



Recent ITAR Case Sends Important Message to Small/Midsized Government Contractors

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A State Department ITAR enforcement case announced last week involving a supplier of military spare parts sends a valuable message to small and mid-sized government contractors of every type.

The case involves Bright Lights USA, Inc. (the "Company"), a small New Jersey defense manufacturer. According to the Directorate of Defense Trade Controls ("DDTC") Charging Letter, the Company's business primarily consists of "manufacturing minor spare parts (including rubber stoppers, seals assemblies, and grommets) for both private- and public-sector customers." Many of these parts transitioned off of the U.S. Munitions list ("USML") beginning October 2013 as a result of Export Control Reform.

When supplying military parts, the Company periodically sought to obtain components from foreign suppliers. According to the DDTC Charging Letter, when ordering foreign-made parts the Company sent drawings of export-controlled components to foreign suppliers to obtain quotations without obtaining the requisite export licenses. Similarly DDTC claimed the Company posted drawings of controlled items online to solicit quotations, including posting on a manufacturing sourcing website where the drawings could be accessed by foreign persons. DDTC also stated that the Company misclassified certain components as being subject to EAR instead of ITAR.

DDCT concluded that Bright Lights had "significant training and compliance program deficiencies" and charged the Company with a number of violations including:

1. Exporting ITAR-controlled technical data to foreign suppliers without a license, including to China and India;
2. Exporting defense articles without a license to persons in the U.K., Spain, Portugal, Turkey and the UAE;
3. Violating the ITAR recordkeeping requirements for failure to maintain records of ITAR-related activities for a five- year period.

While the government can pursue criminal, civil and administrative enforcement for ITAR violations, in the current case the Company was only required to pay a \$400,000 civil penalty. Copies of the DDTC Charging Letter, Consent Agreement and Order can be found here.

Government contracts firms frequently ask questions about the application of ITAR requirements, including how ITAR is applied to small and mid-sized companies. The Bright Lights case squarely addresses many of these questions. The following are a number of the most commonly asked questions and the responses based upon the Bright Lights case:

Q. 1 ? Does the State Department expect small companies to comply with ITAR, and will it actually pursue enforcement cases against them?

A. ? Absolutely yes. Being a small or mid-sized company does not exempt a contractor from ITAR requirements. These obligations apply to companies large and small, and small contractors do not get a "free pass" due to their size. In fact some of the most sophisticated U.S. defense technologies are developed by small and mid-sized firms. This case clearly confirms that DDTC will initiate enforcement actions against small and mid-sized companies.

Q. 2 ? Isn't DDTC really interested in complex defense systems and end items and not incidental spare parts??

A. ? Absolutely not. DDTC is extremely interested in not just large end items but also in subsystems, parts, components, accessories and attachments for defense products. These comprise an important part of the defense supply chain and the government is extremely interested in compliance at all levels, including by prime contractors, subcontractors, second and third tier suppliers and service providers. As the Bright Lights case demonstrates, DDTC will definitely prosecute companies for ITAR violations involving spare parts.

Q.3 ? If a product is removed from the USML under Export Control Reform, doesn't DDTC lose interest in the item?

A. ? Absolutely not. As set forth in the Bright Lights case, DDTC will pursue enforcement actions even for products that were removed from ITAR jurisdiction under Export Control Reform. DDTC is very interested in the integrity of the ITAR regulatory system ? it will pursue enforcement actions even if particular items are decontrolled or transferred to another agency for regulation.

Q.4 ? Are the ITAR recordkeeping requirements really that important? Do these warrant diverting valuable compliance resources from other high priority uses?

A. ? The ITAR recordkeeping requirements are extremely important and exporters should treat these seriously. The recordkeeping requirements are an important law enforcement tool for DDTC in conducting export investigations. In addition, if DDTC discovers shoddy recordkeeping practices in an investigation, this may suggest that the company has lax compliance procedures and possibly other violations as well. It is imperative for contractors to follow these requirements carefully in their compliance practices. The Bright Light case clearly confirms that DDTC will prosecute companies for

recordkeeping violations.

Q.5 ? Does DDTC lose interest in a violation if it occurred more than five years ago?

A. - Not always. Export enforcement agencies may request companies subject to enforcement actions to waive applicable statutes of limitations and may seek penalties for actions that occurred prior to the five year limitation. In the current case Bright Lights executed multiple agreements with DDTC to toll the applicable statute of limitations during DDTC's investigation.

Q.6 ? I can see how DDTC wishes to control the export of physical products ? is it also interested in the transfer of ITAR-controlled technical data?

A. ? Absolutely yes. In fact, the export of technical data without a license is often considered as egregious as the export of physical products and possibly worse. If you illegally export one physical product, the bad guys get one product ? but if you illegally export the technical data related to the product the bad guys can manufacture a thousand of them. The illegal export of controlled technical data (including disclosure to foreign persons in the U.S. and to your company's own employees) is raised in many ITAR compliance cases and is considered among the most serious export violations.

The Bright Lights case sends an important message ? export compliance is important for small and mid-sized contractors. Some of our most sensitive products and services are supplied by small and mid-sized companies, and the integrity of the defense supply chain is critical for even the smallest of replacement parts and components. The stakes are high in light of the potential civil and criminal penalties, including fines of up to \$1 million and twenty years' imprisonment. While the \$400,000 civil penalty in the Bright Lights case is significant, it is small when compared to the criminal sanctions imposed in other ITAR cases.

Steps that small and mid-sized companies can take to come into compliance with ITAR include: (i) reviewing the jurisdiction and classification of their products and services to determine if they are controlled under ITAR and the Export Administration Regulations; (ii) based upon these classifications, determining the licensing and other requirements that apply; and (iii) adopting ITAR compliance programs and conducting employee compliance training. Additional details regarding the ITAR requirements can be found at: [ITAR For Government Contractors](#).

Companies in the defense industry have been forewarned ? DDTC, along with its companion agencies the Bureau of Industry and Security, Office of Foreign Assets Control and Customs and Border Protection, expect a high level of compliance effort from contractors large and small alike.

Note: This article contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not intended and should not be construed as legal advice.

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