

JUL 18 2008

Unsealed _____,

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 08-20574-CR-LENARD(s)

**18 U.S.C. § 371
18 U.S.C. § 1001(a)(2)
18 U.S.C. § 1031
18 U.S.C. § 1343
18 U.S.C. § 981(a)(1)(C)**

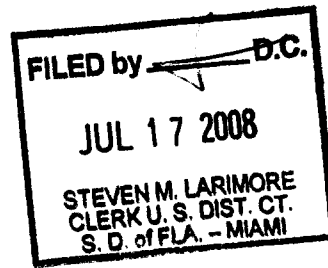
UNITED STATES OF AMERICA

v.

**AEY, INC.,
EFRAIM DIVEROLI,
DAVID PACKOUZ,
ALEXANDER PODRIZKI, and
RALPH MERRILL,**

Defendants.

_____ /



SUPERSEDING INDICTMENT

The Grand Jury charges:

General Allegations

At times relevant to this Superseding Indictment:

1. The corporate defendant **AEY, INC.** (hereinafter referred to as **AEY**), engaged in the business of procuring arms and ammunition. **AEY** was incorporated in the State of Florida, and its principal place of business was in Miami Beach, Florida.

2. The defendant **EFRAIM DIVEROLI**, a resident of the United States, was the President and owner of **AEY**. The defendant **EFRAIM DIVEROLI** managed and directed the business operations of **AEY**.

68

3. The defendant **DAVID PACKOUZ** was a Director and Vice President of **AEY**.

4. The defendant **ALEXANDER PODRIZKI** was an agent of **AEY** stationed in Tirana, Albania.

5. The defendant **RALPH MERRILL** was a business associate of **EFRAIM DIVEROLI**, who provided financial and managerial assistance to **AEY**.

6. The United States Department of the Army (hereinafter referred to as the Army) was an agency of the United States.

7. On or about July 28, 2006, the United States Army Sustainment Command, a component of the Army, issued a solicitation, designated number W52P1J-06-R-0129, requesting bids on a contract to provide various types of ammunition to the Islamic Republic of Afghanistan.

8. On or about September 20, 2006, **AEY** submitted a bid and proposal for the procurement of various types of ammunition in response to the Army's solicitation. On or about October 17, 2006, **AEY** submitted a revised price and represented that it could fulfill the requirements of the solicitation for approximately \$298,000,000.

9. On or about January 26, 2007, the Army awarded a prime contract, designated number W52P1J-07-D0004 (hereinafter referred to as the contract), to **AEY**, for the procurement of various types of ammunition referenced in the contract.

10. Under the contract, **AEY** was required to certify that it was providing serviceable and safe ammunition. The contract also required **AEY** to comply with Defense Federal Acquisition Regulation 252.225-7007, which prohibited delivery of ammunition acquired, directly or indirectly, from a Communist Chinese military company.

COUNT 1
(Conspiracy to Commit Offenses Against the United States)

1. Paragraphs 1 through 10 of the General Allegations are restated and realleged as if fully set forth herein.

2. From in or about April 2007, and continuing through in or about December 2007, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

**AEY, INC.,
EFRAIM DIVEROLI,
DAVID PACKOUZ,
ALEXANDER PODRIZKI, and
RALPH MERRILL,**

did knowingly and willfully combine, conspire, confederate and agree with each other, and with other persons known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. in a matter within the jurisdiction of the Department of the Army, an agency of the executive branch of the Government of the United States, to knowingly and willfully make materially false, fictitious, and fraudulent statements and representations, in violation of Title 18, United States Code, Section 1001(a)(2);

b. in a procurement of property as a prime contractor with the United States, where the value of the contract for such property was \$1,000,000 or more, did knowingly execute a scheme and artifice with the intent:

- (1) to defraud the United States and its agency, the Department of the Army; and
- (2) to obtain money by means of material false and fraudulent pretenses, representations and promises; in violation of Title 18, United States Code, Section 1031; and

c. to knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted certain wire communications in interstate and foreign commerce, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1343.

