriate contract types are either: (1) cost-plus-award-fee (CPAF) and cost-plus-fixed-fee (CPFF), or (2) fixed-price-award-fee (FPAF) and CPFF. The specific combination used will be determined on an airport-by-airport basis, considering such factors as size, airport category, and transition requirements.

www.dhs.gov

The performance-based task orders for both Sioux Falls and Jackson Hole utilize FPAF/CPFF contracts. In these instances, the FPAF vehicle was determined to be in the best interests of the government to support the Full Operation Capability Screening Services portion of the scope of work, and the CPFF vehicle for the remaining line items, including pre-transition/transition phases, assessments, and other direct costs. The FPAF vehicle also was used because the requirements are sufficiently defined to allow the contractor to make a realistic determination of cost and risk. This will encourage high contract performance in the areas of training, on-boarding, and screening services. There will also be a semi-annual award fee which will provide a continual incentive for improvement and excellence by the contractor.

GAO Recommendation 1: To strengthen its administration of the Screening Partnership Program (SPP) and to help address stakeholder concerns, we recommend that the Secretary of DHS direct the Assistant Secretary, TSA, to take the following actions:

Formally document and communicate with all Federal Security Directors (FSDs), current private screening contractors, and entities that apply to the SPP, the roles and responsibilities of all stakeholders that participate in the SPP, pertaining to the management and deployment of screening services.

Concur. TSA will continue to fully implement this recommendation, incorporating the stakeholder roles and responsibilities as part of best business practices. In the fall of 2004, an integrated working team created the “*Screening Partnership Program Master Transition Toolkit*.” The toolkit provides guidance for transitioning an airport’s checkpoint and baggage screening functions from federal to private operations, maintaining security standards during the transition, and minimizing adverse customer impact. The toolkit, currently in its third version (latest issue August 2005), was updated most recently to incorporate feedback and lessons learned from stakeholders. The toolkit further clarifies the relationships among the FSD, FSD staff, private screening contractors, and other stakeholders as they relate to SPP program management, and provides targeted guidance to the FSDs along these lines.

In addition, TSA has assembled a transition team to work closely with stakeholders to foster awareness and ensure communication regarding the roles and responsibilities of all involved parties working under the SPP. Finally, as part of ongoing outreach efforts, the SPP staff provides stakeholder presentations, and the FSDs meet with stakeholders on a regular basis.

GAO Recommendation 2: To help ensure the completion of a performance management framework for the SPP, so that TSA can assess SPP contractors, and to promote accountability of SPP contractors for achieving desired program outcomes, we recommend that the Secretary of DHS take the following action:

**Appendix II: Comments from the Department
of Homeland Security**

Establish a time frame for completing its review of the performance goals, measures, and targets for the SPP so that TSA may apply them at the earliest possible opportunity.

Concur. TSA has established a set of 14 performance requirements and standards and provided them to the Department for review. TSA will comply with all Departmental guidance regarding performance activities.

The Department and TSA's goal is to transition federal security screening operations to private contractors as expeditiously as possible, while maintaining security standards and minimizing any adverse impacts to the traveling public.

Sincerely,



Steven J. Pecinovsky
Director, Departmental GAO/OIG Liaison Office

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Cathleen A. Berrick (202) 512-3404

Acknowledgments

In addition to the contact named above, David Alexander, C. Jenna Battcher, Chuck Bausell, Amy Bernstein, David Hooper, Lara Laufer, Thomas Lombardi, Hugh C. Pacquette, Lisa Shibata, Maria Strudwick, and Adam Vodraska made key contributions to this report.

Related GAO Reports

Aviation Security: Significant Management Challenges May Adversely Affect Implementation of the Transportation Security Administration's Secure Flight Program. [GAO-06-374T](#). Washington, D.C.: February 9, 2006.

Aviation Security: Federal Air Marshal Service Could Benefit from Improved Planning and Controls. [GAO-06-203](#). Washington, D.C.: November 28, 2005.

