

**The Department of Defense and Private Security Company Standards:  
A presentation to the combined session of the International Stability Operations  
Association and the Security in Complex Environments Group, 15 May 2019**

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**The Department of Defense's goal for private security services is that these functions remain a legitimate and effective method for providing non-inherently governmental protection of personnel, property, and activities in contingencies and areas of other significant military operations where the use of military or other government security forces are unavailable, insufficient, or inappropriate.**

- The use of force in such protective services is limited to self-defense and defense of others against unlawful attack.**
- Services must use methods and techniques that promote, and do not undermine, long-term stability and security of the region in which these services are performed.**
- Misconduct on the part of any PSC affects the ability of all PSCs to operate. Therefore, contracted security functions must comply with quality standards common to all private security providers, regardless of contracting entity.**

In 2009, the United States Congress recognized the growing dependence of private security companies in complex contingencies. The conference report to the National Defense Authorization Act for 2010 noted that that third-party certification is common in government procurements and that such standards have yielded benefits for both the Department of Defense and industry, in terms of consistency, clarity in requirements, and affordability. The Congressional committee believed that a third-party or industry generated set of standards for private security contractors may create similar results for the Department of Defense.<sup>1</sup> The following year, the committees on armed services of the U.S. Senate and House of Representatives directed the Defense Department to develop and implement operational and business practice standards for private security contractors.<sup>2</sup> DoD welcomed this legislation. We already believed that standards were necessary, but before this, DoD had no authority to initiate such a project.

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<sup>1</sup> HASC Report to NDAA 2010: Page 344-345; Third-Party Certification of Private Security Contractors

<sup>2</sup> Joint Explanatory Statement of the Committees on Armed Services of the U.S. Senate and House of Representatives on H.R. 6523, Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Section 833

In keeping with our earlier support of the *Montreux Document on Pertinent Legal Obligations and Good Practices for States Related to the Operations of Private Military and Security Companies During Armed Conflict*, the Department of Defense's goal in developing and implementing these standards was to enable predictable delivery of quality private security services consistent with applicable national and international law and human rights principles not otherwise mandated by law. In other words, we saw this as an opportunity to implement the good practices we agreed to at Montreux. These standards, if applied and managed, could control the risks presented by the use of private security companies when the risk of criminal violence requires use of these services.

We contracted with ASIS International to manage the standards development process in strict accordance with ANSI and ISO rules. The technical committee included more than 200 experts from 22 different countries including government representatives, PSCs, academics, human rights organizations, and commercial sector purchasers of private security services. In the process of developing the standards, we consciously included requirements that addressed various U.S. laws, regulations, and international agreements. These included Section 862 NDAA 2008, and the implementing statute in Title 32, Part 159 of the Code of Federal Regulations, which cover private security companies in contingency environments.

In addition to implementing the Montreux Document, the standards also included requirements and guidance to implement good government practices found in laws and regulations that are not specific to PSCs. These include:

- Contractor Code of Business Ethics and Conduct
- Whistleblower Protections
- Child Labor
- Equal Opportunity
- Combating Trafficking In Persons
- Compliance with Local Labor Laws (Overseas)

In this way the standards also implement those Montreux practices captured in the principles and commitments of International Code of Conduct for Private Security Service Providers and the UN Guiding Principles for Business and Human Rights.

These standards were published, first as the American National Standard ANSI/ASIS PSC.1 in 2012, then with a conformity assessment standard, ANSI/ASIS PSC.2, a maturity model to assist companies on the path to compliance and to assist contract management personnel in assessing performance to the standard – ANSI/ASIS PSC.3 and then finally as an International Standard, ISO 18788. Compliance with the PSC.1 or ISO 18788 is required in all contracts for PSCs services and more recent contracts require evidence of compliance as part of any proposal.

The Defense Department believes that if a company can provide evidence that of compliance with either ISO 18788 or ANSI PSC.1, then the US Government has reasonable assurance that the company can deliver security functions consistent with requirements for these services as spelled out in the laws, regulations, instructions, and other national commitments relevant to these services.

What is evidence of compliance? The most obvious evidence of compliance is independent certification of conformity. This would come from a certified auditor accredited to conduct an assessment according to recognized standards for this purpose. An advantage to the U.S Government in this method is that such certification includes annual and special surveillance audits that can be incorporated into our own Quality Assurance Surveillance Program. This kind of certification, however, is not the only acceptable form of evidence. For example, an audit by the Defense Contract Management Agency, or an inspector general that took particular note of compliance with the standard could also be used as evidence.

Evidence of compliance with the standard provides a measure of quality assurance in contract award, reduces risk of a contractor not being able to perform the contracted services, and treats the risk of potential misconduct on the part of a contractor. Such evidence does not relieve the Defense Department of its own responsibility for assuring standards compliance. These standards, working with an associated maturity model specific to the PSC management standards, also provide tools to assist government contract management personnel in assuring that contractors are delivering quality services, to point out where a contractor might be having problems, and to provide guidance for correcting these problems. In this way, the standard provides an important tool to ensure that commanders in the field will get the support they need and assurance of best value in that contract to the American people.

Despite popular opinion and the statements of some authors who portray themselves as experts on so-called modern mercenaries, the Department of Defense does not exercise a monopsony on this industry. There are some estimates that 80% or more of private security contracts in conflict and post conflict areas are held by the private sector. Misconduct by any of these PSCs will undermine the legitimacy of all PSCs and that of the organizations that employ them. Therefore, DoD believes that the re-establishment of security in these complex emergencies depends on the broad adoption of these quality management performance standards. Similarly, we believe that Broad use of a PSC management standard is important to all clients who use private security services. This will not happen, however, until private sector purchasers believe that, too. It also will not happen unless there are sufficient means and methods available to enable conformity assessment to these standards, that clients have assurance that these assessments are credible and finally, that the benefit of contracting with standards compliant PSCs is exceeds the cost of conformity assessment. I will leave that challenge to the other speakers on this panel.