

HEARING ON EXAMINATION OF AEY CONTRACTS
WITH THE U.S. GOVERNMENT

Tuesday, June 24, 2008

House of Representatives,

Committee on Oversight and

Government Reform,

Washington, D.C.

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Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



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8 Government Reform,

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10 The committee met, pursuant to call, at 10:00 a.m. in
11 room 2154, Rayburn House Office Building, the Honorable Henry
12 A. Waxman [chairman of the committee] presiding.

13 Present: Representatives Waxman, Cummings, Tierney,
14 Watson, Lynch, Norton, Davis of Virginia, Platts, Issa, and
15 McHenry.

16 Staff Present: Phil Barnett, Staff Director and Chief
17 Counsel; Kristin Amerling, General Counsel; Karen Lightfoot,
18 Communications Director and Senior Policy Advisor; David
19 Rapallo, Chief Investigative Counsel; John Williams, Deputy
20 Chief Investigative Counsel; Theo Chuang, Deputy Chief

21 | Investigative Counsel; Russell Anello, Counsel; Stacia
22 | Cardille, Counsel; Suzanne Renaud, Counsel; Christopher
23 | Davis, Professional Staff Member; Earley Green, Chief Clerk;
24 | Jen Berenholz, Deputy Clerk; Caren Auchman, Press Assistant;
25 | Ella Hoffman, Press Assistant; Miriam Edelman, Staff
26 | Assistant; Lawrence Halloran, Minority Staff Director;
27 | Jennifer Safavian, Minority Counsel for Oversight and
28 | Investigations; Keith Ausbrook, Minority General Counsel;
29 | John Brosnan, Minority Senior Procurement Counsel; Steve
30 | Castor, Minority Counsel; Benjamin Chance, Minority
31 | Professional Staff Member; Adam Fromm, Minority Professional
32 | Staff Member; Patrick Lyden, Minority Parliamentarian and
33 | Member Services Coordinator; Brian McNicoll, Minority
34 | Communications Director; and Emile Monette, Minority
35 | Professional Staff Member.

36 Chairman WAXMAN. The meeting of the Committee will come
37 to order.

38 Today's hearing examines a \$300 million contract to
39 supply ammunition to the Afghan Security Forces. This
40 contract is an important one because it relates directly to
41 the success of our mission in Afghanistan. We know a lot
42 about what went wrong after the contract to AEY was awarded
43 in January 2007. We know that ammunition provided by AEY was
44 unserviceable. We know that much of the ammunition was
45 illegal, Chinese-made ammunition. We know that after paying
46 AEY over \$60 million the Army canceled the contract. And we
47 know that last week the Justice Department indicted AEY and
48 its top officials with 71 counts of fraud and related
49 charges.

50 We have also learned that there are questions about the
51 role of the U.S. Embassy in Albania in approving a plan to
52 conceal the Chinese origins of AEY's ammunition. A letter I
53 sent yesterday sought additional information about the
54 Embassy's actions.

55 Today's hearing will examine what is not known: how did
56 a company run by a 21-year-old president and a 25-year-old
57 former masseur get a sensitive, \$300 million contract to
58 supply ammunition to Afghan Forces?

59 My staff has prepared an analysis of the evidence that
60 the Committee has received, and I would like to ask unanimous

61 | consent that the staff analysis and the documents it cites be
62 | made part of today's hearing record.

63 | Mr. DAVIS OF VIRGINIA. No objection.

64 | Chairman WAXMAN. Without objection, that will be the
65 | order.

66 | [The referenced information follows:]

67 | ***** INSERT *****

68 Chairman WAXMAN. The AEY contract shows that the
69 procurement process at the Department of Defense is
70 dysfunctional. There was no apparent need for the contract,
71 no effective vetting of the company's qualifications, and no
72 adequate oversight.

73 The first step in any procurement should be to ask
74 whether the contract is necessary. That is especially true
75 when the contract will cost taxpayers hundreds of millions of
76 dollars. This apparently never happened. AEY acquired its
77 ammunition from stockpiles in Albania and other former Warsaw
78 Pact countries. These countries have surplus ammunition they
79 are trying to give away or destroy.

80 We learned during the investigation that the president
81 of Albania flew to Iraq in 2007 and offered to donate
82 Albanian stockpiles to General Petraeus. It appears that the
83 Army agreed to pay \$300 million for ammunition it could have
84 gotten for free.

85 The procurement failure that is the hardest to
86 understand is the selection of AEY. The State Department
87 maintains a Watch List of potential illegal arms traffickers.

88 Both AEY and Mr. Diveroli are on the Watch List. So are
89 AEY's subcontractor and the subcontractor's subcontractor.
90 The State Department official in charge of the Watch List
91 called this a perfect trifecta. But the Defense Department
92 never bothered to check the Watch List awarding the \$300

93 million arms contract.

94 In the source selection decision, contracting officer
95 wrote: "There essentially is no doubt that AEY would
96 perform in accordance with the delivery schedules and has no
97 history of quality rated problems. Based on this, AEY's
98 initial rating was excellent."

99 This was pure fiction. If Army officials had examined
100 AEY's performance under previous Defense and State Department
101 contracts, they would have easily discovered a dismal record
102 of failure. Documents produced to the Committee show that
103 Federal agencies terminated, withdrew, or canceled at least
104 seven previous contracts with AEY. Under these contracts,
105 AEY provided potentially unsafe helmets to our forces in
106 Iraq, failed to deliver thousands of weapons, and shipped
107 poor quality ammunition to U.S. Special Forces.

108 Government contracting officials repeatedly warned of
109 poor quality, damaged goods, junk weapons, and other
110 equipment in the reject category, and they complained the
111 company repeatedly engaged in bait and switch tactics that
112 were hurting the mission.

113 One contracting official told us, "I just don't trust
114 the guy. I couldn't take anything he said credibly." He
115 told us that AEY was the single worst company he dealt with
116 in Iraq, saying, "That was my lemon I had to make lemonade
117 out of."

118 In testimony to be delivered today, the witness from the
119 Defense Contract Management Agency continues to assert that,
120 ``AEY had a history of satisfactory performance.'' That is
121 simply ridiculous. Rating AEY's performance as excellent and
122 satisfactory is an insult to the taxpayers.

123 The procurement deficiencies cascaded upon each other.
124 The terms of the contract left out essential details,
125 allowing AEY to deliver ammunition that was over 60 years
126 old. There were few inspections of the quality of the
127 ammunition.

128 This unfortunately is not an aberration. Over the last
129 eight years we have witnessed a complete breakdown in the
130 procurement process. As the AEY experience demonstrates, it
131 appears that anyone, no matter how inexperienced or
132 unqualified, can win a lucrative Federal contract worth
133 hundreds of millions of dollars.

134 There are profound lessons to be learned from the AEY
135 experience. By examining AEY as a case study of what went
136 wrong and why, we can begin to rebuild our procurement system
137 and protect the interests of the taxpayers.

138 [Prepared statement of Chairman Waxman follows:]

139 ***** INSERT *****

140 Chairman WAXMAN. I want to recognize Mr. Davis for his
141 opening statement.

142 Mr. DAVIS OF VIRGINIA. Thank you, Chairman Waxman, for
143 holding the hearing.

144 Last Friday's indictment of AEY's officials certainly
145 justifies this Committee's decision to pursue questions about
146 how and why a small, inexperienced company was awarded a
147 Federal contract worth hundreds of millions of dollars.
148 Obvious evidence of consistently shoddy performance was
149 somehow missed or ignored as substandard or illegally
150 obtained munitions were apparently being sent to Afghanistan.

151 The system eventually caught up with AEY, but it took
152 too long and it cost too much. The failure to root out AEY
153 sooner highlights the difficulties that can arise in trying
154 to capture and use information on a contractor's past
155 performance. That such a bad apple continued to receive
156 Federal contracts only strengthens my belief that a
157 well-maintained database of current information on prior
158 violations and other relevant information could be a valuable
159 tool for contracting officers.

160 Such a database was proposed in H.R. 33, and we
161 appreciate Chairman Waxman and the bill's sponsor,
162 Representative Maloney, for working with us to improve the
163 latest version of the bill. It still needs some work, but
164 with derogatory information on performance issues available

165 | only to acquisition officials, the database could provide the
166 | tool the Government needs to root out the rotten apples
167 | before they can spoil even the most valuable barrels.

168 | Perhaps if we had acted faster to put such a system in
169 | place we wouldn't be having a hearing today, but other gaps
170 | in the contracting system also appear to have played a key
171 | role in this fiasco.

172 | It is one thing to have the appropriate information on
173 | past performance available; it is quite another to be able to
174 | use it effectively. In interviews with various contracting
175 | officials involved in the AEY transactions, the impact of the
176 | Small Business Administration's Certificate of Competency
177 | process surfaced several times. Under that statutory scheme,
178 | contracting officials are prohibited from rejecting an offer
179 | from small businesses such as AEY only on the basis the
180 | company is not a responsible perspective contractor due to
181 | negative or marginal past performance. Instead, the matter
182 | must be referred to the SBA, which decides whether the firm
183 | is eligible for award.

184 | While I understand that this program was designed for
185 | the protection of legitimate small business firms, it might
186 | be useful, in light of this case, to take a careful look at
187 | the impact of the process. We should ask whether it has an
188 | intimidating impact on contracting officials who might
189 | otherwise reject a firm as non-responsible for reasons such

190 | as bad past performance, but are reluctant to do so because
191 | of the delay and extra paperwork required by the SBA referral
192 | process.

193 | This case seems to speak volumes about what is wrong
194 | with the military contracting process today. Yet again we
195 | see poor decision-making by overworked and under-trained Army
196 | acquisition officials. Over the course of awarding and
197 | monitoring 29 contracts worth more than \$200 million,
198 | someone, somewhere should have heard an alarm bell and looked
199 | more closely at what this small company was doing with an
200 | implausibly large set of tasks.

201 | But we should take care before extrapolating this
202 | specific, hopefully the unique facts of the AEY, and any
203 | broad conclusions about the entire acquisition system. This
204 | is a sordid tale of greed and ineptitude involving repackaged
205 | Chinese munitions, alleged kickbacks to an Albanian
206 | government official, and phantom plane crashes. There is
207 | little indication the United States routinely purchases
208 | ammunition from vintage Soviet weapons from 22-year-old arms
209 | dealers, so we should ask what needs fixing while keeping an
210 | eye on what needs to keep working in the vast majority of
211 | contract transactions to taxpayers can have their money spent
212 | efficiently and wisely. Meaningful reforms are based on
213 | data, not anecdotes, even sensational ones.

214 | Today's testimony should add important information to

215 | the public record about the mistakes and waste at the heart
216 | of the AEY debacle, and we welcome the witnesses.

217 | Thank you.

218 | [Prepared statement of Mr. Davis of Virginia follows:]

219 | ***** INSERT *****

220 Chairman WAXMAN. Thank you very much, Mr. Davis.

221 We are pleased to have before us today from the Defense
222 Department Brigadier General William N. Phillips, the
223 Commander General of Picatinny Arsenal, Commander of the
224 Joint Munitions and Lethality Life Cycle Management Command,
225 and the Program Executive Officer for Ammunition. He is
226 accompanied by Jeffery P. Parsons, Executive Director of the
227 Army Contracting Command at the U.S. Army Materiel Command.

228 Mitchell A. Howell, Executive Director of the Ground
229 Systems and Munitions Division at the Defense Contract
230 Management Agency.

231 From the State Department we have Stephen D. Mull,
232 Acting Assistant Secretary of State for the Bureau of
233 Political Military Affairs.

234 We also invited officials from AEY, Efraim Diveroli, the
235 President of AEY, and David Packouz, the Vice President. Mr.
236 Diveroli and Mr. Packouz are not with us today. Both
237 individuals informed us, through letters from their
238 attorneys, that they would assert their Fifth Amendment
239 rights against self-incrimination and would refuse to answer
240 questions at the hearing.

241 I ask unanimous consent that both letters be made part
242 of the hearing record. Without objection, that will be the
243 order.

244 [The letters of Mr. Diveroli and Mr. Packouz follow:]

245

***** INSERT *****

246 Chairman WAXMAN. In fact, both men were indicted last
247 week on Federal charges of procurement fraud, false
248 statements, and conspiracy, so their Fifth Amendment concerns
249 would appear to be well founded.