Aviation Security: Federal Action Needed to Strengthen Domestic Air Cargo Security. [GAO-06-76](#). Washington, D.C.: October 17, 2005.

Transportation Security Administration: More Clarity on the Authority of Federal Security Directors Is Needed. [GAO-05-935](#). Washington, D.C.: September 23, 2005.

Aviation Security: Flight and Cabin Crew Member Security Training Strengthened, but Better Planning and Internal Controls Needed. [GAO-05-781](#). Washington, D.C.: September 6, 2005.

Aviation Security: Transportation Security Administration Did Not Fully Disclose Uses of Personal Information During Secure Flight Program Testing in Initial Privacy Notes, but Has Recently Taken Steps to More Fully Inform the Public. [GAO-05-864R](#). Washington, D.C.: July 22, 2005.

Aviation Security: Better Planning Needed to Optimize Deployment of Checked Baggage Screening Systems. [GAO-05-896T](#). Washington, D.C.: July 13, 2005.

Aviation Security: TSA Screener Training and Performance Measurement Strengthened, but More Work Remains. [GAO-05-457](#). Washington, D.C.: May 2, 2005.

Aviation Security: Secure Flight Development and Testing Under Way, but Risks Should Be Managed as System Is Further Developed. [GAO-05-356](#). Washington, D.C.: March 28, 2005.

Aviation Security: Systematic Planning Needed to Optimize the Deployment of Checked Baggage Screening Systems. [GAO-05-365](#). Washington, D.C.: March 15, 2005.

Aviation Security: Measures for Testing the Impact of Using Commercial Data for the Secure Flight Program. [GAO-05-324](#). Washington, D.C.: February 23, 2005.

Transportation Security: Systematic Planning Needed to Optimize Resources. [GAO-05-357T](#). Washington, D.C.: February 15, 2005.

Aviation Security: Preliminary Observations on TSA's Progress to Allow Airports to Use Private Passenger and Baggage Screening Services. [GAO-05-126](#). Washington, D.C.: November 19, 2004.

General Aviation Security: Increased Federal Oversight Is Needed, but Continued Partnership with the Private Sector Is Critical to Long-Term Success. [GAO-05-144](#). Washington, D.C.: November 10, 2004.

Aviation Security: Further Steps Needed to Strengthen the Security of Commercial Airport Perimeters and Access Controls. [GAO-04-728](#). Washington, D.C.: June 4, 2004.

Transportation Security Administration: High-Level Attention Needed to Strengthen Acquisition Function. [GAO-04-544](#). Washington, D.C.: May 28, 2004.

Aviation Security: Challenges in Using Biometric Technologies. [GAO-04-785T](#). Washington, D.C.: May 19, 2004.

Nonproliferation: Further Improvements Needed in U.S. Efforts to Counter Threats from Man-Portable Air Defense Systems. [GAO-04-519](#). Washington, D.C.: May 13, 2004.

Aviation Security: Private Screening Contractors Have Little Flexibility to Implement Innovative Approaches. [GAO-04-505T](#). Washington, D.C.: April 22, 2004.

Aviation Security: Improvement Still Needed in Federal Aviation Security Efforts. [GAO-04-592T](#). Washington, D.C.: March 30, 2004.

Aviation Security: Challenges Delay Implementation of Computer-Assisted Passenger Prescreening System. [GAO-04-504T](#). Washington, D.C.: March 17, 2004.

Aviation Security: Factors Could Limit the Effectiveness of the Transportation Security Administration's Efforts to Secure Aerial Advertising Operations. [GAO-04-499R](#). Washington, D.C.: March 5, 2004.

Aviation Security: Computer-Assisted Passenger Prescreening System Faces Significant Implementation Challenges. [GAO-04-385](#). Washington, D.C.: February 13, 2004.

Aviation Security: Challenges Exist in Stabilizing and Enhancing Passenger and Baggage Screening Operations. [GAO-04-440T](#). Washington, D.C.: February 12, 2004.

The Department of Homeland Security Needs to Fully Adopt a Knowledge-based Approach to Its Counter-MANPADS Development Program. [GAO-04-341R](#). Washington, D.C.: January 30, 2004.