THE PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants **AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL**, to unjustly enrich themselves and derive a benefit by concealing and misrepresenting the fact that the ammunition being provided pursuant to the contract was manufactured and originated in China.

THE MANNER AND MEANS OF THE CONSPIRACY

4. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

(a) Defendants **EFRAIM DIVEROLI, DAVID PACKOUZ, and ALEXANDER PODRIZKI**, would direct others to assist in the packaging of ammunition to be delivered to Afghanistan.

(b) In electronic communications in interstate and foreign commerce and as part of the packaging process, defendants **EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL**, would provide instructions and guidance on how to remove Chinese markings from containers, so as to conceal the fact that the ammunition was manufactured and originated in China.

(c) With each shipment, the defendant **EFRAIM DIVEROLI**, on behalf of **AEY**, would

falsely certify in a Certificate of Conformance that the ammunition being furnished conformed in all respects with the contract requirements.

(d) With each shipment, the defendant **EFRAIM DIVEROLI**, on behalf of **AEY**, would falsely represent in a Certificate of Conformance that the manufacturer and point of origin of the ammunition being delivered was the Military Export and Import Company (hereinafter referred to as MEICO) in Tirana, Albania.

(e) Upon delivery of each shipment of ammunition, defendant **EFRAIM DIVEROLI** would submit and cause others to submit to the Department of the Army, a copy of the Certificate of Conformance and an invoice for payment to **AEY**.

(f) With the submission of the Certificate of Conformance and an invoice, **AEY** would cause the Department of the Army to pay for the ammunition furnished under the contract, and **AEY** would ultimately receive payment via an electronic transfer of funds.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects thereof, the defendant or defendants noted below, committed and caused to be committed in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

5. On or about April 20, 2007, **ALEXANDER PODRIZKI** sent an electronic communication in interstate and foreign commerce to **DAVID PACKOUZ**, which referenced attached pictures of ammunition from containers with Chinese markings.

6. On or about April 20, 2007, **DAVID PACKOUZ** sent an electronic communication in interstate and foreign commerce to **ALEXANDER PODRIZKI**, stating that they had to get rid of the crates with the Chinese letterings since Chinese products were prohibited and would not be accepted.

7. On or about April 20, 2007, **EFRAIM DIVEROLI** sent an electronic communication in interstate commerce to the Department of State, asking whether a United States company could book a transaction involving ammunition from China to fulfill a United States government contract for various types of ammunition destined to Afghanistan.

8. On or about April 23, 2007, **ALEXANDER PODRIZKI** sent an electronic communication in interstate and foreign commerce to **DAVID PACKOUZ**, referencing a communication **ALEXANDER PODRIZKI** had previously sent to a representative of MEICO, which indicated that they were awaiting a response from Washington, DC to see if the Army would accept Chinese manufactured materials, and “[i]f the response is negative we will need to have the metal cases painted over.”

9. On or about April 23, 2007, **EFRAIM DIVEROLI** sent an electronic communication in interstate commerce to the Department of State, asking whether a United States company could broker Chinese ammunition that had been in an Albanian company for about twenty years.

10. On or about April 23, 2007, **EFRAIM DIVEROLI** forwarded an electronic communication in interstate commerce from the Department of State to **DAVID PACKOUZ** and **RALPH MERRILL**, which indicated that the transaction referenced in paragraph 9 would not be authorized. On the same date, **DAVID PACKOUZ** forwarded this communication to **ALEXANDER PODRIZKI**.

11. On or about April 24, 2007, **EFRAIM DIVEROLI** sent an electronic communication in interstate commerce to the Department of State, acknowledging the response of April 23, 2007, and further questioned whether there was a provision for ammunition that would authorize the transaction, similar to a provision that allowed for the United States importation of firearms which were manufactured in proscribed countries, if said firearms had been stored in friendly countries for

more than five years and certification documents were provided.

