Department of Defense

INSTRUCTION

NUMBER 3020.50
July 22, 2009

USD(AT&L)

SUBJECT: Private Security Contractors (PSCs) Operating in Contingency Operations

References: See Enclosure 1

1. PURPOSE. Under the authority of DoD Directive 5134.01 and DoD Directive 3020.49 (References (a) and (b)), and pursuant to section 862 of the 2008 National Defense Authorization Act (NDAA) (Reference (c)) as amended by section 853 of the 2009 NDAA (Reference (d)), this Instruction establishes policy, assigns responsibilities, and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract during contingency operations. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel.

2. APPLICABILITY. This Instruction:

a. Applies to:

(1) OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to as the "DoD Components").

(2) Department of State and other U.S. Federal agencies insofar as it implements the requirements of Reference (c). Specifically, in areas of operations which require enhanced coordination of PSC and PSC personnel working for U.S. Government (U.S.G.) agencies, the Secretary of Defense may designate such areas as areas of combat operations for the limited purposes of this Instruction. In such an instance, the standards established in accordance with this Instruction would, in coordination with the Secretary of State, expand from covering only DoD PSCs and PSC personnel to cover all U.S.G.-funded PSCs and PSC personnel operating in the designated area.

b. Prescribes policies applicable to all:

(1) DoD PSCs and PSC personnel performing private security functions during contingency operations outside the United States.

(2) U.S.G.-funded PSCs and PSC personnel performing private security functions in an area of combat operations, as designated by the Secretary of Defense.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. Consistent with the requirements of paragraph (a)(2) of Reference (c), the selection, training, equipping, and conduct of PSC personnel including the establishment of appropriate processes shall be coordinated between the Department of Defense and the Department of State.

b. Geographic Combatant Commanders will provide tailored PSC guidance and procedures for the operational environment in their area of responsibility (AOR) in accordance with this Instruction, the Federal Acquisition Regulation (FAR) (Reference (e)) and the Defense Federal Acquisition Regulation Supplement (DFARS) (Reference (f)).

c. In a designated area of combat operations, the relevant Chief of Mission will be responsible for developing and issuing implementing instructions for non-DoD PSCs and their personnel consistent with the standards set forth by the geographic Combatant Commander in accordance with paragraph 4.b. of the front matter of this Instruction. The Chief of Mission has the option to instruct non-DoD PSCs and their personnel to follow the guidance and procedures developed by the Geographic Combatant Commander and/or Subordinate Commander.

d. Contracting officers for private security contracts supporting intelligence activities shall follow this Instruction to the maximum extent practicable, consistent with applicable laws, Executive orders, Presidential Directives, regulations, and DoD policy.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Web Site at http://www.dtic.mil/whs/directives.

8. EFFECTIVE DATE. This Instruction is effective immediately.

Ashton B. Carter
Under Secretary of Defense for
Acquisition, Technology and Logistics

Enclosure
1. References
2. Responsibilities
3. Procedures
Glossary

ENCLOSURE 1

REFERENCES

(a) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L))," December 9, 2005
(b) DoD Directive 3020.49, "Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution," March 24, 2009
(c) Section 862 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008," January 28, 2008
(d) Section 853 of Public Law 110-417, "Duncan Hunter National Defense Authorization Act for Fiscal Year 2009," October 14, 2008
(e) Federal Acquisition Regulation, current edition
(f) Defense Federal Acquisition Regulation Supplement, current edition
(g) DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," October 3, 2005
(h) Chairman of the Joint Chiefs of Staff Instruction 3121.01B, "Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces," June 13, 2005
(i) DoD Directive 2311.01E, "DoD Law of War Program," May 9, 2006
(j) DoD 5200.08-R, "Physical Security Program," April 9, 2007
(k) DoD Instruction 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," November 1, 2001
(l) DoD Instruction 1100.22, "Guidance for Determining Workforce Mix," September 7, 2006
(m) Section 3261 of title 18, United States Code
(n) Memorandum of Agreement Between the Department of Defense and Department of State on U.S.G. Private Security Contractors, December 5, 2007
(o) Section 101(a)(13) of title 10, United States Code

ENCLOSURE 2

RESPONSIBILITIES

1. ASSISTANT DEPUTY UNDER SECRETARY OF DEFENSE FOR PROGRAM SUPPORT (ADUSD(PS)). The ADUSD(PS), under the authority, direction, and control of the Deputy Under Secretary of Defense for Logistics and Materiel Readiness, shall monitor the registering, processing, and accounting of PSC personnel in an area of contingency operations.

