

# **BEST PRACTICES FOR HIRING PMSC PERSONNEL**

## **BACKGROUND**

Private security companies have been employed by individuals and corporations for generations to provide security for personnel and assets. However, the recent, more widespread use of private military and security companies (PMSCs) in war zones and in unstable or post-conflict countries has raised important issues encompassing legality, accountability, and international humanitarian law (IHL) and human rights law (HRL). These issues have been highlighted by the extensive international media coverage of the use of private contractors and occasionally abusive behaviour of PMSCs, most notably in the Balkans, Iraq, Afghanistan and Africa. As the use of PMSCs by governments, international agencies and humanitarian organisations has become prevalent, it has inspired debate over what is ‘inherently governmental’ in the provision of such sensitive services and how, if governmental resources are not available, the private sector can fill the resource gap in a professional, accountable and defensible manner. The recent proliferation of PMSCs – indeed, many have emerged (or grown exponentially) as recently as during the post-war period in Iraq – has made it difficult for responsible organisations and also corporate entities to evaluate both individual security personnel and the companies for whom they work.

The need for proper evaluation and trust in security providers is emphasized by the environment in which they will be operating. For projects in unstable environments, professional security is not an ‘extra’ feature but is critical to successful project completion, to the perception of the projects, and to the good reputation of the clients. This is made difficult by the frequent ‘politicization’ of security in the host nation, the vulnerability of security (and security agencies) to misuse and corruption, and any past reputation for abuse. Best practice is therefore essential in hiring and oversight of security providers and personnel, and is the subject of this paper.

## **THE SECURITY INDUSTRY**

There are three generic types of PMSCs operating in unstable or post-conflict environments: international PMSCs, local PMSCs and ‘moonlighting’ state security forces or individuals. The main tasks for which they are engaged include: ‘static’ (or site) guards, individual close protection of managers or other key individuals, and mobile escorting of people or supplies. All of these activities can give PMSCs a power that can amount to a temporary localised monopoly on violence; hence the requirement for meticulous selection, training, management and accountability. This paper will first address the issues surrounding the hiring of international PMSCs, as the main principles applying to them also apply to the other categories. The additional issues and requirements raised when directly hiring local PMSCs or security personnel will then be addressed.

## **PMSC REGULATION**

The regulation of international PMSCs is an on-going process. The Republic of South Africa (RSA) has produced comprehensive national regulations. Other countries have been working towards governmental regulation. The USA and UK have industry self regulatory bodies: the International Peace Operations Association (IPOA) and the British Association of Private

Security Companies (BAPSC). Whilst non-membership in these bodies should not be a major factor in the hiring of PMSCs, both bodies have codes of conduct against which member companies may be judged and non-compliance can be a basis for exclusion. Concurrently the 'Swiss Initiative' has featured the Swiss Ministry of Foreign Affairs working in cooperation with the International Committee of the Red Cross (ICRC). This process has been running for over two years and has involved a large number of nations. It aims to produce a consensus document in September 2008 recalling pertinent legal obligations and setting out 'Good Practices' for States dealing with PMSCs. The author has been involved in the process and this paper takes full account of the work of the Swiss Initiative and makes no recommendations which run counter to it.

In considering all of the following best practices, clients who hire PMSCs – States, private companies, humanitarian organisations or others - must be aware that they are working within an existing legal framework, with which they should be familiar. Best practices in hiring PMSCs will reinforce and complement this legal framework.

## **SELECTION OF INTERNATIONAL PMSCs**

The majority of international PMSCs are American- or British-owned and operated, although some are registered offshore (in, for example, Dubai, Singapore or Cyprus). The first step in selecting a PMSC (or for that matter individual operators from a PMSC) should involve gaining a full understanding of the companies and their cultures, management styles and reputations. An initial trawl of their web sites will reveal such aspects as their codes of conduct and whether they have apparent processes in place to handle ethical and human rights issues.

When putting together the requirement for hiring a PMSC the following initial steps are recommended:

- Be absolutely clear on, and comfortable with, the specific tasks they will be required to undertake.
- Understand the local laws and regulations in the country of operation regarding the use of force and the employment of private sector security contractors.
- Prepare a short list of potential contractors.
- Apply initial 'due diligence' to validate the reputation and experience of the short-listed PMSCs.
- Check the PMSCs' principle services and whether they have previously provided similar services. Acquire references from their clients.
- Acquire information and documentation relating to the PMSCs' ownership.
- Check on the PMSCs' financial viability.