12. On or about April 24, 2007, **EFRAIM DIVEROLI** sent another electronic communication in interstate commerce to the Department of State, acknowledging its response that no such provision existed as to the question set forth in paragraph 11, and further questioned whether there was any way the transaction would be allowable. **EFRAIM DIVEROLI** included **DAVID PACKOUZ** and **RALPH MERRILL** on this communication.

13. On or about April 24, 2007, **EFRAIM DIVEROLI** forwarded an electronic communication in interstate commerce from the Department of State to **RALPH MERRILL**, which indicated that the transaction referenced in paragraph 11 would only be allowed with a waiver by the President of the United States, based on a recommendation to the President that such waiver was in the national security and foreign policy interest of the United States, and there was no way that the proposed transaction could be so justified.

14. On or about April 25, 2007, **RALPH MERRILL** sent an electronic communication in interstate commerce to **EFRAIM DIVEROLI** and **DAVID PACKOUZ**, which referenced attached photographs showing methods of “cleaning wooden crates.” Attached to the communication was a photograph showing a person scraping the words “MADE IN CHINA” off of a wooden crate.

15. On or about May 16, 2007, **RALPH MERRILL**, on behalf of **AEY**, sent an electronic communication in interstate and foreign commerce, to negotiate a lower price due to shipping costs, the origin of the ammunition, and the repackaging. On the same date, **EFRAIM DIVEROLI** and **DAVID PACKOUZ** were sent copies of this electronic communication.

16. On or about May 23, 2007, **EFRAIM DIVEROLI** traveled to Tirana, Albania.

17. On or about May 26, 2007, **EFRAIM DIVEROLI** sent an electronic communication

in interstate and foreign commerce to **DAVID PACKOUZ** and **RALPH MERRILL**, to confirm that a lower price for the ammunition had been negotiated.

18. On or about June 28, 2007, in a Certificate of Conformance, **EFRAIM DIVEROLI**, on behalf of **AEY**, falsely certified that the ammunition being furnished conformed in all respects with the contract requirements, and falsely represented that the manufacturer and point of origin of the ammunition was MEICO in Tirana, Albania.

19. On or about October 31, 2007, in a Certificate of Conformance, **EFRAIM DIVEROLI**, on behalf of **AEY**, falsely certified that the ammunition being supplied conformed with all aspects of the contract, and falsely represented that the manufacturer and point of origin of the ammunition was MEICO in Tirana, Albania.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2-36
(False Statements to a Federal Agency)

1. Paragraphs 1 through 10 of the General Allegations are restated and realleged as if fully set forth herein.

2. On or about the dates listed as to each count below, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

AEY, INC., and
EFRAIM DIVEROLI,

in a matter within the jurisdiction of the Department of the Army, an agency of the executive branch of the Government of the United States, did knowingly and willfully make and cause to be made, materially false, fictitious, and fraudulent statements and representations, in that the defendants stated and represented, and caused to be stated and represented in Certificates of Conformance, as described more fully below in Counts 2 through 36, that the ammunition being furnished under the

Army contract number W52P1J-07-D0004 was manufactured and originated in Albania, when, in truth and in fact, and, as the defendants then and there well knew, the ammunition was not manufactured and did not originate in Albania:

