



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY LEGAL SERVICES AGENCY  
901 NORTH STUART STREET  
ARLINGTON VA 22202-1837



REPLY TO  
ATTENTION OF

March 25, 2008

Contact and Fiscal Law Division  
Procurement Fraud Branch

**CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED**

SUBJECT: Notice of Suspension

Mr. Efraim Diveroli  
President  
AEY, Inc.  
975 Arthur Godfrey Road  
Suite 211  
Miami Beach, FL 33140

Dear Mr. Diveroli:

You are hereby suspended from future contracting with any agency in the executive branch of the United States Government under Section 9.407 of the Federal Acquisition Regulation. The FAR is published at Title 48, Code of Federal Regulations, Chapter 1. A copy of the Department of Defense Debarment and Suspension Procedures is enclosed.

The basis for the suspension is, based on an allegation that, on November 25, 2007, you provided the Army Sustainment Command, Rock Island, Illinois, with a Certificate of Conformance that you knew to be false or misleading as part of Task Order 2 of contract number W51P1J-07-D-0004, in violation of 18 U.S.C. § 1001(a)(3), False Statement. Specifically, this Certificate of Conformance states that all ammunition provided pursuant to Task Order 2 is in conformance with contract specifications and indicates that it was manufactured in Hungary between 1965 and 1975, when in fact the majority of the ammunition was manufactured in the People's Republic of China between 1962 and 1974. Using ammunition manufactured in the People's Republic Of China to meet the requirements of contract number W51P1J-07-D-0004 is prohibited by DFARS 252.225-7007, entitled "Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies." Based on this allegation, both you and your company, AEY, Inc., may be suspended at this time in accordance with FAR 9.407-2(a)(1), (3) and (7) as well as FAR 9.407-2(c). The administrative record that supports the suspensions currently consists of this notice and the attached memorandum and supporting documentation.

Suspension is a temporary measure imposed pending the completion of any investigation or legal proceedings as may ensue. The suspension is effective as of the date of this letter. This status will continue until I terminate it or until you are proposed for debarment. The following consequences apply during this period of suspension:



a. Your name, "Efraim Diveroli," and the name of your company, "AEY, Inc.," will appear in a General Services Administration's Excluded Parties List System containing the names of contractors debarred, suspended, proposed for debarment, or declared ineligible by any agency of the Federal Government. See <http://www.epls.gov/>. The suspensions are effective throughout the executive branch of the Federal Government.

b. Agencies of the executive branch of the Federal Government will neither solicit offers, award contracts, renew or otherwise extend existing contracts, nor approve subcontracts requiring Government approval with you, unless the head of the agency taking the contracting action (or a designee) states in writing the compelling reasons for continued business dealings between you and the agency.

c. You may not conduct business with the Federal Government as an agent or representative of other contractors, nor may you act as an individual surety for other contractors.

d. Other Federal Government contractors may not award subcontracts to you, in excess of \$25,000, unless there is a compelling reason to do so and the contractor first notifies the contracting officer and further complies with the provisions of FAR 9.405-2(b).

e. The Federal Government will exclude you from Government non-procurement transactions, such as grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements. You may not act as an agent or representative of other participants in Federal assistance programs. (See 32 C.F.R. Part 25.)

f. The Army will carefully examine your affiliation with or relationship to any organization doing business with the Government to determine the impact of those ties on the responsibility of that organization to be a Government contractor or subcontractor. Your voluntary disclosure of your other business interests will be considered in determining your present responsibility in this proceeding.


If you are later proposed for debarment, the consequences described in the lettered paragraphs above will continue to apply. Your name, "Efraim Diveroli", and the name of your company, "AEY, Inc.," would continue to be published in the General Services Administration's Excluded Parties List System, however, your status would be changed to reflect that you are proposed for debarment.

FAR 9.4 explains the procedures used for suspending contractors from contracting with the Government. Within 30 calendar days after receipt of this notice, you may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts.

