

so that the Syracuse Developer would be awarded the Syracuse RFP and the Buffalo Developer would be awarded the Buffalo RFP.

b. The Syracuse Developer falsely certified that no one was retained, employed, or designated by or on behalf of the Syracuse Developer to attempt to influence the procurement process, when, in truth and in fact, the Syracuse Developer had retained Howe to influence the procurement process.

c. The Buffalo Developer falsely certified that no one was retained, employed, or designated by or on behalf of the Buffalo Developer to attempt to influence the procurement process, when, in truth and in fact, the Buffalo Developer had retained Howe to influence the procurement process.

18. In the course of, and in furtherance of, the criminal scheme, ALAIN KALOYEROS, a/k/a "Dr. K," STEVEN AIELLO, JOSEPH GERARDI, and LOUIS CIMINELLI, the defendants, and Todd Howe, as well as others, including employees of SUNY Poly and Fort Schuyler, exchanged interstate emails and telephone calls with individuals located in Manhattan, New York, including (i) the then-assistant secretary for economic development for New York State (the "Assistant Secretary"), who worked part-time at the Governor's offices in Manhattan, New York; and (ii) Manhattan-based employees of the Empire State Development Corporation, which is the State's main economic development agency and was the administrator of funding for certain development projects awarded to the Syracuse Developer and to the Buffalo Developer.

19. As a result of the criminal conduct alleged herein, the Syracuse Developer was awarded two State contracts worth a total of approximately \$105 million, and the Buffalo Developer was awarded a State contract that was ultimately worth approximately \$750 million.

COUNT ONE

(Wire Fraud Conspiracy –  
The Preferred Developer RFPs)

The Grand Jury charges:

20. The allegations contained in paragraphs 1 through 19 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

21. From at least in or about 2013, up to and including in or about 2015, in the Southern District of New York and elsewhere, ALAIN KALOYEROS, a/k/a “Dr. K,” STEVEN AIELLO, JOSEPH GERARDI, and LOUIS CIMINELLI, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit wire fraud in violation of Section 1343 of Title 18, United States Code.

22. It was a part and an object of the conspiracy that ALAIN KALOYEROS, a/k/a “Dr. K,” STEVEN AIELLO, JOSEPH GERARDI, and LOUIS CIMINELLI, the defendants, and others known and unknown, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign

commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343, to wit, KALOYEROS, AIELLO, GERARDI, CIMINELLI, and their co-conspirators, devised a scheme to defraud Fort Schuyler of its right to control its assets, and thereby exposed Fort Schuyler to risk of economic harm, by representing to Fort Schuyler that the bidding processes leading to the award of certain significant taxpayer-funded development contracts were fair, open, and competitive, when, in truth and in fact, KALOYEROS and Todd Howe, in collaboration and in concert with AIELLO, GERARDI, and CIMINELLI, used their official positions to secretly tailor the requests for proposals ("RFPs") for those contracts so that companies that were owned, controlled, and managed by AIELLO, GERARDI, and CIMINELLI would be favored to win in the selection process for the contracts, and did transmit and cause to be transmitted interstate email and telephonic communications in furtherance of their scheme to defraud.

(Title 18, United States Code, Section 1349.)

COUNT TWO

(Wire Fraud – The Syracuse RFP)

The Grand Jury further charges:

23. The allegations contained in paragraphs 1 through 11 and 14 through 19 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

24. From in or about 2013, up to and including in or about 2015, in the Southern District of New York and elsewhere, ALAIN KALOYEROS, a/k/a "Dr. K," STEVEN AIELLO, and JOSEPH GERARDI, the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, KALOYEROS, AIELLO, and GERARDI devised a scheme to defraud Fort Schuyler of its right to control its assets, and thereby exposed Fort Schuyler to risk of economic harm, by representing to Fort Schuyler that the bidding process for the Syracuse Preferred Developer contract was fair, open, and competitive, when, in truth and in fact, KALOYEROS and Todd Howe, in collaboration and in concert with AIELLO and GERARDI, used their official positions to secretly tailor the RFP for the contract so that the Syracuse Developer, which was owned, controlled, and managed by AIELLO and GERARDI, would be favored to win in the selection process for the contract, and did transmit and cause to be transmitted interstate email and telephonic communications in furtherance of their scheme to defraud.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE

(Wire Fraud – The Buffalo RFP)

The Grand Jury further charges:

25. The allegations contained in paragraphs 1 through 8 and 12 through 19 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

26. From in or about 2013, up to and including in or about 2015, in the Southern District of New York and elsewhere, ALAIN KALOYEROS, a/k/a "Dr. K," and LOUIS CIMINELLI, the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, KALOYEROS and CIMINELLI devised a scheme to defraud Fort Schuyler of its right to control its assets, and thereby exposed Fort Schuyler to risk of economic harm, by representing to Fort Schuyler that the bidding process for the Buffalo Preferred Developer contract was fair, open, and competitive, when, in truth and in fact, KALOYEROS and Todd Howe, in collaboration and in concert with CIMINELLI, secretly used their official positions to tailor the RFP for the contract so that the Buffalo Developer, which was owned, controlled, and managed by CIMINELLI, would be favored to win in the selection process for the contract, and did transmit and cause to be transmitted interstate email and telephonic communications in furtherance of their scheme to defraud.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT FOUR

(False Statements to Federal Officers)

The Grand Jury further charges:

27. The allegations contained in paragraphs 1 through 11 and 14 through 19 above are hereby repeated, realleged, and incorporated by reference as if fully set forth herein.

28. On or about June 21, 2016, in the Southern District of New York and elsewhere, JOSEPH GERARDI, the defendant, willfully and knowingly did make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit, GERARDI, while meeting with federal agents and representatives of the United States Attorney's Office for the Southern District of New York, made statements denying involvement in tailoring the Syracuse RFP for the benefit of his company, the Syracuse Developer, when, in truth and in fact, GERARDI conspired to tailor and did tailor the Syracuse RFP for the benefit of his company.

(Title 18, United States Code, Section 1001(a)(2).)

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FOREPERSON

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JOON H. KIM  
Acting United States  
Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA**

**- v. -**

**ALAIN KALOYEROS, a/k/a "Dr. K,"  
STEVEN AIELLO, JOSEPH GERARDI, and  
LOUIS CIMINELLI,**

**Defendants.**

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**INDICTMENT**

16 Cr. 776 (VEC)

(18 U.S.C. Sections 1349, 1343,  
1001(a)(2) and 2.)

**JOON H. KIM**

Acting United States Attorney.

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UNITED STATES DISTRICT COURT  
Southern District of New York

UNITED STATES OF AMERICA	)	<b>AMENDED</b>
	)	<b>JUDGMENT IN A</b>
v.	)	<b>CRIMINAL CASE</b>
	)	
JOSEPH PERCOCO,	)	Case Number:
	)	S2 16-cr-00776-VEC-1
<b>Date of Original Judgment:</b>	)	USM Number:
<u>9/25/2018</u>	)	78132-054
<i>(Or Date of Last Amended Judgment)</i>	)	
<b>Reason for Amendment:</b>	)	<u>Barry A. Bohrer,</u>
	)	<u>Andrew Gladstein,</u>
<input type="checkbox"/> Correction of Sentence on Remand (18.U.S.C. 3742(f)(1) and (2))	)	<u>Michael Yaeger</u>
	)	Defendant's Attorney
<input type="checkbox"/> Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(a))	)	
<input type="checkbox"/> Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))	)	
<input checked="" type="checkbox"/> Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)	)	

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>4/15/19</u>
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- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant
  - 28 U.S.C. § 2255 or
  - 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

**THE DEFENDANT:**

- pleaded guilty to count(s)
- pleaded nolo contendere to count(s)

\_\_\_\_\_ which was accepted by the court.