COUNT	DATE	CERTIFICATE OF CONFORMANCE NO.	REPRESENTED MANUFACTURER (POINT OF ORIGIN)
2	06/21/07	AFG-0002-6	MEICO, Tirana, Albania
3	06/23/07	AFG-0002-7	MEICO, Tirana, Albania
4	06/26/07	AFG-0002-8	MEICO, Tirana, Albania
5	06/28/07	AFG-0002-10	MEICO, Tirana, Albania
6	06/30/07	AFG-0002-11	MEICO, Tirana, Albania
7	07/01/07	AFG-0002-12	MEICO, Tirana, Albania
8	07/04/07	AFG-0002-13	MEICO, Tirana, Albania
9	07/09/07	AFG-0002-14	MEICO, Tirana, Albania
10	07/10/07	AFG-0002-15	MEICO, Tirana, Albania
11	07/11/07	AFG-0002-16	MEICO, Tirana, Albania
12	07/12/07	AFG-0002-17	MEICO, Tirana, Albania
13	07/16/07	AFG-0002-18	MEICO, Tirana, Albania
14	07/17/07	AFG-0002-19	MEICO, Tirana, Albania
15	07/28/07	AFG-0002-21	MEICO, Tirana, Albania
16	07/30/07	AFG-0002-23	MEICO, Tirana, Albania
17	08/02/07	AFG-0002-25	MEICO, Tirana, Albania
18	08/06/07	AFG-0002-26	MEICO, Tirana, Albania
19	08/11/07	AFG-0002-27	MEICO, Tirana, Albania
20	08/14/07	AFG-0002-29	MEICO, Tirana, Albania
21	08/16/07	AFG-0002-30	MEICO, Tirana, Albania
22	08/23/07	AFG-0002-31	MEICO, Tirana, Albania

COUNT	DATE	CERTIFICATE OF CONFORMANCE NO.	REPRESENTED MANUFACTURER (POINT OF ORIGIN)
23	08/27/07	AFG-0002-36	MEICO, Tirana, Albania
24	08/31/07	AFG-0002-39	MEICO, Tirana, Albania
25	09/03/07	AFG-0002-40	MEICO, Tirana, Albania
26	09/05/07	AFG-0002-41	MEICO, Tirana, Albania
27	09/08/07	AFG-0002-43	MEICO, Tirana, Albania
28	09/15/07	AFG-0002-44	MEICO, Tirana, Albania
29	09/18/07	AFG-0002-45	MEICO, Tirana, Albania
30	09/22/07	AFG-0002-46	MEICO, Tirana, Albania
31	09/22/07	AFG-0002-47	MEICO, Tirana, Albania
32	09/29/07	AFG-0002-48	MEICO, Tirana, Albania
33	10/10/07	AFG-0002-50	MEICO, Tirana, Albania
34	10/16/07	AFG-0002-51	MEICO, Tirana, Albania
35	10/22/07	AFG-0002-53	MEICO, Tirana, Albania
36	10/31/07	AFG-0002-54	MEICO, Tirana, Albania

All in violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

COUNTS 37-71
(Major Fraud Against the United States)

1. Paragraphs 1 through 10 of the General Allegations are restated and realleged as if fully set forth herein.

2. From in or about April 2007, and continuing through in or about December 2007, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

AEY, INC.,
EFRAIM DIVEROLI,

**DAVID PACKOUZ,
ALEXANDER PODRIZKI, and
RALPH MERRILL,**

in a procurement of property as a prime contractor with the United States, where the value of the contract for such property was \$1,000,000 or more, did knowingly execute and attempt to execute a scheme and artifice with the intent:

- (a) to defraud the United States and its agency, the Department of the Army; and
- (b) to obtain money by means of material false and fraudulent pretenses, representations and promises.

THE PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the conspiracy for the defendants **AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL**, to unjustly enrich themselves and derive a benefit by concealing and misrepresenting the fact that the ammunition being provided pursuant to the contract was manufactured and originated in China.

THE SCHEME AND ARTIFICE

4. Paragraph 4 of Count 1 of this Superseding Indictment is restated and realleged as if fully set forth herein as a description of the scheme and artifice to defraud the United States and its agency, the Department of the Army.

ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE

5. On or about the dates listed as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant or defendants noted below, did knowingly execute and attempt to execute the scheme and artifice, with the intent to defraud the United States and to obtain money by means of material false and fraudulent pretenses, representations and promises, by causing the Department of the Army to make the payments described below:

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
37	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	06/21/07	AEY0006	07/23/07	\$291,081.27
38	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	06/23/07	AEY0007	07/23/07	\$291,081.27
39	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	06/26/07	AEY0008	07/24/07	\$291,081.27
40	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	06/28/07	AEY00010	07/26/07	\$291,081.27
41	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/02/07	AEY00011	07/30/07	\$291,081.27

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
42	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/02/07	AEY00012	07/30/07	\$360,050.25
43	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/05/07	AEY00013	08/09/07	\$291,081.27
44	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/09/07	AEY00014	08/10/07	\$291,081.27
45	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/10/07	AEY00015	08/09/07	\$291,081.27
46	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/11/07	AEY00016	08/09/07	\$291,081.27

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
47	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	07/16/07	AEY00017	08/13/07	\$291,081.27
48	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	07/17/07	AEY00018	08/13/07	\$291,081.27
49	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	07/23/07	AEY00019	08/20/07	\$291,081.27
50	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	07/30/07	AEY00021	08/27/07	\$291,081.27
51	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	07/30/07	AEY00023	08/27/07	\$276,724.64
52	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/02/07	AEY00025	08/28/07	\$276,724.64

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
53	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/13/07	AEY00027	09/11/07	\$276,724.64
54	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/16/07	AEY00029	11/26/07	\$276,724.64
55	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/22/07	AEY00030	09/17/07	\$276,724.64
56	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	08/27/07	AEY00031	09/24/07	\$276,724.64
57	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	08/31/07	AEY00036	10/02/07	\$276,724.84
58	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/04/07	AEY00039	10/02/07	\$291,081.28
59	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/04/07	AEY00040	10/02/07	\$291,081.28
60	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/06/07	AEY00041	10/09/07	\$291,081.28

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
61	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/10/07	AEY0043	10/09/07	\$296,045.45
62	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/17/07	AEY0044	10/16/07	\$296,045.45
63	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/19/07	AEY0045	10/17/07	\$296,045.45
64	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/24/07	AEY0046	10/22/07	\$296,045.45
65	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/27/07	AEY0047	10/24/07	\$291,081.28
66	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/01/07	AEY0048	10/29/07	\$296,045.45
67	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/10/07	AEY0050	11/09/07	\$360,050.29
68	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/18/07	AEY00026	11/02/07	\$276,724.64
69	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/18/07	AEY0051	11/19/07	\$360,050.25

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
70	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/30/07	AEY0053	12/06/07	\$297,790.18
71	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	11/08/07	AEY0054	12/06/07	\$311,389.27
	TOTAL				\$10,331,736.44

All in violation of Title 18, United States Code, Sections 1031 and 2.

COUNTS 72-85
(Wire Fraud)

1. Paragraphs 1 through 10 of the General Allegations are restated and realleged as if fully set forth herein.

2. From in or about April 2007, and continuing through in or about December 2007, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

**AEY, INC.,
EFRAIM DIVEROLI,
DAVID PACKOUZ,
ALEXANDER PODRIZKI, and
RALPH MERRILL,**

knowingly and with intent to defraud, did devise and intend to devise a scheme and artifice to defraud and to obtain money from the United States and its agency, the Department of the Army, by means of material false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false and fraudulent when made.

THE PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the conspiracy for the defendants **AEY, INC., EFRAIM**

DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL, to unjustly enrich themselves and derive a benefit by concealing and misrepresenting the fact that the ammunition being provided pursuant to the contract was manufactured and originated in China.

THE SCHEME AND ARTIFICE

4. Paragraph 4 of Count 1 of this Superseding Indictment is restated and realleged as if fully set forth herein as a description of the scheme and artifice.