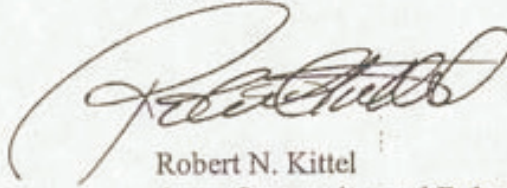
If it is found that your submission raises a genuine dispute regarding facts material to your suspension, a fact finding action may be conducted to determine these disputed material facts. No fact finding will be conducted, however, if your suspension is based on an indictment, as defined in FAR 9.403, or if a determination is made, based on the advice of the Department of

Justice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

All written correspondence should be sent to: U.S. Army Legal Services Agency, Procurement Fraud Branch, ATTN: Mr. Brian A. Persico, 901 North Stuart Street, Room 500, Arlington, Virginia 22203-1837.

If you have any questions, or wish to arrange for an in-person presentation, please contact  Persico at 703-696-1890.

Sincerely,



Robert N. Kittel  
Army Suspension and Debarment Official

Enclosures





DEPARTMENT OF THE ARMY  
UNITED STATES ARMY LEGAL SERVICES AGENCY  
901 NORTH STUART STREET  
ARLINGTON VA 22202-1837

REPLY TO  
ATTENTION OF

JALS-PFB

21 March 2008

MEMORANDUM THRU  
CHIEF, PROCUREMENT FRAUD BRANCH  
CHIEF, CONTRACT AND FISCAL LAW DIVISION

FOR ARMY SUSPENSION AND DEBARMENT OFFICIAL

SUBJECT: Suspension of Efraim Diveroli and AEY, Inc.

1. Purpose. To determine whether Efraim Diveroli and AEY, Inc., should be suspended from future contracting throughout the Executive branch of the United States Government pursuant to Section 9.407 of the Federal Acquisition Regulation.

2. Discussion.

a. AEY, Inc. ("AEY"), founded in November 1999, is a Miami Beach, Florida, based company engaged in the general merchandise, surplus goods, wholesale scrap and waste materials line of business (Ex. 1). Efraim Diveroli is AEY's President and primary point of contact for Government contracts (Ex. 2). Operating from a single location with eight employees, AEY began contracting with the Government in 2004, providing miscellaneous weapons, ammunition, clothing and "research and development", primarily to the Department of Defense and Department of State (Ex. 1 and 2, Ex. 3, pages 1 and 4). For Fiscal Year 2004, AEY was awarded 22 contracts valued at \$1,043,869.00 (Ex. 3, pages 4 and 5). In fiscal year 2005, AEY continued to seek out Government contracts, resulting in the award of 59 contracts valued at \$7,238,329.00. As in 2004, the majority of the contracts were for weapons, ammunition, clothing and related items, with the Department of State as the largest purchaser of AEY products, in particular, weapons (Ex. 3, pages 6 and 7). Fiscal year 2006 saw a decline in Government contracts, with only 48 contracts, valued at \$2,431,087.00, awarded to AEY (Ex. 3, pages 8 and 9).

b. In fiscal year 2007, AEY was awarded 29 contracts by the Government, valued at \$201,707,453.00 (Ex. 3, pages 10 and 11). This extreme increase in the value of AEY's Government contracts can be attributed to the award of contract number W51P1J-07-D-0004, a requirements-type contract to provide non-standard ammunition to the Afghan National Police ("ANP") and Afghan National Army ("ANA"), by the Army Sustainment Command ("ASC"), Rock Island, Illinois, on 26 January 2006 (Ex. 4). This contract, expiring on 30 December 2008, required the delivery of various types of non-standard ammunition to ANP and ANA ammunition stocks in Kabul, Afghanistan within three to six months of the issue of a task order by ASC. Included in these non-standard ammunition requirements were: 7.62x39mm ammunition for AK-47 assault rifles and RPK light machine guns; 7.62x54mm ammunition for PKM machine guns; 9mm pistol ammunition; 14.5mm and 12.7mm heavy machine gun ammunition; 30mm grenades for GP 30 grenade launchers; OG-7V and PG-7 grenades for RPG