2. DIRECTOR, DEFENSE PROCUREMENT AND ACQUISITION POLICY. The Director, Defense Procurement and Acquisition Policy, under the authority, direction, and control of the Deputy Under Secretary of Defense for Acquisition and Technology (DUSD(AT)), shall ensure that Reference (f) and (in consultation with the other members of the FAR Council) the FAR provide appropriate guidance and contract clauses consistent with this Instruction and paragraph (b) of Reference (c).

3. DIRECTOR, DEFENSE BUSINESS TRANSFORMATION AGENCY (BTA). The Director, BTA, under the authority, direction, and control of the Deputy Chief Management Officer of the Department of Defense, through the DUSD(AT), shall ensure that information systems effectively support the accountability and visibility of contracts, contractors, and specified equipment associated with private security functions.

4. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. The Chairman of the Joint Chiefs of Staff shall ensure that joint doctrine is consistent with the principles established by Reference (b), DoD Instruction 3020.41 (Reference (g)), and this Instruction.

5. GEOGRAPHIC COMBATANT COMMANDERS. The geographic Combatant Commanders in whose AOR a contingency operation is occurring, and within which PSCs and PSC personnel perform under covered contracts, shall:

a. Provide guidance and procedures, as necessary and consistent with the principles established by References (b) and (g), and this Instruction, for the selection, training, accountability, and equipping of such PSC personnel and the conduct of PSCs and PSC personnel within their AOR. Individual training and qualification standards, set by the geographic Combatant Commander, shall meet, at a minimum, one of the Military Departments' established standards. Within a geographic Combatant Command, Subordinate Commanders shall be responsible for developing and issuing implementing procedures as warranted by the situation, operation, and environment, in consultation with the relevant Chief of Mission in designated areas of combat operations.

b. Through the Contracting Officer, ensure that PSC personnel acknowledge, through their PSC, their understanding and obligation to comply with the terms and conditions of their covered contracts.

c. Issue written authorization to the PSC identifying individual PSC personnel who are authorized to be armed. Rules for the use of force, developed in accordance with Chairman of the Joint Chief of Staff Instruction 3121.01B (Reference (h)), shall be included with the written authorization.

d. Ensure that the procedures, orders, directives, and instructions prescribed in section 1 of Enclosure 3 of this Instruction are available through a single location (to include an Internet Web site, consistent with security considerations and requirements).

6. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Ensure that all private security-related requirement documents are in compliance with the procedures listed in Enclosure 3 of this Instruction and the guidance and procedures issued by the geographic Combatant Commander.

b. Ensure private security-related contracts contain the appropriate clauses in accordance with the applicable FAR clause and include additional mission-specific requirements as appropriate.

ENCLOSURE 3

PROCEDURES

1. Standing Combatant Command Guidance and Procedures. Each geographic Combatant Commander shall develop and publish guidance and procedures for PSCs and PSC personnel operating during a contingency operation within their AOR, consistent with applicable law; this Instruction; applicable Military Department publications; and other applicable DoD issuances including, but not limited to, References (b), (f), and (h); DoD Directive 2311.01E (Reference (i)); DoD 5200.08-R (Reference (j)); and DoD Instruction 5210.56 (Reference (k)). The guidance and procedures shall:

a. Contain, at a minimum, procedures to implement the following processes, and identify the organization responsible for managing these processes:

(1) Registering, processing, accounting for, and keeping appropriate records of PSCs and PSC personnel in accordance with Reference (g).

(2) PSC verification that PSC personnel meet all the legal, training, and qualification requirements for authorization to carry a weapon in accordance with the terms and conditions of their contract and host country law. Weapons accountability procedures will be established and approved prior to the weapons authorization.