250 I should also note that, as part of their bail
251 conditions, the Federal Court has restricted their travel to
252 the Miami area.

253 Under these circumstances we concluded that it did not
254 make sense to require them to appear today.

255 We are pleased to have our witnesses from the Defense
256 Department and the State Department with us today.

257 It is the practice of our Committee that all witnesses
258 that testify before us and those who are accompanying them
259 answer questions under oath, so I would like to ask you all
260 to please stand and raise your right hand.

261 [Witnesses sworn.]

262 Chairman WAXMAN. The record will indicate that each of
263 the witnesses answered in the affirmative.

264 Why don't we start with Brigadier General Phillips.

265 General PHILLIPS. Mr. Chairman, if I could, I would like
266 to let Mr. Parsons go first, sir. He is the lead for the
267 Army here. He is the Director of the Army Contracting
268 Command, and I am here with him, so, so I would like to defer
269 to Mr. Parsons if that is okay.

270 Chairman WAXMAN. Okay. Thank you.

271

Mr. Parsons?

272 STATEMENTS OF BRIGADIER GENERAL WILLIAM N. PHILLIPS, U.S.
273 ARMY, COMMANDING GENERAL, PICATINNY ARSENAL, COMMANDER, JOINT
274 MUNITIONS AND LETHALITY LIFE CYCLE MANAGEMENT COMMAND;
275 JEFFERY P. PARSONS, EXECUTIVE DIRECTOR, ARMY CONTRACTING
276 COMMAND, PROVISIONAL, U.S. ARMY MATERIEL COMMAND; MITCHELL A.
277 HOWELL, EXECUTIVE DIRECTOR, GROUND SYSTEMS AND MUNITIONS
278 DIVISION, DEFENSE CONTRACT MANAGEMENT AGENCY; AND STEPHEN D.
279 MULL, ACTING ASSISTANT SECRETARY OF STATE, BUREAU OF
280 POLITICAL MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE

281 STATEMENT OF JEFFERY P. PARSONS

282 Mr. PARSONS. Chairman Waxman, Congressman Davis, and
283 distinguished members of the Committee on Oversight and
284 Government Reform, I appreciate the opportunity to appear
285 before you and discuss you concerns regarding the award of a
286 contract to AEY, Incorporated, to supply ammunition to the
287 Afghanistan Army and Afghanistan National Police.

288 The U.S. Army is conducting an extensive review with
289 this contract action to determine if policies, procedures,
290 rules, and regulations were properly followed in the
291 pre-award, award, and post-award phases of the contract.

292 While I did not identify any breaches in policies,

293 | procedures, rules, and regulations, we certainly learned a
294 | great deal in our review and identified a number of
295 | improvements to make to our acquisition process.

296 | Here with me today, as you know, is General Phillips,
297 | the Commanding General of the Army Materiel Command's Joint
298 | Munitions and Lethality Life Cycle Management Command.
299 | General Phillips will address some of the improvements we are
300 | making in the management and acquisition of non-standard
301 | ammunition, to include specifications, packaging, inspection,
302 | and acceptance.

303 | I respectfully request that our joint written statement
304 | be made a part of the record for today's hearing.

305 | Chairman WAXMAN. Without objection, that will be the
306 | order.

307 | Mr. PARSONS. As Executive Director of the Army
308 | Contracting Command, I carefully reviewed the contracting
309 | process associated with the AEY contract. I reviewed and
310 | discussed the source selection process with the contracting
311 | officer. I also reviewed relevant documents such as the
312 | pre-award survey, minutes from the contract post-award
313 | survey, meeting between the ACO and AEY, and post-award
314 | documentation to include reports of discrepancy provided by
315 | the Combined Security Transition Command Afghanistan.

316 | Just recently I visited Afghanistan and had the
317 | opportunity to meet with the Combined Security Transition

318 | Command Afghanistan leadership and members of the Afghanistan
319 | Army. My review indicated that the contracting officer
320 | properly followed the contracting process and made reasonable
321 | judgments based upon the factual information in her
322 | possession. As we have come to learn, however, there was
323 | some factual past performance information that was not in the
324 | possession of the contracting officer at the time of the
325 | contract award.

326 | Based upon our review, we identified a number of small
327 | contract actions awarded by offices in the Army Contracting
328 | Agency where AEY had been terminated for cause in 2006 prior
329 | to the award of the contract in January of 2007. This
330 | information was not visible to the contracting officer, as
331 | the dollar thresholds of the terminated contracts did not
332 | require the recording of past performance information in
333 | accordance with the Defense Federal Acquisition Regulations
334 | Supplement.

335 | As a result, there were no reports of past performance
336 | in the past performance information management system that is
337 | used in the source selection process to evaluate an offeror's
338 | past performance.

339 | Although those terminated actions were not included in
340 | the past performance information management system, the
341 | solicitation did include FAR-52-209-5 certification regarding
342 | responsibility matters, which required AEY to identify

343 | whether they had one or more contracts terminated for default
344 | in the preceding three years by any Federal agency. The
345 | provision also requires an offeror to provide immediate
346 | written notice to the contracting officer if at any time
347 | prior to contract award the offeror learns that his
348 | certification was erroneous when submitted or has become
349 | erroneous by reason of changed circumstances. Again, AEY did
350 | not indicate to the contracting officer that they had had
351 | several contracts that had been terminated for cause prior to
352 | the award of the ammunition contracts.

353 | We have informed our procurement fraud attorneys of this
354 | situation to determine if AEY provided false certifications
355 | during the solicitation phase of the contract. In addition,
356 | we have initiated policy changes within the Army that will
357 | require the posting of past performance information,
358 | regardless of dollar value, for all contracts that have been
359 | terminated for cause or default.

360 | I believe similar policy changes are being considered at
361 | the DOD level, and I would recommend similar policy changes
362 | at the Federal level.

363 | In my opinion, while there certainly is room for
364 | improvement in the way we acquire non-standard ammunition in
365 | support of our allies, this case is more about a contractor
366 | who failed to properly represent their company and failed to
367 | comply with the terms and conditions of the contract, rather

368 | than a faulty contracting process.

369 | Once the contracting officials at the Army Sustainment
370 | Camp became aware of performance issues in February 2008,
371 | they initiated actions to ensure compliance with the
372 | contract.

373 | Once matters became known to the Procurement Fraud
374 | Division regarding the Chinese ammunition, they suspended
375 | them from further Government contracts. Based upon a
376 | show-cause letter that the contracting officer issued to AEY
377 | and their admission that there was Chinese ammunition
378 | provided under this contract, they were terminated for
379 | default on 23 May 2008.

380 | Last week's indictment of AEY President and several
381 | other company officials is yet further indication of a less
382 | than scrupulous contractor.

383 | The Army is in the process of re-procuring ammunition
384 | requirements in support of the Afghanistan Army and National
385 | Police. We have issued several contracts to meet short-term,
386 | critical needs and will apply lessons learned to our new
387 | procurement. We will also pursue re-procurement costs from
388 | AEY consistent with the Federal acquisition regulations.

389 | I appreciate the Congressional support of our Army's
390 | efforts in providing our Nation's war fighters and allies
391 | with quality products and services. We continue to pursue
392 | improvements in our contracting process and workforce, as

393 demonstrated by our Secretary's commitment to implement many
394 of the recommendations in the Gansler Commission report
395 regarding Army acquisition and program management and
396 expeditionary operations.

397 I look forward to your questions.

398 Chairman WAXMAN. Thank you, Mr. Parsons.

399 General Phillips?

400 | STATEMENT OF BRIGADIER GENERAL WILLIAM N. PHILLIPS

401 | General PHILLIPS. Chairman Waxman, Congressman Davis,
402 | distinguished members of this Committee, it is a privilege to
403 | appear before you and to have an opportunity to address the
404 | support that we are providing to a key ally.

405 | As head of the Joint Munitions and Lethality Life Cycle
406 | Management Command, I have sought to gather lessons learned
407 | from our experience with AEY and non-standard ammunition and
408 | apply them simply to improve our process.

409 | In early April, as a direct result of the AEY contract
410 | review that Mr. Parsons just mentioned, we established a team
411 | of subject matter experts in contracting, program management,
412 | and contract administration, which included the Defense
413 | Contract Management Agency, who continues to play a key role,
414 | as well as the Combined Security Transition Command in
415 | Afghanistan. Members of my command have spent the past two
416 | weeks in Afghanistan and Iraq working with our forces on the
417 | ground. We have recognized the need to improve how we
418 | acquire non-standard foreign ammunition.

419 | Let me again emphasize that we have worked with all our
420 | key partners, to include DCMA, to study non-standard
421 | ammunition procurement procedures from acquisitions to
422 | contracts to delivery. As a result, future standards for

423 | quality, packaging, transportation, and technical
424 | specification elements for non-standard ammunition will more
425 | clearly state what we expect from our contractors.

426 | These new terms and conditions have been prepared and
427 | have been staffed with industry and other OSD offices for
428 | their comments. A request for a proposal has been prepared
429 | with these new standards and will be published in early July
430 | for industry to respond.

431 | Let me add that our response from industry has been very
432 | important, and we have sought to capture lessons learned from
433 | them and apply that to our request for proposal process.

434 | As part of our process and to enforce quality standards
435 | of non-standard ammunition before shipment, DCMA and the
436 | Joint Munitions and Lethality Life Cycle Command will send
437 | trained personnel to the point of origin for non-standard
438 | ammunition contracts to verify ammunition type, quantity, and
439 | condition.

440 | The Army has moved aggressively to address this matter
441 | from the first notification of the problems in the field, and
442 | our actions have been prompt and fair. We also continue to
443 | pursue improvements to our contracting process as a result of
444 | this experience. Your Army is committed to ensuring our
445 | soldiers and allies are properly prepared to continue the
446 | fight against the global war on terrorism.

447 | In closing, let me just add that we thank Congressman

448 Waxman and Congressman Davis, thank you and this
449 distinguished Committee for your support for our soldiers,
450 our service members, and our allies.

451 I look forward to your questions.

452 [Prepared joint statement of General Phillips and Mr.
453 Parsons follows:]

454 ***** INSERT *****

455 | Chairman WAXMAN. Thank you very much.

456 | Mr. Howell?

457 | STATEMENT OF MITCHELL HOWELL

458 | Mr. HOWELL. Chairman Waxman, Congressman Davis, and
459 | distinguished members of the Committee on Oversight and
460 | Government Reform, I appreciate the opportunity to appear
461 | before you and discuss your concerns about the Defense
462 | Contract Management Agency's contract administration and,
463 | more particularly, product acceptance processes for various
464 | types of nonstandard ammunition.

465 | The contract at issue was for the procurement and
466 | delivery of various nonstandard ammunition types for the
467 | Afghanistan National Police and the Afghanistan National
468 | Army. The contract was awarded in January 2007 to AEY,
469 | Incorporated, located in south Florida.

470 | The Joint Munitions and Lethality Life Cycle Management
471 | Command, through their supporting acquisitions center at Rock
472 | Island, Illinois, requested a pre-award survey from the DCMA
473 | in December of 2006. Their request to DCMA was for an
474 | analysis of AEY's financial and transportation capability.
475 | In January of 2007 DCMA found AEY to be satisfactory in both
476 | of the evaluated capabilities.

477 | AEY had a history of satisfactory performance on similar
478 | contracts, showing increasing revenue growth, adequate
479 | capitalization, and was considered low-risk for the evaluated

480 capabilities.

481 DCMA conducted a post-award conference in March 2007
482 with AEY representatives to confirm contract technical,
483 quality, and safety performance requirements. At the meeting
484 it was understood that all ammunition would be off the shelf
485 and previously manufactured. All storage, packaging, and
486 transportation were required to be international best
487 commercial practices. AEY confirmed their understanding of
488 these requirements. The contract's packaging and quality
489 terms and conditions specified by the Buying Command had been
490 utilized in previous contracts without any identified
491 discrepancies.

492 The contract required kind, count, and condition
493 inspection. There was no age limitation on the procured
494 ammunition. Product acceptance took two distinct forms. For
495 domestic sources, acceptance was performed at origin. For
496 outside the continental United States, OCONUS, sources,
497 acceptance was performed at destination.

498 The contract terms allowed the contractor to submit
499 certificates of conformance for OCONUS sourced items. The
500 Federal acquisition regulation authorized buying commands to
501 allow contractor use of COCs in lieu of more stringent
502 Government inspection criteria, especially where risk is
503 determined to be low.