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grenade launchers; 73mm high explosive and high explosive anti-tank rounds for BMP-1 Infantry Fighting Vehicles; 115mm armor piecing and high explosive rounds for T-62 Main Battle Tanks; 82mm and 120mm mortar rounds; 122mm high explosive rounds for D-30 howitzers; AT-3 and AT-5 anti-tank guided missiles; and 57mm aerial rockets (Ex. 4, pages 2 and 3). Delivery was to be directly to ANP and ANA ammunition stocks via transport arranged by AEY (Ex. 4, pages 3 and 20).

1) A review of Section I-79 of contract number W51P1J-07-D-0004 shows that, at a minimum, the Government is obligated to purchase 14,584,516 rounds of various types of 7.62x39mm ammunition, 1,302,684 rounds of various types of 7.62x54mm ammunition, 243,249 rounds of 9mm pistol ammunition, 7,091 rounds of various types of 14.7mm ammunition, 17,500 12 gauge shotgun rounds and 1,000 OG-7V grenades from AEY. Available information on Task Orders awarded to date shows that the majority of requirement to date had been for 7.62x39mm ammunition, OG-7V grenades and 30mm grenades (Ex. 4, page 27 and 28).

c. As of 20 March 2008, AEY has been issued five task orders under contract number W51P1J-07-D-0004. Task order 1, valued at \$48,717,653.00 was issued by ASC in March 2007. Task Order 2, valued at \$14,012,013.00 was issued to AEY in June 2007. Task Orders 3 and 4, valued at \$138,614,538.00 were issued in August 2007 (Ex. 3, page 10). During fiscal year 2008, a fifth Task Order, number 5, was issued on 13 December 2007, valued at \$22,560,384.69 (Ex. 5).

d. Prior to the award of contract number W51P1J-07-D-0004, numerous questions were received from potential offerors regarding contract requirements and performance. Amendment 3 to the solicitation for this contract included a question from one offeror asking if "ammunition from China [is] acceptable for this contract – assuming that it meets the technical specifications" (Ex. 4, page 8). In response, ASC stated that "statutory or regulatory restrictions . . . that may effectively prohibit supplies from any source are the responsibility of each offeror to both identify and resolve." This response was clarified by Amendment 6 to the solicitation, through the express incorporation of DFARS 252.225-7007 into the solicitation, entitled "Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies," into the solicitation (Ex. 4, page 10 and 11). DFARS 252.225-7007 specifically states in subparagraph b that:

"Any supplies or services covered by the United States Munitions List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company"

Subparagraph (a) of this section defines "Communist Chinese Military Company" as "any entity that is part of the commercial or defense industrial base of the People's Republic of China" or any company that is owned, controlled or affiliated with the Government of the People's Republic of China (Ex. 6). Due to the express incorporation of DFARS 252.225-7007 into Section A, Solicitation/Contract Form, of contract number W51P1J-07-D-0004, use of ammunition from the People's Republic of China by AEY to meet contract requirements is prohibited (Ex. 4, page 1, block 18, pages 10 and 11).



e. On 25 November 2007, Mr. Diveroli executed Certificates of Conformance number AFG-0002-59 ("CoC"), related to the delivery of 850,740 rounds of 7.62x39mm ball ammunition, 499,260 rounds of 7.62x39 tracer rounds and 584,960 7.62x54 tracer rounds in 28 pallets pursuant to Task Order 2. This CoC identified ammunition included in this shipment as "Lot Number" of A-001-39B and used the Transportation Control Numbers ("TCN") BB6C95-7033-9002BXX, BB6C95-7033-9003AXX and BB6C95-7033-9005AXX. Mr. Diveroli identified MFS 2000 Hungarian Ammunition Manufacturing Inc. ("MFS 2000") as the "Manufacturer (point of origin)" of the ammunition included in Lot Number A-001-039B and that it was manufactured between 1965 and 1974. He also stated that it conformed with all contract requirements. This ammunition was subsequently delivered to the ANA Ammo and Weapons Depot known as the "22 Bunkers Complex" (Ex. 7).