Given that these details are not easy to obtain, the potential employer can seek advice from PMSC trade associations such as BAPSC<sup>1</sup> or IPOA<sup>2</sup>, as well as the ICRC<sup>3</sup>, DCAF<sup>4</sup> or relevant NGOs. Once a short list has been selected, more in-depth *commercial due diligence* is required:

- Probe more deeply into the PMSCs' management and financial viability.
- Confirm the PMSCs registration(s) and the professional qualifications of the management and operational staff.
- Check on the terms and contract conditions of the PMSCs' own employees.
- Check on the PMSCs' contractual arrangements with sub-contractors, subsidiary corporations and joint ventures, and their reputation for managing sub-contractors.
- Confirm insurance and medical support arrangements for employees, contractors and injured civilians.
- Discover whether the PMSCs have incurred past incidences of misconduct. In particular, any involvement in violent crime, sexual offences, financial fraud, bribery, violations of IHL or HRL, or mistreatment of civilians should be discovered, and the records of how the PMSCs dealt with such occurrences reviewed.

*Technical due diligence* should include the following aspects:

- Review whether the PMSCs and their personnel and contractors possess the requisite licenses to operate under relevant national laws. These may include licenses required by the state where the PMSC is registered, by the state where they are operating and/or by the state of nationality of the employees.
- Review whether the PMSCs and their employees are authorized to carry – and trained to use – their various weapons, and authorized and trained as well to operate necessary machinery, such as communications equipment and vehicles. The training and qualifications possessed by security personnel are especially important – and sensitive – issues.
- Review the sufficiency of the training programmes the PMSCs will put in place for the contract. These should normally include pre-deployment training and regular continuity training. In addition to security training, these programmes should include cultural, IHL and HRL elements.
- Review of the logistical capacity of the PMSCs – i.e., whether they have access to and the ability to transport supplies and technical equipment such as rations, weapons, vehicles, clothing, etc.
- Review the PMSCs' standing operating procedures and supervisory arrangements, including policies for the use of force and opening fire.

*Managerial due diligence* should include:

---

<sup>1</sup> <http://www.bapsc.org.uk/>

<sup>2</sup> <http://ipoaworld.org/eng/>

<sup>3</sup> <http://www.icrc.org/web/eng/siteeng0.nsf/html/privatisation-war>

<sup>4</sup> <http://www.dcaf.ch/>

- Review of the structure, organization, skills and contract-specific expertise of the PMSCs' management teams. In particular the client needs to be confident that the codes of conduct and other relevant standards of any PMSC management teams under consideration are coincident with their own. Shortcuts by PMSCs (in, for example, not obtaining local operating licences, non-observance of local laws and the vulnerability of the sector to corruption) have badly affected many projects.
- Review the PMSCs' arrangements and procedures for, *and actual history of*, investigating 'incidents,' any violations of policy, and employee or third party complaints. In this respect review also the PMSCs' 'whistleblower' protections.
- Review data regarding the relevant work experience and turn-over rate of PMSC staff, and review also the pre-employment screening process used for staff and manager selection.
- Review the PMSCs' personnel and property management and records systems. These will include their plans for rotating personnel on and off the contract; their payment and accounting systems; their regulations and safeguards against bribery, corruption, fraud and other instances of financial impropriety; their operational health and safety policies; and their plans for evacuation, medical treatment and support of wounded personnel and their families.
- Review the PMSCs' IHL, HRL and cultural awareness policies and training, and the PMSCs' respect for the rights of their employees and contractors. These should include at a minimum the provision by the PMSCs to their employees and contractors of their contracts and of adequate pay, accommodation, training and travel support to and from the contract.

Short-listed PMSCs should be excluded outright on the following grounds:

- Inability to fulfil any aspect of the request for proposal (RFP).
- Grave professional misconduct of the PMSC or management.
- Lack of financial stability, such as bankruptcy or failure to pay taxes or meet commercial commitments.
- Submission of false or misleading information.
- Previous breaches of IHL or HRL, or serious and persistent cultural insensitivity.

The preferred contractor can be selected according to award criteria incorporating many of the above aspects. It would be normal to grade within the following main categories:

- Company standards and reputation.
- Contract management.
- Professional standards, including training and behavioural aspects.
- Personnel standards.
- Contract infrastructure.

- Pricing. Pricing should not be the only consideration for hiring a PMSC.