504 In addition, the Government maintains its inspection

505 | rights, regardless of whether the contract allows for use of
506 | COCs or not.

507 | The items of concern originated from OCONUS sources.
508 | The OCONUS shipments were delivered to the airport in
509 | Afghanistan. Due to limitations at the airfield; kind, count,
510 | and condition inspection took place after movement of the
511 | ammunition from the air field to the bunkers. Ordinance
512 | commissioned and non-commissioned officers conducted that
513 | inspection. These officers have specialized ammunition
514 | training and the expertise necessary to perform kind, count,
515 | and condition inspection.

516 | COCs were acknowledged by the ordinance officers at the
517 | delivery point. In these COCs, the contractor certified the
518 | ammunition provided was in acceptable condition and could be
519 | safely fired in an originally chambered weapon or weapon
520 | system.

521 | Due to the off-the-shelf nature of the OCONUS source
522 | non-standard ammunition, DCMA's inspection and acceptance
523 | services were very limited. For OCONUS-to-OCONUS shipments,
524 | these duties primarily involve processing payment after
525 | receipt of invoices and a COC signed by both the contractor
526 | and the ordinance officer conducting the inspection.

527 | DCMA has been a critical strategic partner in helping
528 | the Buying Command fashion a new acquisition strategy for
529 | non-standard ammunition. Letters of delegation requiring

530 enhanced scrutiny of non-standard ammunition items have
531 recently been accepted by DCMA. We have already performed
532 some of these delegated functions on short notice in support
533 of urgent ammunition requests.

534 We are confident that the more stringent specifications
535 and corresponding inspection and acceptance requirements will
536 greatly enhance the likelihood that only conforming
537 ammunition will be presented and accepted in the future.

538 DCMA is fully engaged with our Buying Command partners
539 to ensure we continue to improve the processes related to the
540 acquisition and acceptance of non-standard ammunition.

541 In addition to the improvements already mentioned,
542 DCMA's internal realignment enhances our Contract
543 Administration operations. Subsequent to the award of this
544 contract, DCMA realigned into product groupings, including
545 the Munitions and Support System's Contract Management Office
546 facilitating better customer service and subject matter
547 expertise minimizing the potential for situations like this
548 one in an environment of increasing mission and constrained
549 resources.

550 We appreciate the Congressional support of our efforts
551 as the Department's primary contract management agency in
552 providing our Nation's war fighters and allies with quality
553 products and services.

554 Again, thank you for the opportunity to appear before

555 | this Committee today to address DCMA's role in this matter.

556 | I will now answer any questions the Committee may have.

557 | [Prepared statement of Mr. Howell follows:]

558 | ***** INSERT *****

559 | Chairman WAXMAN. Thank you, Mr. Howell.

560 | Mr. Mull?

561 STATEMENT OF STEPHEN D. MULL

562 Mr. MULL. Thank you very much, Mr. Chairman and Ranking
563 Member Davis and all the members of the Committee, for the
564 opportunity to meet with you today to provide you some
565 background on the Department of State's Watch List for
566 Defense export licensing.

567 The Watch List is managed by the Directorate of Defense
568 Trade Controls, which we call DDTC, and that is part of the
569 Bureau for Political Military Affairs which I lead.

570 The State Department has been responsible for regulating
571 Defense trade since 1935 with the objective of ensuring that
572 Defense trade supports U.S. national security and foreign
573 policy interests. We carry out our work on the authority of
574 the Arms Export Control Act and the Foreign Assistance Act of
575 1961, according to the International Traffic and Arms
576 Regulations, the ITAR, which includes the U.S. Munitions
577 List, USML.

578 The USML covers items specially designed for military
579 appraisals, and its 20 categories extend from firearms to the
580 joint strike fighter. The Secretary of State has assigned
581 the Bureau of Political Military Affairs the responsibility
582 for performing this critical national security function for
583 the State Department.

584 The Department's primary mission in this regard is to
585 deny our adversaries access to U.S. Defense technology while
586 facilitating appropriate Defense trade with our allies and
587 Coalition partners to allow for their legitimate self-defense
588 needs and to fight effectively alongside U.S. military forces
589 in joint operations.

590 We do this in part by screening all export applications
591 against our Watch List, a large task given the volume of
592 applications handled by the Department. In fiscal year 2007,
593 the Political Military Bureau received approximately 81,000
594 licensing applications for exports valued at approximately
595 \$100 billion. In fiscal year 2008 we anticipate that the
596 trend of an average annual increase of 8 percent will
597 continue.

598 Our Watch List is based on section 38(g) of the Arms
599 Export Control Act, and that directs the Department of State,
600 as designated by the President, to develop appropriate
601 mechanisms to identify persons and entities who are
602 ineligible to contract with the United States Government or
603 to receive an export license.

604 The Watch List was created to respond to this section of
605 law, as well as to help us identify other parties who might
606 be unreliable recipients of Defense articles and services
607 licensed by the State Department.

608 The Watch List currently has just under 80,000 entries

609 | drawn from a wide array of governmental and other sources.
610 | We update the Watch List daily with our compliance
611 | specialists, who continuously review intelligence
612 | information, law enforcement information, and open source
613 | information for relevant material.

614 | Public lists such as the General Services
615 | Administration's Excluded Parties List, the Office of Foreign
616 | Asset Control's specially designated foreign nationals, and
617 | the Department of Commerce's Denied Parties List are all part
618 | of our Watch List.

619 | The Watch List also includes persons who are subject to
620 | criminal or civil debarment by DDTC, as well as entries
621 | derived from classified intelligence reporting.

622 | Additionally, sensitive information regarding ongoing
623 | criminal investigations is routinely provided to us by the
624 | FBI and Immigrations and Customs Enforcement senior special
625 | agents who are assigned and work with us in the Political
626 | Military Bureau and to serve as liaison among our agencies.

627 | It is important to point out what the Watch List is and
628 | what the Watch List is not.

629 | The Watch List functions mainly to alert our licensing
630 | officers and compliance specialists within DDTC about
631 | potential concerns regarding a party to a Defense export
632 | license application. The wide range of information and
633 | sources used in compiling the Watch List reflects the

634 statutory requirements of the Arms Export Control act and the
635 wide latitude given the State Department in making the
636 decisions regarding the exports of munitions.

637 Consequently, while some entries clearly determine
638 whether an export may be approved--for example, if a party to
639 a deal is debarred or otherwise ineligible to export--other
640 entries tend to be of a more informational nature and are
641 used in coming to decision on making licensing applications.

642 Consequently, the presence of an entity on the Watch
643 List will prompt further scrutiny and review, but it is
644 doesn't automatically entail removal of the party or the
645 denial of a license application.

646 Each license application submitted to DDTC is required
647 by the regulations to include the names of all the parties
648 who are involved in the proposed transaction. All of those
649 parties, both foreign and domestic, are checked against this
650 Watch List. If there is a match, the license application is
651 immediately put on hold for a review by a compliance
652 specialist.

653 If the party in question is debarred by the Department
654 for a conviction under the Arms Export Control Act or
655 otherwise ineligible--for example, if another U.S. Government
656 agency has debarred them from contracting with the U.S.
657 Government--or if they are under criminal indictment, they
658 will be removed and the approved export application or the

659 | license will be denied.

660 | If the Watch List entry indicates concerns in the
661 | activities of a particular party without rising to the level
662 | of removal or denial, DDTC's compliance and licensing
663 | officers will undertake a careful review and may request
664 | additional information from the applicant. Additional or
665 | clarifying information regarding the entity may also be
666 | sought from other Government agencies.

667 | If it appears after review that the original reasons for
668 | entering the party on the Watch List have been resolved, the
669 | hold will be released and the license will likely be approved
670 | without further delay.

671 | We find the Watch List to be an effective tool to
672 | facilitate coordination with other Government agencies that
673 | may have a concern with the particular entity. For example,
674 | companies under criminal investigation may be Watch Listed to
675 | make sure that investigative agency, such as FBI or ICE, is
676 | alerted when a company applies for an export application.
677 | Such Watch Listing can facilitate a criminal investigation by
678 | ensuring communication and coordination among Government
679 | agencies.

680 | It is also worth noting that such coordination may
681 | confirm the suspensions of investigators, but it is also true
682 | that such coordination may demonstrate that a particular
683 | entity, in fact, is acting within the law, and helps ensure

684 | that investigative resources are not wasted on law-abiding
685 | companies.

686 | Thank you for your interest. I will be happy to answer
687 | any of your questions about our Watch List.

688 | [Prepared statement of Mr. Mull follows:]

689 | ***** INSERT *****

690 Chairman WAXMAN. Thank you very much for your testimony.

691 Without objection, the questioning will commence with a
692 ten-minute round for the majority followed by a ten-minute
693 round for the minority. Either side may reserve any unused
694 time of its ten-minute block for use during or immediately
695 following a five-minute round by a member of that side, with
696 this reserved time to be controlled by the Chairman and the
697 Ranking Member, respectively.

698 Without objection, that will be the order.

699 I am going to start off the questions, myself.

700 One of the questions we are trying to figure out at this
701 hearing is: how can a company like AEY get such an important
702 contract for \$300 million to provide ammunition to the
703 Afghanistan Security Forces? Mr. Howell, in your written
704 statement for today you explain AEY got the contract because
705 of AEY's strong record of past performance. Here is what you
706 said: ``AEY had a history of satisfactory performance on
707 similar contracts, showed increased revenue growth, adequate
708 capitalization, and was considered a low risk.'' Do you
709 stand by that statement?

710 Mr. HOWELL. Yes, sir, I do.

711 Chairman WAXMAN. Well, we did what the Army apparently
712 never did. We looked back at past contracts to see what
713 AEY's past performance under other contracts was really like.
714 One contract that AEY got was a contract with the

715 Multi-National Security Transition Command in Iraq to deliver
716 protective helmets. A U.S. official who examined AEY's
717 shipments wrote, "The helmets came to Abu Graib by mistake.
718 They were not very good. They had peeling paint, and a few
719 appeared to have been damaged such as having been dropped.
720 When I first saw them, I put them in the reject category."

721 The same inspector also wrote this to Mr. Diveroli, the
722 head of AEY: "Some people got a little wound up when they
723 saw the daily receiving report. They remembered the 10,000
724 helmets you sold them earlier this year and the junk AKs we
725 still have in the warehouse. Several scenarios were being
726 planned for you, none of them pleasant."

727 Another official wrote, "Bottom line, the helmets are
728 damaged goods and we don't want them."

729 General Phillips, does this sound like satisfactory
730 performance to you?

731 General PHILLIPS. Sir, I am going to let Mr. Parsons
732 address that question, but before I do that I would just like
733 to state that when the KO goes in, the contracting officer,
734 goes in to make an award on a contract they do a thorough
735 review of past performance and they ask DCMA to assist in
736 that process, so--

737 Chairman WAXMAN. Well, if you did a thorough performance
738 and someone came back with this kind of report of performance
739 under a previous contract, would you think that that sounded

740 | like satisfactory performance? Mr. Parsons, maybe you can
741 | answer this question.

742 | Mr. PARSONS. No, I would not, sir. And, as I mentioned
743 | in my opening remarks, we have found that, due to dollar
744 | value of many of those contracts not being within the
745 | reporting threshold, a lot of that information did not get
746 | reported. Again, the reason why we are initiating a policy
747 | change in the Army to ensure that, regardless of dollar
748 | value, that type of information is sent forward.

749 | I will say that--

750 | Chairman WAXMAN. Well, I want an answer to this question
751 | and I have limited time. Under another Defense Department
752 | contract AEY failed to deliver 10,000 Beretta pistols under a
753 | contract for \$5.6 million. The contracting official who
754 | terminated that contract said this about Mr. Diveroli: ``I
755 | just don't trust this guy. I couldn't take anything he said
756 | credibly.''

757 | The contracting official added: ``All his reasons
758 | continued to build and build, and then it just got to the
759 | point where it was the straw and the camel's back, and I
760 | said, ``Look, no amount of consideration is going to take
761 | care of the fact that you have been unable to deliver. You
762 | have not had one delivery order come in.''

763 | Now, hearing that, Mr. Howell, would you think that
764 | indicated sound past performance?

