

**STATEMENT BY**

**BRIGADIER GENERAL WILLIAM N. PHILLIPS  
COMMANDING GENERAL, PICATINNY ARSENAL  
COMMANDER, JOINT MUNITIONS & LETHALITY LIFE CYCLE MANAGEMENT  
COMMAND  
PROGRAM EXECUTIVE OFFICER AMMUNITION**

**AND**

**MR. JEFFERY P. PARSONS  
EXECUTIVE DIRECTOR  
ARMY CONTRACTING COMMAND (PROVISIONAL)  
U.S. ARMY MATERIEL COMMAND**

**BEFORE THE**

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**WEAPONS, AMMUNITION, AND MUNITIONS SALES TO IRAQ AND AFGHANISTAN**

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Thank you for this opportunity to report to you on the United States Army Materiel Command's support to the Afghan National Army and Afghan National Police, and specifically the Army's contract with AEY, Inc. to supply ammunition to the Afghan forces.

The Department of Defense (DOD) places the safety of U.S. and allied Soldiers as a priority in the global war on terrorism. As a result of our concern with regard to contractor performance, we are conducting a thorough review to ensure our Afghan allies are provided with good quality ammunition, and to ensure the soundness of the processes the Army uses to acquire supplies for its allies.

The majority of the Afghan Security Forces use former Warsaw Pact weapons systems which require former Warsaw Pact or foreign ammunition. The United States Army considers this ammunition as non-standard ammunition because it is produced by foreign sources, and it may not meet the same specifications that we use in acquiring U.S. ammunition. Since the U.S. currently neither maintains nor produces this type of ammunition, we contracted to supply this non-standard ammunition from the commercial marketplace. Let me stress that 'non-standard' does not mean 'substandard'.

In April 2006, a requirement for the procurement of ammunition for use in weapons by Afghan National Security Forces was processed by the United States Army Security Assistance Command (USASAC) through the Foreign Military Sales (FMS) program. USASAC forwarded this requirement to its Security Assistance Element located in the Joint Munitions Command (JMC). The Joint Munitions Command is now a part of the Army Joint Munitions and Lethality Life Cycle Management Command - - the Army's principal command responsible for ammunition procurement. In July 2006, the Army Sustainment Command Acquisition Center - - the contracting office for the Joint Munitions Command - - proceeded in accordance with the Federal Acquisition Regulation (FAR) to solicit offers for a two-year requirements contract. This competition was conducted on a full-and-open competition basis. Ultimately, eight offers were evaluated.

The evaluation focused on the past performance of the offerors' recent contracts, the quality and timeliness of their past performance, their experience in systems integration (i.e., identification of ammunition appropriate for foreign weapons), international movement and the degree to which they intended to utilize small businesses in the performance of the contract. While AEY, Inc. properly certified itself as a Small Business, the full-and-open nature of the competition gave large and small businesses the same opportunity to propose against the requirement. The results of the evaluation indicated AEY, Inc's proposal offered the best value to the Government in terms of past performance, price and small business utilization.

Prior to awarding the contract, the contracting officer asked the Defense Contract Management Agency (DCMA) to review AEY, Inc.'s financial capability, its accounting system and transportation capabilities. After its review of AEY, Inc., DCMA recommended a complete award based on satisfactory findings. The survey included a check of the Excluded Parties List System, which did not show AEY, Inc., or any related affiliates or any company official as being debarred. At the same time and in support of DCMA, the Defense Contract Audit Agency (DCAA) reviewed the company's accounting system. DCAA, in a meeting at AEY, Inc.'s office in Miami, found the company to be in compliance with the necessary accounting standards for government contracts.

Based upon all information available including a legal review, the contracting officer awarded a two-year, firm fixed price requirements contract to AEY, Inc on January 26, 2007. Throughout the acquisition process, the Army followed all applicable procurement policies and procedures in making this best value award decision. The contract required that the ammunition be serviceable and issued without qualification. The contract specified that this ammunition may be produced under NATO specification, Warsaw Pact specification, and/or commercial equivalent. The contract also required the contractor to submit a Certificate of Conformance (COC) with each delivered shipment attesting to the contractor's compliance with contract requirements.

Additionally, the contract incorporated Defense Federal Acquisition Regulation 252.225-7007, dated September 2006, prohibiting the acquisition of Munitions List Items from Communist Chinese military companies, either directly or indirectly.

The contract also called for the ammunition to be packaged in accordance with the best commercial practice for international shipment. We previously used this specification -- "best commercial practice for international shipment" -- in other FMS sales for non-standard ammunition and believed it adequate for this contract as well due to the success on previous contracts.