Before awarding the contract it will be necessary to agree how performance will be monitored, penalties that may be imposed, and conduct that will constitute breaches of contract. In these negotiations, the client will want to place much heavier emphasis than in normal commercial contracts on cultural aspects, violations of IHL and HRL, and breeches of operational procedures – in particular misuse of force or firearms. There should be a regular requirement for – and commitment to – supervisory visits by both PMSC and client management, and for a rigorous complaints procedure.

### **ADDITIONAL CONSIDERATIONS FOR SELECTION OF PMSCs**

Iraq and Afghanistan have been unusual in that more expatriate managers and security personnel have been deployed than in other unstable countries. In general terms, international PMSCs will use as many locally-recruited employees as possible – for both cultural and cost reasons – and may often sub-contract to local PMSCs. The following are important additional considerations when either recruiting or employing PMSCs which themselves employ or sub-contract to local companies:

- Local laws may differ concerning the employment of international versus local PMSCs. The laws and regulations for local employment must be researched and followed.
- The background and connections of local PMSC management will be key – but not always immediately clear or easily ascertained. Considerable and creative due diligence efforts are likely to be necessary to establish their bona fides.
- Lesser standards of training and professionalism should not be accepted. Evidence of educational and professional qualifications should be checked.
- The rights of the local employees must be protected in the contract with particular reference to pay and conditions of employment.
- Screening (of both companies and individual operators) is essential but can be extremely difficult. Cultural acceptability in terms of tribal allegiance may be desirable but proven involvement in political activities has to be avoided. On occasion it may be necessary to employ expatriates in areas of mixed tribal allegiances. Where militaristic ‘warlords’ have held sway, extreme care has to be taken in dealing with them or in giving them PMSC authority which they may then abuse. Clients should not attempt to award local contracts or allow PMSCs to award local contracts or employ local security personnel without professional cultural advice.
- IHL and HRL training may be even more important for local security personnel who will have been living and working in an unstable and often violent and frequently corrupt society.
- Evidence of other previous or concurrent employment, particularly in the police or security forces must be obtained. It will not necessarily preclude personnel from full or part time employment with a PMSC – it may indeed be a positive qualification – but is an essential part of cultural and human rights due diligence.

- Care should be taken not to place potential local employees and their families at unacceptable risk by association with the PMSC.

## **ESSENTIAL INCLUSIONS IN PMSC CONTRACTS**

Each contract will have the normal financial and commercial elements and be specific to the particular task, but because of the nature of PMSC work clients should require the following components:

- Requirements for the PMSC and all employees and contractors to obtain and maintain the necessary registrations, licences and authorizations required under local law or the law of the PMSC's country of registration and/or countries of origin of employees.
- Specification of the relationship and allocation of responsibilities between the PMSC and any contractors, subsidiary companies or joint ventures they may involve in carrying out the contract.
- Provisions detailing the pay and employment conditions of local contractors or third nation contractors who may be brought onto the contract by the PMSC
- Licensing and permitting requirements for the transport, carriage and operating of weapons and task-specific equipment, including communications equipment.
- Details of basic training standards required for operators, including both pre-deployment and continuity training.
- Specific rules for the use of force and weapons.
- Requirement for adequate insurance of employees and contractors, and for compensation of third parties who may be damaged or injured by PMSC activities.
- Arrangements for employee casualty evacuation, medical treatment, and compensation and support of families.
- Provisions requiring the PMSC to maintain accurate records of personnel and property for inspection as required by the client or local authorities.
- Specific health and safety requirements.
- Specific standards of conduct of PMSC employees regarding cultural behaviour, adherence to IHL and HRL, and avoidance of offences such as bribery, corruption and serious crime.

## **UNRESOLVED ISSUES**

Clients will considerably reduce their vulnerability to irresponsible PMSC behaviour by following the guidelines in recruitment and oversight outlined in this paper. However, there are still issues in enforcement of standards and legal responsibility for the actions of PMSCs and their personnel which are not fully resolved. In very unstable countries such as Iraq and Afghanistan the legal structure and processes may be inadequate to bring PMSCs or individual contractors to justice for illegal or violent offences. Nor is it often possible – or at least likely –