Aviation Security: Efforts to Measure Effectiveness and Strengthen Security Programs. [GAO-04-285T](#). Washington, D.C.: November 20, 2003.

Aviation Security: Federal Air Marshal Service Is Addressing Challenges of Its Expanded Mission and Workforce, but Additional Actions Needed. [GAO-04-242](#). Washington, D.C.: November 19, 2003.

Aviation Security: Efforts to Measure Effectiveness and Address Challenges. [GAO-04-232T](#). Washington, D.C.: November 5, 2003.

Airport Passenger Screening: Preliminary Observations on Progress Made and Challenges Remaining. [GAO-03-1173](#). Washington, D.C.: September 24, 2003.

Aviation Security: Progress Since September 11, 2001, and the Challenges Ahead. [GAO-03-1150T](#). Washington, D.C.: September 9, 2003.

Transportation Security: Federal Action Needed to Enhance Security Efforts. [GAO-03-1154T](#). Washington, D.C.: September 9, 2003.

Transportation Security: Federal Action Needed to Help Address Security Challenges. [GAO-03-843](#). Washington, D.C.: June 30, 2003.

Federal Aviation Administration: Reauthorization Provides Opportunities to Address Key Agency Challenges. [GAO-03-653T](#). Washington, D.C.: April 10, 2003.

Transportation Security: Post-September 11th Initiatives and Long-Term Challenges. [GAO-03-616T](#). Washington, D.C.: April 1, 2003.

Airport Finance: Past Funding Levels May Not Be Sufficient to Cover Airports Planned Capital Development. [GAO-03-497T](#). Washington, D.C.: February 25, 2003.

Transportation Security Administration: Action and Plan to Build a Results-Oriented Culture. [GAO-03-190](#). Washington, D.C.: January 17, 2003.

Aviation Safety: Undeclared Air Shipments of Dangerous Goods and DOT's Enforcement Approach. [GAO-03-22](#). Washington, D.C.: January 10, 2003.

Aviation Security: Vulnerabilities and Potential Improvements for the Air Cargo System. [GAO-03-344](#). Washington, D.C.: December 20, 2002.

Aviation Security: Vulnerability of Commercial Aviation to Attacks by Terrorists Using Dangerous Goods. [GAO-03-30C](#). Washington, D.C.: December 3, 2002.

Aviation Security: Registered Traveler Program Policy and Implementation Issues. [GAO-03-253](#). Washington, D.C.: November 22, 2002.

Airport Finance: Using Airport Grant Funds for Security Projects Has Affected Some Development Projects. [GAO-03-27](#). Washington, D.C.: October 15, 2002.

Commercial Aviation: Financial Condition and Industry Responses Affect Competition. [GAO-03-171T](#). Washington, D.C.: October 2, 2002.

Aviation Security: Transportation Security Administration Faces Immediate and Long-Term Challenges. [GAO-02-971T](#). Washington, D.C.: July 25, 2002.

Aviation Security: Information Concerning the Arming of Commercial Pilots. [GAO-02-822R](#). Washington, D.C.: June 28, 2002.

Aviation Security: Vulnerabilities in, and Alternatives for, Preboard Screening Security Operations. [GAO-01-1171T](#). Washington, D.C.: September 25, 2001.

Aviation Security: Weaknesses in Airport Security and Options for Assigning Screening Responsibilities. [GAO-01-1165T](#). Washington, D.C.: September 21, 2001.

Homeland Security: A Framework for Addressing the Nation's Efforts. [GAO-01-1158T](#). Washington, D.C.: September 21, 2001.

Related GAO Reports

Aviation Security: Terrorist Acts Demonstrate Urgent Need to Improve Security at the Nation's Airports. [GAO-01-1162T](#). Washington, D.C.: September 20, 2001.

Aviation Security: Terrorist Acts Illustrate Severe Weaknesses in Aviation Security. [GAO-01-1166T](#). Washington, D.C.: September 20, 2001.

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548