(3) Arming of PSC personnel. Requests for permission to arm PSC personnel shall be reviewed on a case-by-case basis by the appropriate Staff Judge Advocate to the geographic Combatant Commander (or a designee) to ensure there is a legal basis for approval. The request will then be approved or denied by the geographic Combatant Commander or a specifically identified designee, no lower than the flag officer level. Requests to arm non-DoD PSC personnel shall be reviewed and approved in accordance with paragraph 4.c. of the front matter of this Instruction. Requests for permission to arm PSC personnel shall include:

(a) A description of where PSC personnel will operate, the anticipated threat, and what property or personnel such personnel are intended to protect, if any.

(b) A description of how the movement of PSC personnel will be coordinated through areas of increased risk or planned or ongoing military operations, including how PSC personnel will be rapidly identified by members of the U.S. Armed Forces.

(c) A communication plan, to include a description of how relevant threat information will be shared between PSC personnel and U.S. military forces and how appropriate assistance will be provided to PSC personnel who become engaged in hostile situations. DoD contractors performing private security functions are only to be used in accordance with DoD Instruction 1100.22 (Reference (l)), that is, they are limited to a defensive response to hostile acts or demonstrated hostile intent.

(d) Documentation of individual training covering weapons familiarization and qualification, rules for the use of force, limits on the use of force including whether defense of others is consistent with host nation Status of Forces Agreements or local law, the distinction between the rules of engagement applicable to military forces and the prescribed rules for the use of force that control the use of weapons by civilians, and the Law of Armed Conflict.

(e) Written acknowledgment by the PSC and its individual PSC personnel, after investigation of background of PSC personnel by the contractor, verifying such personnel are not prohibited under U.S. law to possess firearms.

(f) Written acknowledgment by the PSC and individual PSC personnel that:

1. Potential civil and criminal liability exists under U.S. and local law or host nation Status of Forces Agreements for the use of weapons. Such written acknowledgement should not be construed to limit civil and criminal liability to conduct arising from "the use of weapons." PSC personnel could be held criminally liable for any conduct that would constitute a federal offense (see the Military Extraterritorial Jurisdiction Act (Reference (m)).)

2. Proof of authorization to be armed must be carried by each PSC personnel.

3. PSC personnel may possess only U.S.G.-issued and/or -approved weapons and ammunition for which they have been qualified according to subparagraph 1.a.(3)(d) of this enclosure.

4. PSC personnel were briefed and understand limitations on the use of force.

5. Authorization to possess weapons and ammunition may be revoked for non-compliance with established rules for the use of force.

6. PSC personnel are prohibited from consuming alcoholic beverages or being under the influence of alcohol while armed.

(4) Registration and identification in the Synchronized Predeployment and Operational Tracker (or its successor database) of armored vehicles, helicopters, and other vehicles operated by PSC personnel.

(5) Reporting alleged criminal activity or other incidents involving PSCs or PSC personnel shall be in accordance with Reference (i). All incidents involving the following shall be reported and documented:

(a) A weapon is discharged by an individual performing private security functions.

(b) An individual performing private security functions is killed or injured in the performance of their duties.

(c) A person other than an individual performing private security functions is killed or injured as a result of conduct by PSC personnel.

(d) Property is destroyed as a result of conduct by a PSC or PSC personnel.

(e) An individual performing private security functions has come under attack including in cases where a weapon is discharged against an individual performing private security functions or personnel performing such functions believe a weapon was so discharged.

(f) Active, non-lethal counter-measures (other than the discharge of a weapon) are employed by PSC personnel in response to a perceived immediate threat in an incident that could significantly affect U.S. objectives with regard to the military mission or international relations.

(6) The independent review and, if practicable, investigation of incidents reported pursuant to subparagraphs 1.a.(5)(a) through 1.a.(5)(f) of this enclosure and incidents of alleged misconduct by PSC personnel.