In January 2008, JMC received unofficial reports from the Combined Security Transition Command - Afghanistan (CSTC-A) regarding the condition of packaging of some of the ammunition delivered by AEY, Inc. When CSTC-A sent its formal Reports of Discrepancy (ROD) in February 2008, JMC and the contracting officer immediately notified AEY, Inc. that its packaging did not meet the contract requirements. The Army met with AEY, Inc. on February 28, 2008 in Rock Island, Illinois and outlined our required corrective actions.

On March 17, 2008, JMC and the contracting officer received the first RODs, dated March 1, 2008, regarding quality and previously identified packaging issues associated with the recent deliveries of 1 million rounds of ammunition to CSTC-A. AEY, Inc. had previously shipped over 125 million rounds of ammunition successfully.

The Government issued a corrective action letter to AEY, Inc. on March 18, 2008. The letter highlighted the ammunition discrepancies and required AEY, Inc. to submit a corrective action plan. AEY, Inc. submitted its plan to the contracting officer on March 28, 2008.

The allegation against AEY, Inc. that led to its suspension by the Army is that the company procured ammunition that was originally produced in China, in direct violation of contract requirements. AEY, Inc. certified that the ammunition was manufactured in Hungary. As a result of these allegations, the Army suspended AEY, Inc. on March 26, 2008. The Army is aware of a Department of Defense Inspector General (DODIG) complaint against AEY, Inc. and continues to assist the DODIG and other law enforcement agencies.

After assessing the information used by the Army to suspend AEY, Inc. and providing AEY, Inc. the opportunity to show cause why its contract should not be terminated, on May 23, 2008, the contracting officer terminated AEY, Inc.'s contract to supply ammunition to CSTC-A. This termination for default is based on AEY, Inc.'s failure to deliver conforming ammunition in accordance with the contract terms.

As an Army, we continually assess how we are meeting the needs of our customers and ensuring that we are improving our business practices. Our procurement of this non-standard ammunition met a need to support military operations

by Afghan National Security Forces. However, as a result of our review into this matter, we recognize that changes need to be made in our acquisition of non-standard ammunition. We have already made changes to our packaging, transportation and technical standards for non-standard ammunition and will ensure we cite specific requirements we expect our contractors to meet. We now stipulate specific compliance with the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods for air movement and International Maritime Dangerous Goods (IDMG) Code for surface movements. This ensures that we also specifically cite Title 49 of the Code of Federal Regulations as the applicable US standard and hold our contractors to that standard. We have also chartered a team of subject matter experts to better define the quality standards necessary for future non-standard ammunition requirements, how and where the ammunition should be inspected, and the best DOD agency to accomplish these inspections. We have also continued to focus on supporting the urgent ammunition needs of CSTC-A and have provided their most urgent critical ammunition requirements which incorporated these improved standards for packaging, transportation and quality.

As a longer-term resolution of contracting issues, the Army is implementing the recommendations of the Commission on Army Acquisition and Program Management in Expeditionary Operations, which released its final report, "Urgent Reform Required: Army Expeditionary Contracting," on October 31, 2007.

The Gansler Commission provided an independent, long-term, strategic assessment of the Army's acquisition and contracting system – and its ability to support expeditionary operations and sustained high operational demand in an era of persistent conflict. To complement the work of the Commission, the Army Contracting Task Force was established to review current contracting operations and take immediate action where appropriate. The recommendations of the Commission were consistent with the findings of the Task Force.

We are currently addressing structural weaknesses and shortcomings identified, with a view to improving both current and future expeditionary contracting operations. We are committed to finishing the development and then implementing an Army-wide contracting campaign plan to improve doctrine, organization, training, leadership, materiel, personnel, and facilities. Achieving this objective will require resources, time, and sustained leadership focus. The contracting campaign plan will continue the initiatives already underway in the Army.

Secretary Geren directed the realignment of the U.S. Army Contracting Agency (ACA) to the U.S. Army Materiel Command (AMC) and the establishment of the U.S. Army Contracting Command (ACC) (Provisional) under AMC. The ACC (Provisional) stand-up ceremony on March 13, 2008 is in keeping with the Gansler Commission's recommendation to restructure Army contracting organizations and restore responsibility to better facilitate contracting and contract management in expeditionary

and U.S.-based operations. The ACC, whose first Executive Director, Mr. Jeff Parsons, is with me today, is a two-star level command with (2) one-star level subordinate commands – an Expeditionary Contracting Command and an Installation Contracting Command.

The Gansler Commission recognized that the Army needs an additional 1,400 contracting officers to perform our mission. We, in the Army, are addressing that need and ask the Committee to recognize that experienced contracting officers take years to develop. The additional personnel and the reorganization of Army contracting are the solutions to contracting issues we face now and in the future.

We firmly believe we are on the right track and that we will improve our overall contracting processes while continuing to supply the Afghan National Security Forces and other allies with the material that they need.