765 Mr. HOWELL. I would not, if I heard those things, say it
766 was past performance. But I would also question if those
767 contracting officers, in fact, provided written input to the
768 Excluded Parties List or other reference areas that we could
769 use, in fact, to weigh our evaluation for adequate
770 performance for our contractor.

771 Chairman WAXMAN. Well, under another contract with AEY,
772 with one with the U.S. Army Special Operations Command, AEY
773 was supposed to provide the same type of ammunition that it
774 alter delivered to Afghanistan. The contracting officer who
775 terminated that contract said that AEY "failed to deliver
776 acceptable goods, provided no notice of an excusable delay,"
777 and "provided inadequate assurance of future performance."
778 Does that sound like satisfactory performance, Mr. Howell?

779 Mr. HOWELL. Absolutely not.

780 Chairman WAXMAN. The Committee also looked at AEY's
781 performance under contracts with other agencies. Under a
782 contract with the State Defense to provide tactical equipment
783 for use in Iraq, including optical sites and weapons
784 adaptors, AEY repeatedly ignored a contracting officer's
785 warnings. In fact, AEY delivered only one item by the
786 delivery date, and it was rejected as a nonconforming
787 substitute.

788 When the contracting officer withdrew the order, this is
789 what he wrote to AEY: "You are hereby notified that your

790 failure to deliver the listed items has endangered the
791 performance of the Department of State mission. Further, in
792 subsequent correspondence your promises of delivery have not
793 been met. You are hereby informed that the undelivered items
794 are being withdrawn from subject order. The DOS mission can
795 no longer be delayed due to your inability to produce the
796 items as stated in subject order.''

797 Mr. Parsons, does that sound like satisfactory
798 performance?

799 Mr. PARSONS. No, it does not, sir.

800 Chairman WAXMAN. The award of this contract to AEY
801 despite these numerous examples of contracts terminated for
802 poor performance reveals a fundamental flaw. The system for
803 vetting contractors appears to be broken. It is hard to
804 imagine a less-qualified contractor than AEY, and yet this
805 company was rated excellent by the Defense Department and it
806 was awarded a contract worth \$300 million. That is quite
807 amazing to me.

808 I am going to reserve the balance of my time and I am
809 going to yield to Congresswoman Norton her opportunity to ask
810 questions.

811 Ms. NORTON. Thank you, Mr. Chairman.

812 Let me go first to Mr. Mull. You are aware, of course,
813 that the Arms Control Act requires us to make sure that
814 brokering, arms brokering overseas, is done in light of the

815 national security interests of the United States. I want to
816 look at the Watch List that you discussed in your testimony.

817 When there is an application for someone to be an arms
818 broker, the Government is supposed to check all the parties
819 on the Watch List specifically to see if these are arms
820 traffickers. That is correct?

821 Mr. MULL. Yes. We compare every application for an arms
822 brokering license against the Watch List.

823 Ms. NORTON. So this Watch List is very important, and we
824 have learned--and I want to verify this--that everyone
825 involved in the AEY contract was on the Watch List. Let's go
826 first to the buyer, the president, Efraim Diveroli, flagged
827 in April 2006 because of suspected illegal arms trafficking;
828 is that not correct?

829 Mr. MULL. Yes, ma'am, that is correct.

830 Ms. NORTON. Although, Mr. Chairman, I would like to put
831 their words on the record of the Watch List that, although
832 Mr. Diveroli was only 21 years old, he has brokered and
833 completed several multi-million-dollar deals involving fully
834 semi-automatic rifles, and here are the operative
835 words--''future license applications involving Diveroli
836 and/or his company should be very carefully scrutinized.''

837 Mr. Mull, that entry was placed in 2006; is that not
838 accurate?

839 Mr. MULL. Yes, ma'am. And if I might elaborate, we

840 actually first put the company AEY on our Watch List in
841 January of 2005.

842 Ms. NORTON. I have limited time. I just want to make
843 sure that my questions are predicated on the facts. They are
844 on the Watch List.

845 Now, the middle man, Mr. Mull, was Enrique Tolmay. Now,
846 he was also placed on the Watch List in 2006 before this
847 contract was awarded; is that not correct?

848 Mr. MULL. Yes, ma'am, that is correct.

849 Ms. NORTON. Now, the source of the ammunition was Mr.
850 Pinari. He is the head of Albania's military export/import
851 company. He was first listed, according to my information,
852 in 2005; is that not true?

853 Mr. MULL. Yes, ma'am, that is correct.

854 Ms. NORTON. Now, we note that the entries of Mr. Tolmay
855 and Mr. Pinari came from the CIA and the DIA, and we
856 understand that their information is classified, but the fact
857 that they were on the list in 2005 and 2006 is not
858 classified; is that correct?

859 Mr. MULL. That is correct.

860 Ms. NORTON. General Phillips, let me turn to you. The
861 head of the State Department's Directorate of Defense Trade
862 Controls told us that the AEY had "a perfect trifecta," and
863 yet, of course, they were awarded by the Army a \$300 million
864 contract. How do you explain awarding the contract to

865 | somebody who is on a Watch List that is not classified, sir?

866 | General PHILLIPS. Ma'am, the contracting officers that
867 | execute the contracts are not required to go and look at the
868 | Watch List. I believe that to be true, and I will ask Mr.
869 | Parsons to just elaborate on that comment, if he would.

870 | Ms. NORTON. Wait just a second. Your testimony here is
871 | that you didn't check the Watch List because you were not
872 | required to check--the contracting officer was not required
873 | to check the Watch List. I want to ask you, in light of what
874 | we now know, we know the contracting officer did not. And
875 | the last thing I am trying to do is to blame it on the
876 | contracting officer.

877 | The only reason we are having hearings like this is to
878 | see what we can do to improve in the future, so I am not
879 | trying to say why in the world did you do it. In light of
880 | what you now know, would it not seem in the best interest of
881 | the United States to either, when you are involved in sales
882 | which require a license, to either check the Watch List or,
883 | if there is no ``requirement,`` to have your own internal
884 | procedures so that the contracting officer would know to
885 | check the Watch List? Or is your testimony that we didn't
886 | have the procedures, we didn't have to do it, and we are not
887 | going to do it in the future?

888 | Mr. Parsons?

889 | Mr. PARSONS. Ma'am, I don't disagree. What I am not

890 | sure of is whether that Watch List is accessible to people
891 | outside of the should. I can tell you that there is nothing
892 | in the regulation--

893 | Ms. NORTON. Mr. Mull, was that Watch List which is not
894 | classified, if it had been asked for by the DOD, would they
895 | have been allowed to look at the Watch List?

896 | Mr. MULL. We often get requests from other Government
897 | agencies and we evaluate it. We have to make sure that we
898 | don't release any classified information, so--

899 | Ms. NORTON. This was not classified.

900 | Mr. MULL.--we would screen in response to a Government
901 | agency. We would consider the request and provide what we
902 | could.

903 | Ms. NORTON. Thank you. So this could have been
904 | released. It was not classified.

905 | Mr. Chairman, I would like to ask if any procedures
906 | have, in fact, been set up to check the Watch List, before I
907 | sign on. Are there any procedures now within the DOD to
908 | check the Watch List now that, of course, you know that you
909 | have access to that information?

910 | Mr. PARSONS. Ma'am, no, there is not to my knowledge,
911 | but we will pursue that with the Department of State. Our
912 | understanding was that that Watch List fed the Excluded
913 | Parties List, which is what is required by the contracting
914 | officer, but we will engage with the State Department to see

915 | if there is a way that we can add that to our procedures.

916 | Chairman WAXMAN. Thank you, Ms. Norton. Your time has
917 | expired.

918 | I just want to ask a quick question of Mr. Parsons. One
919 | of the sources for the classified information was the Defense
920 | Intelligence Agency. Do you know now what the entry was?

921 | Mr. PARSONS. Can you repeat the question, sir?

922 | Chairman WAXMAN. One of the sources for the
923 | classification was the Defense Intelligence Agency. Do you
924 | know now what the deletion was?

925 | Mr. PARSONS. With the DIA, no, I do not.

926 | Chairman WAXMAN. You do not. Okay.

927 | We have another vote on the House floor. we are going
928 | to recess for around ten minutes in order for Members to vote
929 | and come back.

930 | We stand in recess.

931 | [Recess.]

932 | Chairman WAXMAN. The Committee will come back to order.

933 | I would like to now recognize Mr. Davis for ten minutes.

934 | Mr. DAVIS OF VIRGINIA. Thank you.

935 | Mr. Howell, let me ask you, what does it take to be a
936 | non-responsible bidder?

937 | Mr. HOWELL. Yes, sir.

938 | Mr. DAVIS OF VIRGINIA. I mean, in retrospect you would
939 | say these guys are probably non-responsible, wouldn't you,

940 for a \$200 million bid?

941 Mr. HOWELL. I would. Given the facts that we know
942 today, I would tell you that they were a non-responsive
943 contractor. They did not comply with the terms and
944 specifications of the contract, which is a primary metric
945 that we use. They didn't deliver on time, didn't deliver in
946 accordance with the specifications in both the basic contract
947 or the modifications.

948 Mr. DAVIS OF VIRGINIA. Let me just go through another
949 company and ask if you think it is responsible. This is a
950 company that in 2007 paid a \$1.1 million settlement for
951 over-billing for aircraft parts, and in 2006 a \$30 million
952 payment to settle claims that 100 neighbors in the Santa
953 Susanna Field Nuclear Research Facility were sickened by
954 decades of radioactive and toxic contamination. This was
955 supposed to be confidential, but one of the plaintiffs
956 divulged the terms to local media. In 2004, a \$615 million
957 settlement to resolve the Darlene Druin scandal and other
958 pending investigations, if you remember that.

959 In 2003 an \$18 million settlement for violations of the
960 Arms Export Control Act and the International Trafficking in
961 Arms regulation. In 2003 a \$6 million settlement for
962 violations of the Arms Export Control Act involving
963 transferred data to China. In 2003 they paid a \$4 million
964 fine for violations to the Arms Export Control Act and the

965 International Trafficking Arms control. That is a different
966 violation. In 2003 a \$2.5 million settlement for alleged
967 defective pricing. In 2003 a \$490,000 settlement for a
968 key-tam action for false claims. They had had business units
969 suspended from receiving new Federal contracts for an
970 18-month period from 2003 to 2005. Criminal investigations.

971 But this is the Boeing Corporation, but they are
972 responsible under the criteria because they can still
973 deliver; is that how you view it?

974 Mr. HOWELL. Well, sir, the DCMA's ability to assess
975 prior performance and potential responsiveness is directly
976 limited to the data that we have and can review.

977 Mr. DAVIS OF VIRGINIA. Yes. That is all public data
978 here. And they continue to receive. I guess what I am
979 saying is it is a fairly low bar for companies. Really,
980 debarment or not finding people responsible is basically a
981 fairly low bar, isn't it?

982 Mr. HOWELL. Yes, sir.

983 Mr. DAVIS OF VIRGINIA. What did DCMA's review entail?
984 Based on their review, a complete award was recommended. AEY
985 was classified as a low financial risk at the time, and the
986 firm was deemed well-managed, efficient, and experienced.
987 Can you find where that information came from?

988 Mr. HOWELL. Yes, sir. We use a form 1403. That is what
989 the procurement contracting officer submits for a pre-award

990 survey. In that, in section 19 and 20 they have the ability
991 to identify both major and contributing factors that they
992 would like for the agency to examine for us to make a
993 determination. The contracting officer, in accordance with
994 the contract, the type of contract, meaning the priority,
995 non-standard ammunition, previously manufactured,
996 OCONUS-to-OCONUS delivery, requested that we perform a
997 pre-award on the financial, transportation, and
998 accountability aspects of this impending contract.

999 We did that for financial and transportation and the
1000 Defense Contracting Auditing Agency conducted the
1001 accountability piece of it.

1002 Mr. DAVIS OF VIRGINIA. Were they aware that the CEO of
1003 this company was in his early 20s?

1004 Mr. HOWELL. I cannot answer that question at this point,
1005 sir.

1006 Mr. DAVIS OF VIRGINIA. Let me ask you, Mr. Parsons, Mr.
1007 Diveroli had some colorful off-the-field incidents, for lack
1008 of a better term. What affect do domestic incidents by
1009 contractors' presidents have on the awarding of a Government
1010 contract?

