**TRADE ALERT**

***Company Eliminated from Army Contract Competition
over Description of its own ITAR Compliance Program***

On August 11, 2016, the U.S. Government Accountability Office (“GAO”) denied a government contract protest by Microwave Monolithics, Inc. *See*, GAO case number B-413088. The case is noteworthy because of the reason for denial. GAO found that the company’s proposal was properly eliminated from the competition where the Army reasonably concluded that the proposal failed to show compliance with the International Traffic in Arms Regulations (ITAR), as required, even though the company was registered with the State Department’s Directorate of Defense Trade Controls (“DDTC”).

Microwave Monolithics, Inc., a small business in Simi Valley, California, protested the elimination of its proposal from the competition under request for proposals issued by the Department of the Army, Army Materiel Command (“Army”) for personal recovery devices. The RFP stated that a proposal had to meet the solicitation’s minimum requirements, which included the following pertaining to ITAR compliance:

The offeror, and subcontractors as appropriate, is ITAR compliant, or has a viable plan to become ITAR compliant prior to contract award. The contractor has appointed an employee to be responsible for ITAR compliance and has established the following: written policies and procedures for employees performing activities subject to ITAR and/or handling ITAR-controlled items or data; procedures for the receipt, handling, storing, implementation and testing of ITAR-controlled items, procedures for the restriction of access by foreign nationals to ITAR-controlled items or data; an auditing procedure for ITAR compliance; and procedures for actions to be taken if a violation is discovered.

The Company argued that its proposal met the requirement, in part, because it was registered with DDTC, which by default requires a designated security officer and maintenance of records showing compliance per ITAR Section 122. The Army maintained that it was looking for more detail than mere ITAR registration.

***Conclusion***

In addition to existing DDTC oversight, Government customers increasingly are taking steps to mitigate export control risks of their contractors through the contracting process itself. Any company active in government contracts should review RFP language carefully with respect to ITAR compliance. The ability of a contractor to clearly describe a viable ITAR compliance program could affect the competitiveness of its proposal.