to bring them to book under the home nation's legal systems, whether because of legal jurisdictional gaps, political will to prosecute or the asserted difficulties of collecting evidence and finding witnesses in a war zone for trials that would take place thousands of miles away. In some instances contractors for the US government (whether or not they are US nationals) are incorporated into the Department of Defense legal oversight and can be dealt with similarly to a member of the armed forces but this does not apply to all categories of security contractors or sub-contractors.<sup>5</sup> Contractors from other home countries do not come under similar extra-territorial jurisdiction, and other than ensuring that specific violations will attract instant dismissal or contract severance it is difficult to bring PMSCs and their employees to justice. Efforts should be made to encourage states – as through the Swiss Initiative – to adopt the legal reforms and commit the law enforcement resources necessary to make the prospect of legal accountability (both criminal and civil) a meaningful prospect for lawbreaking contractors, and to make compensation for victims of contractor misconduct available. But much will always be dependent on the quality, philosophy and management processes of the PMSC selected. For this reason this paper has concentrated heavily on the due diligence aspects which clients should apply when hiring a PMSC. Standards of ethics and oversight vary quite considerably in what is still a relatively young industry operating in an exceptionally sensitive area in often dangerous environments. Clients will ultimately be responsible (at least in moral and perceptual terms) for inappropriate behaviour by the PMSCs they hire. Thus great care must be taken in hiring, and meticulous oversight will always be essential.

Another unresolved issue is the overlap of security services into traditional military areas. In general terms private security companies should not become involved in warfighting and should not be seen as 'substitute military.' However, in some instances in Iraq where PMSCs were recruited to protect facilities or regional officials they ended up fighting alongside the military when attacks occurred. This can also be the situation when escorted convoys are attacked. When hiring PMSCs, clients thus must be clear from the outset regarding the tasks for which they are hiring them, and how far the tasks could extend in emergency situations. Hiring PMSCs to guard military targets in a war zone is undesirable and should be avoided. It is likely to result in them becoming military targets in their own right and indeed a 'substitute military' when under attack. Although many PMSC personnel will have had previous military experience this not only places them in an invidious and potentially illegal situation but they are unlikely to be equipped or supported for such a role. Their involvement may also open up legal, ethical and human rights issues. A good principle is to hire private security resources in dangerous or unstable environments only to protect *civilian* officials, managers and facilities, in order to allow them to carry out their tasks or perform their functions. It is not good practice to make civilian PMSCs into 'substitute military' or an extension of government national security policy.

## CONCLUSION

The selection and hiring of a PMSC or of security personnel in support of projects in unstable environments is critical to the safe and successful completion of the projects. The hiring of unprofessional, abusive or corrupt PMSC personnel can have expensive and serious reputational consequences and alienate the local population, thus undermining the entire enterprise. Adoption

---

<sup>5</sup> <http://www.privatesecurityregulation.net/files/PMSC%20Article,%20US,%20Kevin%20Lanigan,%20Final.doc>

of the best practices outlined in this paper should assist in minimising the likelihood of serious lapses in the professionalism of the security provided.

## RELATED REFERENCES

Other initiatives which are relevant to this paper are:

- The ‘Swiss Initiative,’ led by the Swiss Ministry of Foreign Affairs in cooperation with the ICRC. This aims to promote respect for IHL and HRL with regard to private military and security companies. It has involved a series of expert meetings with governmental and other experts, and a paper is due to be finalized in September 2008. It deals in detail with the legal issues involved with the states that contract PMSCs, with the states on whose territory PMSCs operate and for home states in respect of the commercial export of military and security services.<sup>6</sup>
- Geneva Centre for the Democratic Control of Armed Forces (DCAF) publications relating to PMSCs, including ‘The Activities of Private Security Companies in Europe’ and ‘Regulating Private Security in Europe’.<sup>7</sup>
- The ‘Sarajevo Process,’ completed in August 2006 and available on the South Eastern and Eastern Europe Clearinghouse (SEESAC) web site. Orientated towards the emerging private security industry in the Balkans, it establishes a code of conduct for local PMSCs and gives guidelines for the procurement of local private security companies. Much of it is relevant to the procurement of security companies in any unstable, corrupt or post-conflict society. The main document was compiled by Saferworld with private sector input from Control Risks Group, a British international security consultancy.<sup>8</sup>
- In early 2008 the International Peace Institute (IPI) in New York started a ‘Feasibility Study on Standards Implementation and Enforcement Mechanisms for the Global Security Industry’.<sup>9</sup>

---

<sup>6</sup> <http://www.eda.admin.ch/psc>

<sup>7</sup> <http://www.dcaf.ch/publications/kms/index.cfm?nav1=5>

<sup>8</sup> <http://www.seesac.org>; [http://www.saferworld.org.uk/publications.php/231/the\\_sarajevo\\_client\\_guidelines](http://www.saferworld.org.uk/publications.php/231/the_sarajevo_client_guidelines)

<sup>9</sup> <http://www.ipacademy.org/>