1011 Mr. PARSONS. Sir, I have a hearing difficulty, so I just
1012 ask that you repeat the question.

1013 Mr. DAVIS OF VIRGINIA. What affect to domestic incidents
1014 by a contractor's president have on the awarding of a

1015 Government contract? Any?

1016 Mr. PARSONS. As far as his status, himself?

1017 Mr. DAVIS OF VIRGINIA. Yes, for his off-the-field
1018 incidents.

1019 Mr. PARSONS. They focus on the company, not on the
1020 people who own the company, unless they are on the Excluded
1021 Parties List.

1022 Mr. DAVIS OF VIRGINIA. A 22-year-old CEO, I don't think
1023 he had a college degree--that doesn't send off any bells?

1024 Mr. PARSONS. Sir, as part of the solicitation process,
1025 we don't ask for or even know what the age of the owners of
1026 the company are.

1027 Mr. DAVIS OF VIRGINIA. Nobody did in the investigation
1028 of this or had any idea what was behind the paperwork?

1029 Mr. PARSONS. Not that I know of.

1030 Mr. DAVIS OF VIRGINIA. What if a contracting officer
1031 came across a news story where the president was arrested for
1032 domestic violence related charges? That would not be
1033 something that would necessarily ring any bells, because you
1034 look at the total company and not at the CEO?

1035 Mr. PARSONS. Sir, if that was information that was
1036 available to the contracting officer, I am sure that would
1037 have caused some questions on their part. But, again, we are
1038 not aware of any of that information being available to the
1039 contracting officer.

1040 Mr. DAVIS OF VIRGINIA. Could they have taken his age
1041 into account in deciding whether they could have been
1042 selected for an award of this magnitude?

1043 Mr. PARSONS. Not his age. No. That is not one of the
1044 things that we use as a discriminator in awarding--

1045 Mr. DAVIS OF VIRGINIA. How about experience?

1046 Mr. PARSONS. Excuse me?

1047 Mr. DAVIS OF VIRGINIA. Experience is one, though, isn't
1048 it?

1049 Mr. PARSONS. Appearance?

1050 Mr. DAVIS OF VIRGINIA. Experience.

1051 Mr. PARSONS. Experience, yes.

1052 Mr. DAVIS OF VIRGINIA. Experience is clearly a criteria,
1053 and at 22 the fact of the mater is didn't have a lot of
1054 experience.

1055 Mr. PARSONS. The information available to the
1056 contracting officer indicated that the company had had
1057 relevant recent experience, that they had started in 1999,
1058 had awarded contracts by the Department of Defense starting
1059 in 2004, so the contracting officer, again, based on the
1060 information that was available to him, felt that the company
1061 had experience in providing these types of goods and
1062 services.

1063 Mr. DAVIS OF VIRGINIA. Obviously they were wrong. You
1064 think in retrospect they were wrong, don't you?

1065 Mr. PARSONS. They were wrong?

1066 Mr. DAVIS OF VIRGINIA. Yes.

1067 Mr. PARSONS. The contracting officer relied, again, on
1068 if that was supplied on a contract that AEY had for--

1069 Mr. DAVIS OF VIRGINIA. Do you think he made a good
1070 decision or a bad decision?

1071 Mr. PARSONS. Based on the information that she had, I
1072 think she had--

1073 Mr. DAVIS OF VIRGINIA. I am asking you in retrospect,
1074 now that we know all the facts.

1075 Mr. PARSONS. In retrospect, knowing what we know now, it
1076 was not a good decision.

1077 Mr. DAVIS OF VIRGINIA. That is all I am trying to get
1078 after.

1079 I will reserve the balance of my time for this point.

1080 Chairman WAXMAN. The gentleman has three minutes. He is
1081 reserving that.

1082 I want to recognize Mr. Issa.

1083 Mr. ISSA. Thank you, Mr. Chairman. And thank you very
1084 much for holding this hearing.

1085 I am going to bifurcate my questions. I think the
1086 Ranking Member has done a pretty good job, a very good job of
1087 sort of asking the question of, in retrospect does this award
1088 make sense. No, it doesn't.

1089 General Phillips, if I can ask you a question, knowing

1090 | what you know from the record, what tools should have been
1091 | used to prevent this from happening?

1092 | General PHILLIPS. Sir, this is non-standard ammunition
1093 | that we are buying. It is essentially foreign-made
1094 | ammunition, Soviet block countries, former Soviet block.
1095 | Some things that we have to do is to make sure that we
1096 | improve our specifications, the way that we transport this
1097 | ammunition, our packaging, standards, those kinds of things.
1098 | And the team that I have established of subject matter
1099 | experts have taken that on in a very big way and we have
1100 | developed the standards and the specifications, and we are
1101 | going to go off and improve those for future buys that we
1102 | have for non-standard ammunition. We are going to do
1103 | everything possible to ensure that this doesn't happen again,
1104 | sir.

1105 | Mr. ISSA. I don't want to disagree with you. Your
1106 | service in the Army is much longer than mine. But isn't this
1107 | standard ammunition, just not our standard?

1108 | General PHILLIPS. Sir, for our standard ammunition--

1109 | Mr. ISSA. No, no. Please answer the question because I
1110 | asked it that way for a reason. You know, there are three
1111 | camps of ammunition in the world. There is the NATO
1112 | standard, the old Soviet Tricom standards, and then there
1113 | is, like, all others. This is not all others, is it? This
1114 | is basically the old anti-NATO communist block ammunition,

1115 AK-47s, a 762 that doesn't use the same casing as ours, and
1116 so on. It is what we dealt with all the way back in Vietnam;
1117 isn't that true?

1118 General PHILLIPS. Correct, sir.

1119 Mr. ISSA. Let me ask you a question, speaking of
1120 Vietnam. I was in Afghanistan almost immediately after we
1121 had secured it, and I was there with now Chairman Reyes and
1122 former Chairman of Armed Services, Duncan Hunter, and we were
1123 shown by well-meaning, I am sure, Army officers how they were
1124 going to train the Afghans, the guys who, to a certain
1125 extent, had kicked the Soviets' ass with odds and ends
1126 weapons.

1127 I know we are not supposed to use that word
1128 indiscriminately, but I noticed in the staff stuff I noticed
1129 there were some other words like shit ammo, so I figured, you
1130 know, kick the Soviets' ass would work very well. So I will
1131 limit myself to those two parts of George Carlin's repertoire
1132 for today in honor of George's passing.

1133 But we were there with Duncan Hunter, and he looked at
1134 this stuff, and it was junk, and he asked, Are we going to
1135 train with this? Oh, no, this stuff is terrible. This is
1136 what was turned in. We are paying to have this turned in by
1137 Afghans and none of it is useable. He said, Well, when are
1138 you going to start training these guys? Well, we are looking
1139 into procuring weapons.

1140 I asked that day what I am going to ask you today,
1141 although I asked it with a shorter list. Isn't it true that
1142 Bulgaria, the Czech Republic, Estonia, former East Germany,
1143 Hungary, Lithuania, Latvia, Poland, Romania, Slovenia, and
1144 Slovakia all use this standard historically, have large
1145 stockpiles, were known to have large stockpiles, and
1146 virtually all of these people, except for Germany, I guess,
1147 were part of the Coalition of the willing that went into
1148 Afghanistan; isn't that true?

1149 General PHILLIPS. Sir, I am not sure. I believe that to
1150 be true.

1151 Mr. ISSA. I said I would bifurcate this thing, but you
1152 led me right into the other part. Wasn't this an unnecessary
1153 contract, because the truth is if you are going to buy
1154 standard ammunition and you have colleagues, allies, friends,
1155 people you work with for whom this is still a standard, they
1156 know about it.

1157 General, let me ask you a question: why are you wasting
1158 Federal taxpayers' time writing standards for tricom rounds
1159 when, in fact, all those countries I named have experts who
1160 not only have the ammunition and the weapons still in their
1161 stockpiles in many cases, but have people who have the
1162 expertise, and they are all NATO allies? Why is it in a NATO
1163 war in Afghanistan we didn't use our NATO allies' expertise
1164 not only in supply but also in inspection? And why aren't

1165 | you doing it today as part of the fix?

1166 | General PHILLIPS. Sir, I would simply say that we are
1167 | required by statute and by Federal regulation that when we
1168 | enter into agreements with our foreign allies like
1169 | Afghanistan we use specific policies and procedures that are
1170 | defined by, in the case of the Army, the United States Army
1171 | Security Systems Command.

1172 | Mr. ISSA. I am running out of time, so let me close with
1173 | one question that is half comment/half question. You entered
1174 | into agreements. You didn't go there to do it, but you
1175 | entered into agreements with Afghanistan that essentially
1176 | locked out the ability for our NATO allies who had large
1177 | stockpiles from being the suppliers, either for reduced cost
1178 | or in-kind.

1179 | Now let's go back again. If I take a trip to
1180 | Afghanistan this week and I talk to President Karzai and I
1181 | ask him, Would you be willing to have this product delivered
1182 | to you from any source that could deliver you high-quality
1183 | product that your troops could use, do you think he is going
1184 | to tell me, no, no, we have an agreement, we have a certain
1185 | standard? Or do you believe that, in fact, the United States
1186 | military in a macro way--and procurement is just the tail end
1187 | of the macro mistake--made a mistake in Afghanistan that they
1188 | continue to compound because we made a decision to use the
1189 | weapons they were used to, and then we didn't work with the

1190 | people who had the expertise?

1191 | General PHILLIPS. Sir, I agree with you that we have
1192 | made mistakes and we need to capture those lessons learned
1193 | and apply them.

1194 | The one thing I would like to share with you is that we
1195 | are doing everything possible to ensure that our very
1196 | important ally, Afghanistan, gets the munitions that they
1197 | need, and that is my job, to make sure we do that now and in
1198 | the future.

1199 | Mr. ISSA. Thank you, Mr. Chairman. I think we have made
1200 | our point.

1201 | Chairman WAXMAN. Thank you, Mr. Issa.

1202 | Mr. Cummings?

1203 | Mr. CUMMINGS. Thank you very much, Mr. Chairman.

1204 | General, I just want to ask you a few questions. One of
1205 | the things, as I listened to the testimony and reviewed all
1206 | the documents, there are four things that seem to be going on
1207 | here: serious communication problems, some serious
1208 | incompetence, phenomenal carelessness, and a culture of
1209 | mediocrity.

1210 | General, we reviewed documentation from the Defense
1211 | Department involving quite a few previous contracts your
1212 | agency had with this company, AEY. What struck me was the
1213 | number of times AEY failed to perform and then came up with
1214 | outlandish excuses for why it didn't fulfill the contract.

1215 | Let me give you a few examples.

1216 | In 2005 AEY was awarded a contract to provide munitions
1217 | to the Iraq Security Forces, including 10,000 Beretta
1218 | pistols. Mr. Diveroli was only 19 years old at the time. We
1219 | interviewed your contracting officer for this contract, and
1220 | he told us that when Diveroli failed to deliver the weapons,
1221 | he just started making up wild excuses. This is your
1222 | contracting officer, now. This is what he said. "Diveroli
1223 | said the German government was interfering in the delivery of
1224 | these Italian-made pistols. He said that the transport
1225 | planes couldn't fly because of bad weather. He even said
1226 | that there was a fiery plane crash that destroyed the
1227 | documents necessary to secure an export license needed to
1228 | ship the goods."

1229 | But that wasn't all. Mr. Diveroli said at one point
1230 | that he failed to deliver the weapons because a hurricane hit
1231 | Miami, Florida, where AEY was based. He told a contracting
1232 | officer that they had no water and that "his life was just
1233 | terrible." Well, as it turns out this wasn't true.

1234 | In an interview with the Committee staff, this is what
1235 | your contracting officer told us. "We could tell there was
1236 | no hurricane in Miami. It wasn't like we didn't have the
1237 | internet and the green zone."

1238 | General, are you concerned that Mr. Diveroli would make
1239 | up such excuses like this on important Government contracts,

1240 major contracts?

1241 General PHILLIPS. Sir, I appreciate your insight. I
1242 have not heard those allegations that you just went over in
1243 terms of the nine millimeter contract and others, but
1244 certainly it raises issue as to Mr. Diveroli, himself. In
1245 hindsight, if we had had knowledge, Army contracting, the
1246 contracting officer for the contract we are discussing, had
1247 knowledge of that and those instances in the past
1248 performance, that would have weighed in the decision that--

1249 Mr. CUMMINGS. That is why I started off my discussion by
1250 saying one of four things, or four, are happening here. There
1251 are some serious communication problems; wouldn't you agree?