1) MFS 2000 is a Hungarian manufacturer of ammunition for the civilian market. The company primarily manufactures pistol ammunition, however, it does manufacture 7.62x39mm ammunition for civilian hunting and sporting use (Ex. 8).<sup>1</sup>

f. Based on information showing that AEY may have been purchasing ammunition from a source other than that listed on the CoC, a request was made by ASC, the Army Legal Service Agency's Procurement Fraud Branch and other Government agencies to the Afghanistan Fraud Detachment, Major Procurement Fraud Unit, 701<sup>st</sup> Military Police Group, Army Criminal Investigation Command ("CID"), for an inspection of 7.62x39mm ammunition at the 22 Bunkers Complex. On 5 January 2008 CID agents visited the 22 Bunkers Complex and took 335 digital photographs of ammunition, ammunition pallets and shipping documents in 15 storage containers containing ammunition supplied by AEY. All ammunition photographed were from pallets identified by shipping documents stating that AEY was the supplier with various Lot Numbers, TCNs and Task Orders listed as references (Ex. 9).

1) Identification of ammunition can be accomplished by several means, including packaging, headstamps (markings made to the base of an ammunition round), and functional markings to differentiate types of ammunition, such as bullet tip or primer colors coding systems (Ex. 10 pages 11 through 16). Identification of all ammunition photographed at the 22 Bunkers was accomplished using an unclassified Defense Intelligence Agency Publication, entitled "Small Caliber Ammunition Identification Guide (U), Volume 1, Small Arms Cartridges Up To 15mm (U) (hereinafter referred to as "DIA Small Caliber Ammunition Identification Guide") (Ex. 10).

2) A review of the photos taken by CID agents shows that only one container, B33, contained 7.62x39mm ammunition with identification markings, other than headstamps, showing the location of manufacturer (Ex. 11). This ammunition was uniformly packaged in metal containers bearing markings showing that it was manufactured at a location in Hungary during 1971. In addition, a review of the headstamps for these rounds confirms Hungarian origin and the 1971 manufacture date (Ex. 10, pages 39 through 41)

<sup>1</sup> See <http://www.mfs2000.hu/index.php?ny=eng> and [http://www.epicos.com/epicos/extended/hungary/mfs/mfs\\_home.html](http://www.epicos.com/epicos/extended/hungary/mfs/mfs_home.html)



3) Photos taken of the remaining 14 containers (B22, B21, B27, B31, ANP1, E6, I16, I15, I10, I23, I38, J9, T6 and F9) show various types of ammunition packaged in brown paper and cardboard boxes, wrapped in plastic, with AEY shipping documents attached to them. The only identification markings regarding the origin of the ammunition consisted of headstamps showing the numbers 31, 61, 71, 81 and 661 and dates of manufacture ranging from 1962 to 1974 (Ex. 12 through 15).<sup>2</sup> Some of the ammunition was functionally marked with green bullet tips and primers. Based on the information in the DIA Small Caliber Ammunition Identification Guide, the headstamp numbers show that the 7.62x39mm ammunition in these 14 containers was manufactured at factories in the People's Republic of China (Ex. 10, pages 35 to 38, 52, 53 and 56).<sup>3</sup> In addition reviews of functional markings show that green markings are used on bullet tips and primers by the People's Republic of China to differentiate 7.62x39mm tracer ammunition from ball ammunition (Ex. 10, pages 36 and 37).