USE OF THE WIRES

5. On or about the dates listed as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant or defendants noted below, did knowingly execute the scheme and artifice, with the intent to defraud the United States and to obtain money by means of material false and fraudulent pretenses, representations and promises, by transmitting and causing to be transmitted, wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as described below:

COUNT	DEFENDANT(S)	DATE	DESCRIPTION
72	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	04/23/07	Electronic mail message sent by EFRAIM DIVEROLI in Miami Beach, Florida, to RALPH MERRILL in Bountiful, Utah, indicating a U. S. company could not broker Chinese ammunition that had been in an Albanian company for about 20 years.
73	AEY, INC., DAVID PACKOUZ, and ALEXANDER PODRIZKI	04/23/07	Electronic mail message sent by DAVID PACKOUZ in Miami Beach, Florida, to ALEXANDER PODRIZKI in Tirana, Albania, forwarding the electronic mail message referenced in Count 72.

COUNT	DEFENDANT(S)	DATE	DESCRIPTION
74	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, and RALPH MERRILL	04/25/07	Electronic mail message sent by RALPH MERRILL in Bountiful, Utah, to EFRAIM DIVEROLI and DAVID PACKOUZ in Miami Beach, Florida, referencing attached photographs showing methods of "cleaning wooden crates."
75	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/17/07	Electronic transfer of funds in the amount of \$800,780.07 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice numbers GOV01B11 and GOV01B12.
76	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/31/07	Electronic transfer of funds in the amount of \$333,161.42 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice numbers GOV01B8, GOV01B10, and GOV01B16.
77	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/06/07	Electronic transfer of funds in the amount of \$247,389.08 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice number GOV01B17.
78	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/09/07	Electronic transfer of funds in the amount of \$494,738.16 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice numbers GOV01B18 and GOV01B19.

COUNT	DEFENDANT(S)	DATE	DESCRIPTION
79	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/13/07	Electronic transfer of funds in the amount of \$247,389.08 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice number GOV01B21.
80	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/25/07	Electronic transfer of funds in the amount of \$235,186.11 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice number GOV01B36.
81	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/27/07	Electronic transfer of funds in the amount of \$526,638.72 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice number GOV01B31.
82	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/04/07	Electronic transfer of funds in the amount of \$582,137.56 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice numbers GOV01B39 and GOV01B40.
83	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/11/07	Electronic transfer of funds in the amount of \$1,350,385.31 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice numbers GOV01B41 and GOV01B43.
84	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	11/16/07	Electronic transfer of funds in the amount of \$517,772.53 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice numbers GOV01B53 and GOV01B54.
85	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	11/21/07	Electronic transfer of funds in the amount of \$1,176,766.55 from Wells Fargo Business Credit, in Denver, Colorado, to Wachovia Bank, NA, account of AEY, INC., in Miami, Florida, for payment of invoice number GOV01B51.

All in violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE

1. The allegations in this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461, and the procedures outlined at Title 21, United States Code, Section 853.

2. Upon conviction of any violation or conspiracy to violate Title 18, United States Code, Section 1343, the defendants **AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL**, shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to such offenses.

3. The property subject to forfeiture includes, but is not limited to, the following:
- a. The sum of \$10,331,736.44, and all interest traceable thereto, in that such sum in the aggregate constitutes proceeds of the criminal offenses;
 - b. All funds at TD Ameritrade, account number 789-882812, in the name of AEY, Inc., up to \$4,200,000.00;
 - c. All funds at Wells Fargo Bank, account number 189-0004482, in the name of Vector Arms, Inc., Ralph G. Merrill, up to \$400,000.00;
 - d. All funds at Bank of America, account number W67-160822 and account number 00037 3819 2902, in the name of AEY, Inc., up to \$1,475,000;
 - e. A 2007 Mercedes-Benz, Model S550, VIN: WDDNG71X77A085516.

UNITED STATES OF AMERICA
vs.

CASE NO. 08-20574-CR-LENARD(s)

CERTIFICATE OF TRIAL ATTORNEY*

AEY INC., et al.,

Defendants.