1252 General PHILLIPS. Sir, I think when Mr. Parsons
1253 mentioned up front that in past performance and sharing that
1254 information, that we have got to improve the way we do that.
1255 I would agree, sir.

1256 Mr. CUMMINGS. So you did not know about this information
1257 that I just cited when this \$300 million contract was
1258 awarded? You didn't know?

1259 General PHILLIPS. Sir, I did not.

1260 Mr. CUMMINGS. Mr. Parsons, did you want to say
1261 something?

1262 Mr. PARSONS. Sir, again, the information that the
1263 contracting officer had was limited from the standpoint of
1264 past performance. She did get a questionnaire on past

1265 performance answered by the Joint Contracting Command in Iraq
1266 and Afghanistan. Many of those issues that you just
1267 identified were not highlighted in that past performance
1268 review.

1269 Mr. CUMMINGS. It is interesting that when Mr. Diveroli
1270 said a hurricane hit Florida and made his life terrible he
1271 was justifying his failure to perform on one of three
1272 contracts that your team was supposed to be reviewing to
1273 assess his past performance, and yet you didn't even talk to
1274 the primary contracting officer on the contract; is that
1275 right?

1276 Mr. PARSONS. Sir, that is information I am not aware of.

1277 Mr. CUMMINGS. Well, we did talk to him, and this is what
1278 he said. He told us, "I couldn't take anything Diveroli
1279 said credibly." He concluded that Diveroli was lying to
1280 him. That is his statement. And this wasn't the only person
1281 telling us this. Another contracting official became
1282 suspicious when AEY sent helmets accompanied by a cryptic
1283 Chinese document supposedly showing they were safe. This
1284 official told us, "I just don't trust the guy." And there
1285 are many more examples like this. It just seems like if you
1286 didn't know this, then we have a fundamental problem with the
1287 way we do business. The entire system must be broken.

1288 I heard what you said, General, about the corrections
1289 that you plan to make, but I don't know that those

1290 corrections deal with the four things that I talked
1291 about--the communications problems, incompetence,
1292 carelessness, and a culture of mediocrity.

1293 I am hoping that the things you said will correct this,
1294 but I am going to tell you I don't have a lot of faith.

1295 Chairman WAXMAN. Thank you, Mr. Cummings.

1296 Mr. Lynch?

1297 Mr. LYNCH. Thank you, Mr. Chairman.

1298 Mr. Chairman, I want to thank you for holding this
1299 hearing, and I want to thank the Ranking Member for his work,
1300 as well. This is very important.

1301 You know, there has been some reluctance, I think, of
1302 the panel, and I appreciate your coming in here and
1303 testifying, but there has been a reluctance on the panel to
1304 criticize what happened here. I just want to go on the
1305 record to say that all of us have spent a lot of time in Iraq
1306 and Afghanistan and we have seen the excellence with which
1307 our military has performed. The events here that we are
1308 speaking of today are a disgrace. They do not meet the
1309 standards of those men and women in uniform that we have seen
1310 repeatedly in our visits to Iraq and Afghanistan. That is
1311 the great sin here. This does not meet acceptable standards,
1312 not even close.

1313 I am not hearing that from the panelists. I am hearing
1314 hedging, I am hearing some defenses about information not

1315 | being available. This kid was 19 years old, 19 years old.
1316 | He gets a \$300 million contract, taxpayers' money from the
1317 | United States of America. That is a disgrace. I don't hear
1318 | that from the panelists. I am hearing defense of different
1319 | individuals.

1320 | Has anybody been fired for this? Can I ask the panel,
1321 | anybody get their walking papers for what has happened here?
1322 | Has anybody been fired?

1323 | Mr. PARSONS. No, sir. No one has been for instance red.

1324 | Mr. LYNCH. I am sorry?

1325 | Mr. PARSONS. No one has been fired.

1326 | Mr. LYNCH. Well, that is a shame. That is a shame
1327 | because in the private sector somebody would be without a job
1328 | because of this.

1329 | I have to ask you, as well, I know the two individuals
1330 | were indicted, but it looks like, based on the information
1331 | here, because the standards are so lax, it doesn't look like
1332 | they broke the law. It looks like these guys could walk,
1333 | even though they are indicted, because there is no standards
1334 | for age of ammunition, and they knew it, so I am very
1335 | concerned about that.

1336 | I hear and I read that the contracts have been canceled,
1337 | terminated. Now, I was in Iraq at the Taji Weapons Depo a
1338 | few weeks ago and I asked the commanding general there about
1339 | the AEY contract. He said, Yes, they are shipping in to us.

1340 So myself and Mr. Platts from Pennsylvania actually asked the
1341 general to give us a detail, and we went around and started
1342 opening up some crates. They were all AEY contract. It
1343 looks like they are still performing in this contract. That
1344 doesn't jive with the testimony and the documents that I have
1345 before me.

1346 Can you tell me, is AEY still performing on some
1347 contracts in Iraq?

1348 Mr. PARSONS. Sir, I am not aware. I will have to get
1349 back to you on whether they are still performing on a
1350 contract in Iraq.

1351 Mr. LYNCH. That is not good enough.

1352 Mr. PARSONS. I can tell you on this--

1353 Mr. LYNCH. That is not good enough, sir.

1354 Mr. PARSONS.--ammunition contract they are not.

1355 Mr. LYNCH. I will get back to you--that is not good
1356 enough. Considering what these kids did to the American
1357 taxpayer, there should be no question in anyone's mind that
1358 these contracts have been terminated. That just sends the
1359 wrong signal to these contractors that someone could do this
1360 and still get paid and still perform under other related
1361 contracts. I mean, this individual, Efraim Diveroli, had
1362 seven contracts that were unsatisfactory previous to this.

1363 What bothers me is that a lot of this information was
1364 laid out there. The Sourcing Committee on this most recent

1365 | contract declared that he was unsatisfactory. Then the
1366 | Defense contracting officer changed that assessment, changed
1367 | it from unsatisfactory to good and allowed the contract to be
1368 | granted. So I would be asking if there was an investigation
1369 | regarding that individual who turned the recommendation
1370 | around after we had all the information before us.

1371 | The fact that I think, based on what I saw with my eyes,
1372 | AEY is still performing contracts for the United States
1373 | Government. That is based on my own assessment in person, in
1374 | Taji and Iraq with Mr. Platts and some others.

1375 | I hope you will get back to me on that.

1376 | [The information follows:]

1377 | ***** COMMITTEE INSERT *****

1378 Mr. LYNCH. Also, there is another individual here, Mr.
1379 Merrill. It appears, at least from the documents in front of
1380 me, that you asked for verification and assessments from
1381 individuals about the way these contractors performed. One
1382 of the things that gets me is that in assessing how a
1383 contractor performed you asked the vice president of AEY how
1384 are you doing. He has a major financial interest in this
1385 company, and he filled out the form and said we are doing
1386 great. You asked the vice president of the company to do an
1387 assessment of his company. How do you think that is going to
1388 come back? I mean, that is just a systemic gap here. I wish
1389 we weren't at this point.

1390 I think we have got to scrap this whole system and come
1391 up with something that is more worthy of our men and women in
1392 uniform, because this has taken resources away from them, it
1393 is basically stealing taxpayer dollars, and it is putting
1394 them in jeopardy.

1395 I am beside myself. I am absolutely beside myself about
1396 this whole deal. All the money and time we are spending
1397 here, this is a mess. It is a mess. It is a disgrace.

1398 Chairman WAXMAN. The gentleman's time has expired.

1399 Mr. LYNCH. I will yield back. Thank you, Mr. Chairman.

1400 Chairman WAXMAN. Thank you.

1401 Mr. DAVIS OF VIRGINIA. Mr. Chairman, let me claim my
1402 three minutes, if I could, really quick.

1403 Chairman WAXMAN. Yes, sir.

1404 Mr. DAVIS OF VIRGINIA. Could I just ask why this was a
1405 requirements contract as opposed to a multiple-award IDIQ or
1406 something like that? Why was this vehicle chosen?

1407 Mr. PARSONS. Congressman Davis, it is my understanding,
1408 after talking with the contracting officials on this, that
1409 when they were discussing the requirements for the
1410 Afghanistan ammunition they could not get the customer to
1411 specify a minimum amount of ammunition that they would need
1412 to place a minimum order against an IDIQ contract. So
1413 instead they elected to use a requirements contract, which
1414 doesn't require us to necessarily award a minimum
1415 requirement.

1416 Mr. DAVIS OF VIRGINIA. Okay. Now, this was a small
1417 business that got the contract at the end of the day. Who
1418 checked to see if their certification was accurate? Is this
1419 the contracting agencies? Is it the SBA? Or is it a
1420 competitors' complaint? How does that work?

1421 Mr. PARSONS. Sir, the contractors certified in their
1422 certification representations that they were a small
1423 business. The contracting officer verified that they were a
1424 small business and coded that in the Federal procurement data
1425 system as a small business.

1426 Mr. DAVIS OF VIRGINIA. That could have been protested if
1427 somebody wanted to protest, but it was not in this case,

1428 right?

1429 Mr. PARSONS. The small business size was not a factor in
1430 deciding. This contract was open to large businesses and
1431 small businesses.

1432 Mr. DAVIS OF VIRGINIA. Right. But if a small business
1433 competes in this, don't they have an advantage?

1434 Mr. PARSONS. What was that last part again?

1435 Mr. DAVIS OF VIRGINIA. If a small business competes, it
1436 isn't there some advantage to that?

1437 Mr. PARSONS. Correct.

1438 Mr. DAVIS OF VIRGINIA. What is the difference between a
1439 small business and a small disadvantaged business?

1440 Mr. PARSONS. Sir, the small disadvantaged business are
1441 those companies that meet the qualifications of the Small
1442 Business Act for being identified as disadvantaged for either
1443 minority status or for other aspects of it. I don't have a
1444 complete list off the top of my head on what those are, but
1445 there is definitely something that has the difference between
1446 the small business and small disadvantaged business.

1447 Mr. DAVIS OF VIRGINIA. I know what it is. What is your
1448 understanding of the certificate of competency process and
1449 the role of the SBA?

1450 Mr. PARSONS. Sir, my understanding is that if there is a
1451 question on the part of the contracting officer regarding the
1452 responsibility of the small business, they go to the Small

1453 Business Administration and ask for a certificate of
1454 competency for that small business.

1455 Mr. DAVIS OF VIRGINIA. Now, when a contracting officer
1456 has to interface with officials from SBA, what are the
1457 procedures? Do they just ask for it and the SBA then will do
1458 appropriate checks?

1459 Mr. PARSONS. Yes. They correspond directly with the
1460 Small Business Administration and give them all the
1461 particulars regarding the issue and wait for the SBA to make
1462 an assessment.

1463 Mr. DAVIS OF VIRGINIA. So how much information does the
1464 contracting officer share, and how knowledgeable does the SBA
1465 have to be in understanding the nuances of a specific
1466 acquisition?

1467 Mr. PARSONS. I am not certain, sir.

1468 Mr. DAVIS OF VIRGINIA. Okay. How frequently does the
1469 SBA effectively reverse a contracting officer's
1470 responsibility determination during the processing? Do you
1471 ever see that?

1472 Mr. PARSONS. Again, sir, I do not know.

1473 Mr. DAVIS OF VIRGINIA. Have you ever seen it?

1474 Mr. PARSONS. I have never seen the SBA reverse one, no.

1475 Mr. DAVIS OF VIRGINIA. What challenges does your agency
1476 have with the SBA certificate of competency process,
1477 particularly in an acquisition to be awarded on the basis of

1478 a low price technically acceptable offer?

1479 Mr. PARSONS. I am not certain.

1480 Mr. DAVIS OF VIRGINIA. You don't feel you have any
1481 challenges, or do you have challenges with the SBA
1482 certificate of competency process, particularly in an
1483 acquisition that is awarded on the basis of the low price
1484 technically acceptable offer? Any problems?

1485 Mr. PARSONS. Sir, again, for this particular acquisition
1486 I am not aware of any issues regarding the competency, the
1487 certificate of competency with SBA. There wasn't any
1488 engagement at all with the SBA in this acquisition process.