- was found guilty on count(s) Nine (9), Ten (10), Eleven (11) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1349.F	CONSPIRACY TO COMMIT HONEST SERVICES WIRE FR	12/31/2015	9

18:1349.F	CONSPIRACY TO COMMIT HONEST SERVICES WIRE FR	12/31/2015	10
18:666A.F	SOLICITATION OF BRIBES AND GRATUITIES FROM THE	12/31/2016	11

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) Six (6), Seven (7), Twelve (12)
- Count(s) Open and Underlying
- is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/15/2019

Date of Imposition of Judgment

Valerie Caproni

Signature of Judge

Valerie Caproni USDJ

Name and Title of Judge

4.15.19

Date

### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of;

Seventy-Two (72) Months on each count to run concurrently.

The court makes the following recommendations to the Bureau of Prisons:

It is recommended that the defendant be housed in the camp at FCI Otisville.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m.  
on \_\_\_\_\_

as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - before 2 p.m. on 12/28/2018
  - as notified by the United States Marshal.
  - as notified by the Probation or Pretrial Services Office.

\*\*\*If the defendant has not been designated to a facility by 12/28/2018, he shall surrender to the US Marshal for this district.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_  
to \_\_\_\_\_  
at \_\_\_\_\_ with a  
certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL  
By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:

Three (3) Years on each count to run concurrently.

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

### **STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you

live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate

or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

#### **U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_



**ADDITIONAL SUPERVISED RELEASE TERMS**

The defendant is to provide the Probation Department access to any and all requested financial information.

The defendant must not incur any new credit card charges or open any new credit line without approval of the Probation Department.

The defendant shall be supervised by the district of residence.

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<b>TOTALS</b>
<b><u>Assessment</u></b>	\$ 300.00
<b><u>JVTA Assessment*</u></b>	\$
<b><u>Fine</u></b>	\$
<b><u>Restitution</u></b>	\$

- The determination of restitution is deferred until \_\_\_\_\_ . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

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\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>	<b><u>\$ 0.00</u></b>	<b><u>\$ 0.00</u></b>	

- Restitution amount ordered pursuant to plea agreement \$\_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
- the interest requirement is waived for  
 fine  restitution.

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\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

- the interest requirement for the  
 fine  restitution is modified as follows:

**ADDITIONAL TERMS FOR CRIMINAL  
 MONETARY PENALTIES**

Forfeiture traceable to the offense in the amount of \$320,000.00 is Ordered.

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A**        Lump sum payment of \$ 300.00  
 due immediately, balance due  
           not later than \_\_\_\_\_, or  
           in accordance with  C,  D,  E,  
           or  F below; or
- B**        Payment to begin immediately (may be  
 combined with  C,  D, or  F below);  
 or
- C**        Payment in equal \_\_\_\_\_  
 (e.g., weekly, monthly, quarterly)  
 installments of \$\_\_\_\_\_ over a period  
 of \_\_\_\_\_ (e.g., months or years), to  
 commence \_\_\_\_\_ (e.g., 30 or 60 days)  
 after the date of this judgment; or
- D**        Payment in equal \_\_\_\_\_ (e.g.,  
 weekly,            monthly,            quarterly)  
 installments of \$\_\_\_\_\_ over a period  
 of \_\_\_\_\_ (e.g., months or years), to  
 commence \_\_\_\_\_ (e.g., 30 or 60 days)

after release from imprisonment to a term of supervision; or

- E  Payment during the term of supervised release will commence within 60days (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties: Payment of forfeiture during supervised release will be in amounts not less than 15% of defendant's gross income from all sources.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several  
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.

- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVRTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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**From:** Howe, Todd  
**To:** Leckerling, Richard  
**CC:** Steve Aiello  
**Sent:** 7/16/2014 9:41:21 PM  
**Subject:** Fwd: See attached memo  
**Attachments:** ATT00001.htm;  
Percoco\_memo\_post-  
employment.docx

Rich - let's discuss tomorrow. Steve needs labor relations help on inner harbor and Joe would like to assist. Let's discuss tomorrow.

Sent from my iPhone

Begin forwarded message:

Ch-

**From:** <[percl5@aol.com](mailto:percl5@aol.com)>

**Date:** July 10, 2014 at 10:10:10 AM EDT

**To:** <[thowe@woh-solutions.com](mailto:thowe@woh-solutions.com)>

**Subject:** See attached memo