4) All documentation attached to the pallets containing ammunition with headstamps showing the numbers 31, 61, 71, 81 and 661 showed they were supplied by AEY as part of Task Order 2 of contract number W51P1J-07-D-0004 (Ex. 12 through 15). With the exception of pallets in container F9, all pallets labeled as belonging to Lot Number A-001-039B, TCN BB6C95-7033-9002BXX. The documentation on the pallets in container F9 did, however, refer to TCN BB6C95-7033-9004BXX. Based on this documentation, this was the ammunition that was certified to be in conformance with all contract specifications by Mr. Diveroli on 25 November 2005 (Ex. 7).

g. Title 18, Section 1001 of the United States Code states that whoever "knowingly or willingly makes or uses any false writing or document, knowing the same to contain any materially false or misleading statement, or entry shall be fined under this title or imprisoned not more than 5 years, or both," 18 U.S.C. § 1001(a)(3) (Ex. 16).

### 3. Regulatory Basis for Suspension.

a. FAR 9.403 provides that a "contractor" means any individual or other legal entity that may reasonably be expected to submit offers or be awarded Government contracts. Alternatively, a "contractor" is one that conducts business or may be expected to conduct business with the Government as an agent or representative of a contractor.

b. FAR 9.407-2(a) provides that a contractor may be suspended upon adequate evidence of:

<sup>2</sup> Due to the large number of pictures taken by CID agents at the 22 Bunkers Complex, only photos from containers B22, B31, ANP1 and I15 are attached as exhibits. These containers were chosen as they show all 5 headstamps that the DIA Small Caliber Ammunition Identification Guide describes as originating in the People's Republic of China.

<sup>3</sup> One round depicted in pictures from container B22 is labeled with a headstamp showing the number 501, manufactured in 1972. According to the DIA Small Caliber Ammunition Identification Guide, this number has been found on 7.62x39mm rounds of "Unknown Origin" in Central Africa. This round cannot, therefore, be attributed to manufacture in the People's Republic of China (Ex. 12).



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(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

\* \* \*

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

\* \* \*

(7) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor.

c. FAR 9.407-2(c) provides that a contractor may also be suspended, upon adequate evidence, for any cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

d. FAR 2.101 defines "adequate evidence" as information sufficient to support the reasonable belief that a particular act or omission has occurred.

e. FAR 9.407-4 provides that suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as otherwise provided in that section.

f. FAR 9.407-5 provides that the scope of suspension shall be as set forth at FAR 9.406-5.

g. FAR 9.406-5(a) provides that the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

h. FAR 9.407-1(c) provides that suspension may be extended to affiliates of a contractor if they are specifically named and given written notice of the suspension and an opportunity to respond. FAR 9.403 provides that business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or can control the other or a third party controls or can control both.

#### 4. Conclusions.

a. Both Mr. Diveroli and AEY are contractors in accordance with the provisions of FAR 9.403. Since 2003, AEY has actively sought out contracts with various Government agencies for miscellaneous weapons, ammunition and clothing, as well as for "research and development". During that period of time AEY expanded its Government business from \$0 in fiscal year 2003 to \$201,707,453.00 in fiscal year 2007. Mr. Diveroli, as President of AEY, was heavily involved in the day-to-day operations of the company and was personally involved in the contracting process. Based on this experience, it is reasonable to believe that both Mr. Diveroli and AEY



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SUBJECT: Suspension of Efraim Diveroli and AEY, Inc.

will seek to obtain similar work in the future, either directly or as a representative of another contractor.

