



ADUSD – Program Support

National Defense University

Inherently Governmental Functions and Private Security Contractors

Mr. Gary Motsek
ADUSD (Program Support)
June 19, 2008



Inherently Governmental

ADUSD – Program Support

- DoD is guided by three main documents when determining whether an activity or function is inherently governmental:
 - The Federal Acquisition Regulations (FAR);
 - The Federal Activities Inventory Reform Act, or FAIR Act, of 1998, and
 - Office of Management and Budget (OMB) Policy Letter 92-1, issued in 1992
- An inherently governmental function is a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees.
- An inherently governmental function includes activities that require the making of value judgments in making of decisions for the Government. Governmental functions normally fall into two categories:
 - (1) the act of governing, *i.e.*, the discretionary exercise of Government authority; or
 - (2) monetary transactions and entitlements.
- These documents specifically identify those functions considered to be inherently governmental and those functions NOT considered to be inherently governmental.

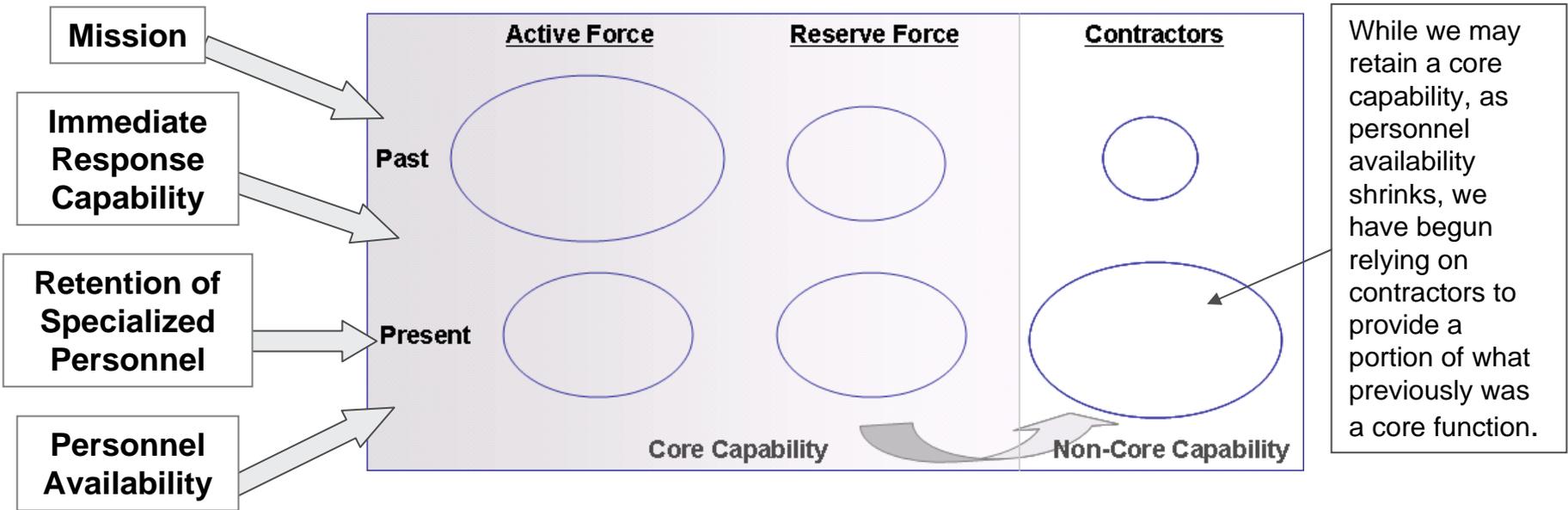


Core Capability

ADUSD – Program Support

A desired capability to keep “in house” to meet our national interest needs. These capabilities are not contracted out, but not necessarily inherently governmental.

Considerations



$$\text{Personnel Cap} - \text{Inherently Governmental Functions} = \text{Personnel Available to Provide Core Capability}$$

Examples of non-inherently governmental functions we retain as part of our core military capability: Medical, Legal, Transportation, Ammunition Builders, Food Services, Maintenance, Communication, Intelligence Analysis, Security.



FY 2009 NDAA Markup



ADUSD – Program Support

➤ **SASC proposed language on Private Security Contractors and Inherently Governmental Functions**

“Ensures that private security contractors do not perform inherently governmental functions in an area of combat operations. Codifies existing DOD standards, under which security operations are inherently governmental, if they will be performed in highly hazardous public areas where the risks are uncertain and could reasonably be expected to require deadly force that is more likely to be initiated by contractor personnel than by others.”

➤ **AT&L input to the Statement of Administration Policy**

- Significant improvements have already been made in the policy and management framework governing the activities of PSCs, including the negotiation of a DoD-State Department MOA for PSC operations in Iraq and implementation of the provisions of sections 861 and 862 of the FY 2008 NDAA.
- Policies and procedures already implemented require private security contractors to operate under strict rules for the use of force that are defensive in nature, carefully supervised, and only allow the use of deadly force as a last resort in response to imminent threats and in the inherent individual right of self-defense.
- DoD currently employs directly or indirectly approximately 10,000 armed PSC personnel in Iraq and Afghanistan.