1489 Mr. DAVIS OF VIRGINIA. But they weren't competent at the
1490 end of the day?

1491 Mr. PARSONS. Correct.

1492 Mr. DAVIS OF VIRGINIA. Thank you.

1493 Chairman WAXMAN. Thank you, Mr. Davis.

1494 Ms. Watson?

1495 Ms. WATSON. I want to thank the Chairman very much for
1496 having this hearing today, and I thank the panelists for
1497 coming forth.

1498 As we look into the background, we find that in 2006--it
1499 was December--Mr. Diveroli and Mr. Packouz allegedly beat a
1500 valet parking attendant, resulting in charges of battery and
1501 possession of a stolen or forged document against Mr.
1502 Diveroli and a battery charge against Mr. Packouz.

1503 In January of 2007 AEY was awarded a \$298 million,
1504 two-year contract by the Defense Department. The president
1505 of AEY, Efraim Diveroli, was 21 years old at the time that
1506 the contract was awarded, and the vice president, David
1507 Packouz, was 25 years old.

1508 I just heard one of the witnesses say that we don't look
1509 at age. Well, suppose they were under-age, 16 and 17? Would
1510 you not want to be aware that they were not adults?

1511 And on Friday both of them and three other AEY officials
1512 were indicted on charges that they concealed the Chinese
1513 origins of AEY's ammunition shipments from Albania to
1514 Afghanistan.

1515 If the investigation revealed that there was a contract
1516 to buy Chinese goods, which would be illegal in this regard,
1517 how is it that the Department of Defense and the contractors
1518 did not know the background that I just read? Somebody is
1519 not doing the work that they should. They are not being
1520 accurate.

1521 I want to ask Mr. Mull, Were you aware of the contract
1522 with the Chinese for the goods?

1523 Mr. MULL. The contract with the Chinese?

1524 Ms. WATSON. Mr. Gin had notified the factory before and
1525 after the production of 100 percent inspection of the vests
1526 to make sure that there is no Chinese markings anywhere on
1527 the vests or on the box, and I understand there were markings

1528 | there. It is kind of like, as I understand, a bait and
1529 | switch thing that AEY did, and there is a history of this
1530 | kind of thing. I understand that there as some, I guess,
1531 | relationships and some purchase long before this contract.
1532 | Were you aware that they were buying these goods from the
1533 | Chinese?

1534 | Mr. MULL. No, ma'am, I was not. But, because that was
1535 | not part of an export of weapons from the United States and
1536 | munitions from the United States, which is what we are solely
1537 | responsible for regulating, we wouldn't necessarily have been
1538 | aware of that. But, to answer your Iraq, no, I was not aware
1539 | in this particular case.

1540 | Ms. WATSON. Well, the documents that were obtained by
1541 | the Committee seemed to show that AEY concealed these Chinese
1542 | origins by claiming that the vests were made in South Korea
1543 | and were only shipped through China. This is how the AEY
1544 | official described this plan: ``Harry, I just spoke to
1545 | Efraim, and here is how we could resolve this situation.
1546 | Please advise.''

1547 | The commercial invoice would show that the shipper is a
1548 | south Korean company, and we have the letterhead, and that
1549 | you and your contact in C--meaning China--is just the expert
1550 | company.

1551 | Mr. Mull, again, would concealing the true Chinese
1552 | origins of goods under a State Department contract be a

1553 violation of law?

1554 Mr. MULL. Well, if someone was exporting Chinese sourced
1555 munitions, we would not give a license to someone to export
1556 munitions from the United States from China overseas;
1557 however, again, in the State Department we do not regulate
1558 foreigners dealing with one another overseas.

1559 Ms. WATSON. According to the indictments of last week,
1560 the Justice Department is examining the Chinese origin of the
1561 ammunition AEY provided from Albania to Afghanistan under the
1562 Defense Department's \$300 million contract, but the Committee
1563 now has evidence that AEY may have concealed the Chinese
1564 origins of other goods, including the bullet-proof vest.

1565 Mr. Chairman, I suggest that we share with the Justice
1566 Department the information we obtain to make sure that they
1567 are aware of it. I am just appalled that we don't have
1568 sharper people, that we are not doing better background
1569 checks. To have a company like this get away with it and use
1570 \$300 million of taxpayers' money is abominable.

1571 Thank you, Mr. Chairman.

1572 Chairman WAXMAN. Thank you, Ms. Watson.

1573 Mr. Platts?

1574 Mr. PLATTS. Thank you, Mr. Chairman. I appreciate your
1575 holding this hearing.

1576 I want to associate myself with comments from previous
1577 speakers, especially Mr. Lynch. As he referenced, we

1578 | traveled together in April and had some conversations
1579 | regarding AEY and their supply.

1580 | I want to follow up on the last speaker, Mr. Mull, on
1581 | the issue of the Department of State's role here. It is my
1582 | understanding that Department of State does the licensing for
1583 | any firm that wants to engage in brokering sale of arms,
1584 | munitions overseas. As part of that process, there is a
1585 | Watch List maintained from intelligence officials, law
1586 | enforcement, other entities, developed. It is also my
1587 | understanding that one or more individuals or entities
1588 | associated with the AEY contract were on that Watch List.

1589 | I guess my first question is: given that, how did AEY
1590 | get a license? Was the information that led to them being on
1591 | that Watch List investigated before a license was issued?

1592 | Mr. MULL. Yes. Of the 17 licenses that the State
1593 | Department issued to AEY, we consulted with law enforcement
1594 | agencies that were involved with and looking at the
1595 | activities of the company, and we checked with them to make
1596 | sure that issuing this license would not obstruct any of
1597 | their investigations or that it would otherwise break the
1598 | law.

1599 | We are required by the Arms Export Control act to make
1600 | decisions on these applications for export licenses according
1601 | to certain criteria laid out in the Arms Export Control Act.
1602 | In the licenses that we did approve, there was nothing

1603 | illegal that they were proposing, and we confirmed that in
1604 | consultation with the appropriate law enforcement agencies.

1605 | Mr. PLATTS. Maybe I am misunderstanding the intent of
1606 | that Watch List. It is not that they are proposing anything
1607 | illegal, but the fact that they are under investigation seems
1608 | some bells would go off that maybe we need to wait until
1609 | those investigations are completed before we issue new
1610 | licenses. Is that not part of the consideration of whether a
1611 | license is issued or not?

1612 | Mr. MULL. If the company is on the Watch List, yes, a
1613 | bell will go off and automatically it will attract more
1614 | intensive attention from our licensing specialists and our
1615 | compliancing specialists to see if there is anything about
1616 | that particular case that would be a violation of U.S. law.
1617 | In those cases where we issued the licenses, we made the
1618 | determination in those discrete cases that there was nothing
1619 | illegal.

1620 | Mr. PLATTS. I guess I would add to colleagues who
1621 | expressed somewhat disbelief that, given the circumstances
1622 | here, a company with such a small record of engagement in
1623 | this area was one a Watch List, the age of the company
1624 | executives combined, that then we go ahead and issue a
1625 | license that leads to a \$300 million. So I guess my
1626 | understanding of what scrutiny would result from that Watch
1627 | List is more perfunctory. As long as there is no illegal

1628 | conduct identified, the fact that they are under
1629 | investigation isn't going to cause a license to be withheld.
1630 | It sounds like it has to be something identified, yes, they
1631 | are proposing something illegal or yes, they have done
1632 | something illegal, not there is lots of questions here about
1633 | whether they are worthy of this license.

1634 | Mr. MULL. Well, sir, we did not issue a license for the
1635 | \$300 million--

1636 | Mr. PLATTS. That is a separate contract.

1637 | Mr. MULL. Right.

1638 | Mr. PLATTS. But you issued a license to allow them to
1639 | engage in the activity that led to them being able to get
1640 | contracts.

1641 | Mr. MULL. No. These were separate contracts where they
1642 | sought to export U.S. provided supplied weapons to overseas.

1643 | Mr. PLATTS. Right.

1644 | Mr. MULL. And we carefully vetted to make sure that the
1645 | things they were selling overseas was not a violation of law.

1646 | Mr. PLATTS. Okay. What sharing of information from your
1647 | Watch List goes to DOD when they are looking at issuing
1648 | contracts such as this? What information that you had that
1649 | led to them being on a Watch List is shared with DOD?

1650 | Mr. MULL. Because so much of what we have on the Watch
1651 | List comes from intelligence agencies and other classified
1652 | sources, we cannot freely share it. But what we would do--

1653 Mr. PLATTS. Even with DOD?

1654 Mr. MULL. That is right, because we have to respect the
1655 originators of the classified information. The originator
1656 ultimately determines who can see it. So what we do
1657 gladly--and Mr. Parsons and I were talking about this during
1658 the break--that if there were an entity or a person that any
1659 part of the DOD was looking at for consideration for a
1660 contract, if they provided us with the name or the person we
1661 would be happy to run that name against our list. If we saw
1662 a hit, we would then consult with the originator of the
1663 information, say, Hey can we share this with the Defense
1664 Department?

1665 Mr. PLATTS. So that is something you are discussing
1666 today, but as of today the information that leads to the
1667 Department of State to be concerned about individuals or
1668 entities to put them on a Watch List, DOD today has on access
1669 to that information?

1670 Mr. MULL. We receive on multiple occasions from many
1671 different Government agencies who are aware of the Watch
1672 List, they contact us and ask us to check, and so we have
1673 done that in the past.

1674 Mr. PLATTS. But there is no standard protocol that if
1675 you put somebody dealing with the sale or brokering of
1676 ammunition or weapons on a Watch List, that there is no
1677 automatic sharing with DOD that buys a lot of ammunition and

1678 | weapons, that there is not an automatic sharing, hey, just so
1679 | you know, this entity or this individual has been put on our
1680 | Watch List, so you may want to take a closer look if you are
1681 | going to purchase, including a \$300 million contract? That
1682 | doesn't happen today?

1683 | Mr. MULL. No, sir. We do not push out the information,
1684 | but if we are contacted we--

1685 | Mr. PLATTS. I think that is one of the problems, that
1686 | one branch of our Government has information that raises some
1687 | concerns is not automatically sharing it with another entity
1688 | within our Government that is engaged in the purchase of the
1689 | underlying product, ammunition and arms. I appreciate that
1690 | that dialogue is beginning on how to strengthen that, and I
1691 | think that is what we are after in this oversight hearing.
1692 | How do we make sure this doesn't happen again.

1693 | Mr. MULL. Yes. Sir, if I might, one of the concerns
1694 | that we have, we have close to 80,000 entities on this list,
1695 | and much of the information is controlled, and so we wouldn't
1696 | know. Much of it comes from other classified controlled
1697 | sources. We would need the originator of the information's
1698 | permission to push that out, and so it would be difficult on
1699 | a list that long--

1700 | Mr. PLATTS. My time is up. Given the level of
1701 | classified clearance in the Department of Defense equal to
1702 | anyone at Department of State, we should be able to find a

1703 way to share that information in a seamless fashion.

1704 I thank each of you for your testimony, and also for
1705 your service to our Country.

1706 Thank you, Mr. Chairman.

1707 Chairman WAXMAN. Your time is up.

1708 Mr. Braley?

1709 Mr. BRALEY. Thank you, Mr. Chairman.

1710 There have been a number of disturbing issues raised by
1711 this investigation, but Mr. Mull I want to talk to you about
1712 one that specifically relates to the role of the U.S. Embassy
1713 in Albania and the potential coverup of the countries of
1714 origin of this ammunition.

1715 Yesterday Chairman Waxman sent a letter to Secretary
1716 Rice asking about reports that the U.S. Ambassador and other
1717 officials at the U.S. Embassy at Albania approved a plan to
1718 conceal the Chinese origins of the ammunition that AEY
1719 supplied to the Afghan Security Forces. The Committee
1720 received this information from Major Larry Harrison the Chief
1721 of U.S. Office of Defense Cooperation in Albania.

1722 During an interview with this Committee, he stated that
1723 the Ambassador and his top aids held a late-night meeting
1724 with the Albanian Defense Minister to discuss how to respond
1725 to a request by the New York Times to visit the site where
1726 AEY was removing Chinese ammunition from its original
1727 packaging before sending it to Afghanistan. According to

1728 Major Harrison, who was at that meeting, the Albanian Defense
1729 Minister ordered one of his top generals to remove all
1730 evidence of Chinese packaging before the site was inspected
1731 the following day.