b. The CoC signed by Mr. Diveroli on dated 25 November 2007 certifying the conformance of 7.62x39mm ball and tracer ammunition supplied pursuant to Task Order 2 contains information that he knew to be false or misleading. Specifically, this ammunition failed to conform to the requirements of DFARS 252.225-7007 in that a large quantity of the ammunition actually delivered was manufactured in the People's Republic of China. Use of ammunition manufactured in the People's Republic of China to meet contract requirements is specifically prohibited by this clause. In addition, the CoC prominently lists MFS 2000 as the "Manufacturer (point of origin)" of this ammunition. Based on the information available regarding MFS 2000, the company only manufactures 7.62x39mm rounds for civilian use and these are packaged in distinctively marked 20 round boxes. The company does not appear to be engaged in the surplus military ammunition trade and has not been a military contractor since the early 1990s. None of the rounds depicted in the photos from the 14 containers can therefore be identified as originating from MFS 2000. Based on the headstamps and functional markings, all but one round found in these 14 containers can be identified as having been manufactured in the People's Republic of China. Finally, the CoC states incorrect dates of manufacture, namely that the ammunition was produced between 1965 and 1974 when, in fact, many of the rounds were produced as early as 1962.

c. The statements in the 25 November 2007 CoC and the photos of 7.62x39mm ammunition actually delivered to the ANA and ANP provide adequate evidence, per FAR 2.101, that Mr. Diveroli violated 18 U.S.C. § 1001(a)(3), False Statement. Mr. Diveroli may therefore be suspended from contracting with the Government pursuant to 9.407-2(a)(1), (3) and (7). In addition, this allegation calls into question Mr. Diveroli's ability to be considered a presently responsible Government contractor or subcontractor, resulting in his eligibility for immediate suspension from contracting with the Government in accordance with FAR 9.407-2(c).

d. AEY may be suspended from contracting with the Government as an affiliate of Mr. Diveroli pursuant to FAR 9.407-1(c). Mr. Diveroli, as President of AEY, has the ability to utilize the company's assets for his personal benefit and may solicit additional contracts from the Government on behalf of AEY. In addition, due to the fact that Mr. Diveroli's duties include active participation in the day-to-day activities of AEY, as evidenced by his signature on the CoCs for Task Order 2, the alleged actions of Mr. Diveroli to be imputed to AEY pursuant to FAR 9.406-5(a).

e. The suspensions of Mr. Diveroli and AEY, if approved, should remain in effect until the resolution of any pending investigation or ensuing legal proceedings per FAR 9.407-4.



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SUBJECT: Suspension of Efraim Diveroli and AEY, Inc.

5. Recommendation. That the Army Suspension and Debarment Official suspend Efraim Diveroli and AEY, Inc., by signing the attached letter.



BRIAN A. PERSICO  
Attorney, Procurement Fraud Branch

16 Exhibits:

- 1) Dunn & Bradstreet Report, AEY, Inc.
- 2) Central Contract Registry Data, AEY, Inc.
- 3) Contracting Data, 2003 through 2007, AEY, Inc., USASpending.gov
- 4) Contract Number W52P1J-07-D-0004, dated 26 Jan 06
- 5) Task Order 5, Contract Number W52P1J-07-D-0004, dated 13 Dec 07
- 6) DFARS 252.225-7007 (1998)
- 7) Certificate of Conformance Number AFG-0002-59, Task Order 2, Contract Number W52P1J-07-D-0004, dated 25 Nov 07
- 8) Company Brochure, MFS 2000 Hungarian Ammunition Manufacturing Inc.
- 9) Agent's Investigative Report and Photographic Index, dated 12 Jan 08
- 10) Defense Intelligence Agency Publication DST-1160G-514-81-Vol 1, Change 3, entitled "Small Caliber Ammunition Identification Guide (U), Volume 1, Small Arms Cartridges Up To 15mm (U), 30 May 91 (relevant excerpts only)
- 11) Photos, Container B33, dated 5 Jan 08
- 12) Photos, Container B22, dated 5 Jan 08
- 13) Photos, Container B31, dated 5 Jan 08
- 14) Photos, Container ANP1, dated 5 Jan 08
- 15) Photos, Container I15, dated 5 Jan 08
- 16) 18 U.S.C. § 1001 (2008), False Statements