(7) Identification of ultimate criminal jurisdiction and investigative responsibilities, where conduct of U.S.G.-funded PSCs or PSC personnel are in question, in accordance with applicable laws to include a recognition of investigative jurisdiction and coordination for joint investigations (i.e., other U.S.G. agencies, host nation, or third country agencies), where the conduct of PSCs and PSC personnel is in question.

(8) A mechanism by which a commander of a combatant command may request an action by which PSC personnel who are noncompliant with contract requirements are removed from the designated operational area.

(9) Interagency coordination of administrative penalties or removal, as appropriate, of non-DoD PSC personnel who fail to comply with the terms and conditions of their contract, as is applicable to this Instruction.

(10) Implementation of the training requirements contained in subparagraph 1.b.(2) of this enclosure.

b. Specifically cover:

(1) Matters relating to authorized equipment, force protection, security, health, safety, and relations and interaction with locals in accordance with Reference (g).

(2) Predeployment training requirements addressing, at a minimum, the identification of resources and assistance available to PSC personnel as well as country information and cultural training, and guidance on working with local nationals and military personnel.

(3) Rules for the use of force and graduated force procedures.

(4) Requirements and procedures for direction, control, and the maintenance of communications with regard to the movement and coordination of PSCs and PSC personnel, including specifying interoperability requirements. These include coordinating with the Chief of Mission, as necessary, private security operations outside secure bases and U.S. diplomatic properties to include movement control procedures for all contractors, including PSC personnel.

2. Availability of Guidance and Procedures. The geographic Combatant Commander shall ensure the guidance and procedures prescribed in section 1 of this enclosure are readily available and accessible by PSCs and their personnel (e.g., on a Web page and/or through contract terms) consistent with security considerations and requirements.

3. Subordinate Guidance and Procedures. The Subordinate Commander, in consultation with the Chief of Mission, will issue guidance and procedures implementing the standing combatant command publications specified in section 1 of this enclosure, consistent with the situation and operating environment.

4. Consultation and Coordination. The Chief of Mission and the geographic Combatant Commander/Subordinate Commander shall make every effort to consult and coordinate responses to common threats and common concerns related to oversight of the conduct of U.S.G.-funded PSCs and their personnel. The Memorandum of Agreement Between the Department of Defense and Department of State on U.S.G. PSCs (Reference (n)) shall provide the framework for the development of guidance and procedures without regard to the specific locations identified therein.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AOR area of responsibility

FAR Federal Acquisition Regulation

PSC private security contractor

U.S.G. United States Government

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this Instruction.

area of combat operations. An area of operations designated as such by the Secretary of Defense, when enhanced coordination of PSCs working for U.S.G. agencies is required.

contingency operation. Defined in section 101(a)(13) of title 10, United States Code (Reference (o)). These may include humanitarian or peacekeeping operations or other military operations or exercises.

contractor. The contractor, subcontractor, grantee, or other party carrying out the covered contract.

covered contract

A DoD contract for performance of services in an area of contingency operations or a contract of a non-DoD Federal agency for performance of services in an area of combat operations, as designated by the Secretary of Defense.

A subcontract at any tier under such a contract.

A task order or delivery order issued under such a contract or subcontract.

Also includes contracts or subcontracts funded under grants and sub-grants by a Federal agency for performance in an area of combat operations as designated by the Secretary of Defense.

Excludes temporary arrangements entered into by non-DoD contractors or grantees for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company. Such arrangements must still be in compliance with local law.

private security functions. Activities engaged in by a contractor under a covered contract as follows:

Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.

Any other activity for which personnel are required to carry weapons in the performance of their duties. Reference (g) prescribes policies related to personnel allowed to carry weapons for self-defense.

PSC. During contingency operations, "PSC" means a company employed by the Department of Defense, performing private security functions under a covered contract. In a designated area of combat operations, the term "PSC" expands to include all companies employed by U.S.G. agencies performing private security functions under a covered contract. Contractors performing private security functions are not authorized to perform inherently governmental functions. In this regard, they are limited to a defensive response to hostile acts or demonstrated hostile intent.

PSC personnel. Any individual performing private security functions under a covered contract.