1732 Although Major Harrison was ``very uncomfortable`` with
1733 these actions, he told the Committee that ``the Ambassador
1734 agreed that this would alleviate suspension of wrongdoing.``

1735 Mr. Mull, I know you were invited here today to testify
1736 about the Watch List, but do you have any further information
1737 from the State Department regarding this specific issue?

1738 Mr. MULL. No, sir, I do not. All I know is what I read
1739 in the Chairman's letter yesterday and in the press accounts
1740 yesterday, and I do know, while I am personally not aware of
1741 any wrongdoing on the part of the management of our Embassy
1742 in Tirana, I do know that the State Department plans to
1743 respond to these serious allegations in the appropriate
1744 channel once they have collected the information.

1745 Mr. BRALEY. Well, let me just ask you then
1746 hypothetically, assuming that a U.S. Ambassador to a country
1747 like Albania had sat in a meeting like the one I described
1748 and was aware that an intentional act was being committed to
1749 conceal the identity of the country of origin in violation of
1750 U.S. military procurement requirements, would you agree that
1751 that would be a bad thing for that Ambassador to do without
1752 reporting?

1753 Mr. MULL. Sir, I am reluctant to answer a hypothetical
1754 question, because I can imagine there might be circumstances
1755 in which covert activity is involved of the transfer. I
1756 would--

1757 Mr. BRALEY. I am just going to have to stop you right
1758 there. I am having a hard time understanding how a covert
1759 activity would justify an intentional violation of U.S. law.
1760 Can you explain any situation where that would be acceptable?

1761 Mr. MULL. I think any violation of U.S. law by any U.S.
1762 Government official is unacceptable.

1763 Mr. BRALEY. What potential remedies are available
1764 against a U.S. Ambassador who participates or allows the
1765 concealment of a country of origin of ammunition that is
1766 being shipped to an ally of this Country?

1767 Mr. MULL. Sir, I am afraid I personally can't provide
1768 you the answer to the question because I don't work on
1769 disciplinary matters or investigative matters outside of the
1770 arms export business from the United States, but I would be
1771 pleased to take your question back to the appropriate
1772 authorities.

1773 Mr. BRALEY. I would appreciate that.

1774 [The information follows:]

1775 ***** COMMITTEE INSERT *****

1776 Ms. WATSON. Mr. Braley, would you yield a second?

1777 Mr. BRALEY. I would.

1778 Ms. WATSON. As a former Ambassador, you would be
1779 recalled from your post in no time. That is the remedy.

1780 Thank you, Mr. Chairman.

1781 Mr. BRALEY. Reclaiming my time, the other question
1782 raised in the letter that Mr. Waxman sent yesterday to the
1783 Secretary of State is that the Embassy apparently concealed
1784 information about this meeting from the Committee, and the
1785 Committee specifically asked for information about meetings
1786 between Embassy officials and the Albanian Defense Ministry,
1787 as well as any information about any interventions into AEY's
1788 repackaging operation.

1789 Although Major Harrison argued internally that the
1790 Department should inform of us of those activities, he was
1791 overruled, and he provided documents contemporaneously to
1792 back up his story.

1793 Chairman Waxman made a new request yesterday for all the
1794 documents relating to this meeting and for a series of
1795 interviews with the Ambassador and his top aids. Mr. Mull,
1796 can you tell us whether the State Department intends to
1797 comply with that request voluntarily?

1798 Mr. MULL. Sir, I am sorry, I can't answer the question.
1799 I don't know what the intention is of the senior Department
1800 leadership, except that we will respond to the Chairman's

1801 request through the appropriate channel.

1802 Mr. BRALEY. Well, let me tell you why this is so serious
1803 and why this Committee takes this so seriously. A BBC News
1804 report says that Major Harrison was replaced in his position
1805 in the Embassy on June 9th. Do you know if that is true?

1806 Mr. MULL. That is the first I have heard of it, sir.

1807 Mr. BRALEY. General, Mr. Howell, do you have any
1808 knowledge of whether that occurred?

1809 General PHILLIPS. No, sir.

1810 Mr. HOWELL. No, sir, I don't.

1811 Mr. BRALEY. The reason why that is important is because
1812 Major Harrison was a Defense Department official, and if
1813 there was any retaliation against Major Harrison that would
1814 be a serious issue, particularly since June 9th was the very
1815 same day he was interviewed by this Committee.

1816 Mr. Chairman, I would certainly hope that the Committee
1817 will look closely into this matter and follow up on any
1818 further investigation to protect Major Harrison as a
1819 potential whistleblower.

1820 Chairman WAXMAN. Thank you very much, Mr. Braley.

1821 Mr. Tierney?

1822 Mr. TIERNEY. Thank you, Mr. Chairman.

1823 You know, I am trying a little bit here to understand
1824 how the Defense Department came to the conclusion that AEY's
1825 past performance was excellent and that there was no history

1826 of quality-related problems. If you just look at the report
1827 that we put together and some of the information, they had an
1828 Army Special Forces Command contract for ammunition
1829 terminated in 2005 because of late deliveries and poor
1830 quality, an Army contract for gun scope mounts terminated in
1831 2006 because of its failure to deliver after two extensions,
1832 a State Department contract for weapon systems terminated in
1833 2007 because they provided the wrong items. The Defense
1834 Department terminated four delivery orders under a larger
1835 contract to supply munitions to Iraq Security Forces because
1836 the company failed to deliver the goods, including 10,000
1837 Beretta pistols.

1838 General, I am curious. How can there be a conclusion
1839 that there is no history of poor performance when the
1840 Government agencies had terminated at least 11 different
1841 contracts?

1842 General PHILLIPS. Sir, I believe your comments and what
1843 you described are true, but when you go back and you look at
1844 the decision that the contracting officer made, based upon
1845 the information that was available to that contracting
1846 officer, she made a reasonable decision based upon the
1847 information that she had, the past performance information,
1848 and the pre-award survey that was done by the Defense
1849 Contract Management Agency.

1850 Mr. TIERNEY. Let's take a look at that. They did talk

1851 | to her. She was interviewed, and she said she had never
1852 | heard of those terminations. That, I guess, is what is
1853 | stunning on that. She said she checked the Army's Past
1854 | Performance Management System database--I would think that
1855 | should have had the information--and there was no negative
1856 | information about AEY.

1857 | So I guess, General, if that system has such serious
1858 | flaws, what has been done to correct that?

1859 | Mr. PARSONS. Sir, if I may, I will address that. We are
1860 | initiating policy changes in our past performance reporting
1861 | to ensure that that type of information, regardless of dollar
1862 | value of the contract, is captured. Part of the problem we
1863 | have today is past performance reporting is only required
1864 | when these types of contracts are \$5 million or more. Many of
1865 | the contracts I believe you describe were below that
1866 | threshold, and so there was no requirement to do the
1867 | reporting. However, what we are going to initiate is, when
1868 | there is evidence that the contractor is not complying with
1869 | terms and conditions of the contract and is terminated for
1870 | default or terminated for cause or a show cause letter is
1871 | issued for poor performance, that will be recorded in the
1872 | past performance data system in the future.

1873 | Mr. TIERNEY. I mean, it is unbelievable that it wouldn't
1874 | have been done in the past. I mean, who is responsible for
1875 | that, and do they still have their job? Who is responsible

1876 | for keeping that list up and keeping it accurate. Has there
1877 | been any accountability for the fact that these past
1878 | performance problems weren't even on that list?

1879 | Mr. PARSONS. The contracting officer is required to
1880 | update past performance information on those contracts that
1881 | meet the threshold, so that is the contracting officer
1882 | requirement, commonly shared with the program office. But,
1883 | again, in our review of many of the contracts where they have
1884 | been terminated for default, none of those contracts met that
1885 | dollar threshold. Again, that is a hole in the system that
1886 | we have got to repair.

1887 | Mr. TIERNEY. You know, the Beretta pistols were \$5.6
1888 | million, as has been pointed out to me. I think some of
1889 | those did hit the threshold.

1890 | Mr. PARSONS. Sir, that information is new. I am not
1891 | aware of that \$5.6 million contract or when that contract was
1892 | actually terminated.

1893 | Mr. TIERNEY. I guess that is the problem: nobody else
1894 | was, either.

1895 | Mr. PARSONS. None of the ones I saw were that threshold.

1896 | Mr. TIERNEY. Let me change directions here just for a
1897 | second. There is a fellow named Mr. Ralph Merrill who was
1898 | also indicated last week. According to an e-mail that he
1899 | sent back in March of 2006, he identified himself as the vice
1900 | president of AEY.

1901 Mr. Howell, did you know that Mr. Merrill was a vice
1902 president of that company in 2006?

1903 Mr. HOWELL. Not at the time, no, sir.

1904 Mr. TIERNEY. Later that year in December of 2006 Mr.
1905 Merrill was involved in helping AEY obtain its \$300 million
1906 contract with the Defense Department to provide ammunition to
1907 the Afghan Security Forces. In December of 2006 he stated he
1908 would support AEY's efforts to perform on the contract by
1909 reserving \$1 million as working capital to be dispensed
1910 against purchase orders. He did this as the president of a
1911 company called Vector Arms.

1912 Mr. Howell, that information was submitted to your
1913 agency during its survey of the company AEY's financial
1914 capability. Your agency was informed that he had a financial
1915 interest in the success of that contract; is that right?

1916 Mr. HOWELL. Yes, sir, as far as I know.

1917 Mr. TIERNEY. Okay. Now, the Committee talked to the
1918 contracting officer who ordered that ammunition contract, and
1919 she told us that Mr. Merrill even joined Mr. Diveroli in a
1920 meeting with her discussing the requirements of the contract.
1921 She said Mr. Merrill identified himself as a consultant to
1922 the company at that time. So we probably don't have any
1923 problem with him being vice president/financial
1924 backer/consultant, but the fact of the matter is the
1925 Department awarded the contract based on the conclusion that

1926 AEY had an excellent past performance, and in part that
1927 conclusion was issued on questionnaires that were submitted
1928 to contracting officials on only three of AEY's contracts.

1929 So I guess one problem would be they only went to three
1930 of the prior contracts to get information. But one of the
1931 questionnaires was sent to Mr. Merrill, whose company had a
1932 prior contact with him, and, of course, Mr. Merrill gave him
1933 excellent reviews. He had a conflict of interest. There is
1934 something wrong here where you are asking somebody that has a
1935 huge financial stake in a current contract that is being
1936 sought and asking him about past performance on contracts
1937 that he also had an interest in. How can you get an unbiased
1938 and objective assessment of past performance from someone who
1939 has a financial interest in the contract?

1940 Mr. HOWELL. First, sir, at the time, as I mentioned, we
1941 had no knowledge that the gentleman was a vice president of
1942 the company, but when we conducted our pre-award--

1943 Mr. TIERNEY. He represented himself as a vice president
1944 of the company. He sent an e-mail to you telling you he was
1945 vice president of the company in March of 2006.

1946 Mr. HOWELL. Sir, I am not sure of the timing of that
1947 correspondence--

1948 Mr. TIERNEY. March 2006.

1949 Mr. HOWELL. I am not sure of the timing of that
1950 correspondence as it related to the timing of the pre-award

1951 | survey. Subsequent to the request for pre-award survey, we
1952 | looked at several financial aspects of the company. That was
1953 | one of them. And the rating was that they were financially
1954 | capable of conducting a brokerage operation.

1955 | Mr. TIERNEY. And you made that decision based on three
1956 | questionnaires of the companies, at least one of which had a
1957 | very serious conflict of interest. I think that is the issue
1958 | here. You have got to do something, I would hope, with
1959 | regard to that process to make sure that that doesn't
1960 | continue to happen.

1961 | Mr. HOWELL. DCMA has begun a review of all of its
1962 | processes related to that, and we are looking at the
1963 | implementation of different policies that will prevent those
1964 | occurrences in the future.

1965 | Mr. TIERNEY. I yield back, Mr. Chairman. My time has
1966 | expired.

1967 | Chairman WAXMAN. Thank you very much, Mr. Tierney.

1968 | Gentlemen, we thank you for being here and answering our
1969 | questions, and we hope this hearing will serve a constructive
1970 | purpose, because what we have been talking about is not a
1971 | proud day for contracting for our Country.

1972 | We stand adjourned.

1973 | [Whereupon, at 12:12 p.m., the committee was adjourned.]