_____ /

Superseding Case Information:

Court Division: (Select One)

X Miami _____ Key West
_____ FTL _____ WPB _____ FTP

New Defendant(s) Yes _____ No X
Number of New Defendants
Total number of counts 85

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 30 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

	(Check only one)		(Check only one)	
I	0 to 5 days	_____	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	<u>X</u>	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) Yes

If yes:
Judge: Joan A. Lenard Case No. 08-20574-CR-LENARD

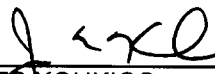
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) No

If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No



JAMES KOUKIOS
ASSISTANT UNITED STATES ATTORNEY
Court No. A5500915

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: AEY, Inc.

Case No: 08-20574-CR-LENARD(s)

Count #: 1

Conspiracy to Commit Offenses Against the United States

18 U.S.C. § 371

*** Max.Penalty:** 5 years' probation

Counts #: 2 - 36

False Statements to a Federal Agency

18 U.S.C. § 1001 (a)(2)

*** Max.Penalty:** 5 years' probation

Counts #: 37 - 71

Major Fraud Against the United States

18 U.S.C. § 1031

*** Max.Penalty:** 5 years' probation

Counts #: 72- 85

Wire Fraud

18 U.S.C. § 1343

*** Max.Penalty:** 5 years' probation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Efraim Diveroli

Case No: 08-20574-CR-LENARD(s)

Count #: 1

Conspiracy to Commit Offenses Against the United States

18 U.S.C. § 371

*** Max.Penalty:** 5 years' imprisonment

Counts #: 2- 36

False Statements to a Federal Agency

18 U.S.C. § 1001 (a)(2)

*** Max.Penalty:** 5 years' imprisonment

Counts #: 37- 71

Major Fraud Against the United States

18 U.S.C. § 1031

*** Max.Penalty:** 10 years' imprisonment

Counts #: 72, 74 - 85

Wire Fraud

18 U.S.C. § 1343

*** Max.Penalty:** 20 years' imprisonment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: David Packouz

Case No: 08-20574-CR-LENARD(s)

Count #: 1

Conspiracy to Commit Offenses Against the United States

18 U.S.C. § 371

*** Max.Penalty:** 5 years' imprisonment

Counts #: 37 - 46

Major Fraud Against the United States

18 U.S.C. § 1031

*** Max.Penalty:** 10 years' imprisonment

Counts #: 73 - 76

Wire Fraud

18 U.S.C. § 1343

*** Max.Penalty:** 20 years' imprisonment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Alexander Podrizki

Case No: 08-20574-CR-LENARD(s)

Count #: 1

Conspiracy to Commit Offenses Against the United States

18 U.S.C. § 371

*** Max.Penalty:** 5 years' imprisonment

Counts #: 37 - 55

Major Fraud Against the United States

18 U.S.C. § 1031

*** Max.Penalty:** 10 years' imprisonment

Counts #: 73, 75 - 79

Wire Fraud

18 U.S.C. § 1343

*** Max.Penalty:** 20 years' imprisonment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Ralph Merrill

Case No: 08-20574-CR-LENARD(s)

Count #: 1

Conspiracy to Commit Offenses Against the United States

18 U.S.C. § 371

*** Max.Penalty:** 5 years' imprisonment

Counts #: 37 - 71

Major Fraud Against the United States

18 U.S.C. § 1031

*** Max.Penalty:** 10 years' imprisonment

Counts #: 72, 74 - 85


Wire Fraud

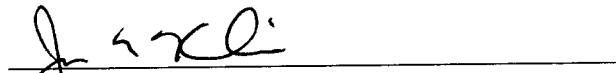
18 U.S.C. § 1343


*** Max.Penalty:** 20 years' imprisonment

All in violation of Title 18, United States Code, Section 981(a)(1)(C), as incorporated by
Title 28, United States Code, Section 2461.

A TRUE BILL


R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY


JAMES M. KOUKIOS
ASSISTANT UNITED STATES ATTORNEY


ELOISA DELGADO FERNANDEZ
ASSISTANT UNITED STATES ATTORNEY