

June 17, 2019

The Honorable Ellen Lord  
Under Secretary of Defense for Acquisition and Sustainment  
3010 Defense Pentagon  
Washington, DC 20301-3010

Dear Under Secretary Lord:

I write to follow up on the findings and recommendations of the Government Accountability Office (GAO) in its February 2019 report *Defense Contracting: Enhanced Information Needed on Contractor Workplace Safety*. Pursuant to a provision in the National Defense Authorization Act for Fiscal Year 2018,<sup>1</sup> GAO reviewed the safety and health records of Department of Defense (DOD) contractors and existing DOD procedures to evaluate them during the contracting process.<sup>2</sup>

DOD “is the largest contracting agency in the federal government,” but GAO found an alarmingly high number of workplace safety and health violations, including serious violations, among the DOD contractors it reviewed in the construction and manufacturing sectors.<sup>3</sup> GAO found that almost 80% of contractors it reviewed that had had either OSHA or state-level workplace safety inspections within the previous five years were found to have committed at least one violation. Nearly half were cited for at least one serious violation, meaning that “there was a substantial probability that death or serious physical harm could result, and the employer knew, or could have known... of the hazard.”<sup>4</sup> The DOD contractors that received citations averaged almost 5 citations (405 total) and 2.3 serious citations (195 total) per company.<sup>5</sup> Tragically, at least seven workers died in connection with the serious violations.<sup>6</sup>

These findings are disturbing, because they strongly suggest that many companies receiving billions of dollars in manufacturing and construction contracts from DOD are seriously endangering the health and safety of their employees in violation of federal law.

GAO also found that “officials at DOD have multiple opportunities to address contractor safety throughout the acquisition process,” but that “not all contracting officials are aware that relevant

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<sup>1</sup> National Defense Authorization Act for Fiscal Year 2018, H.R.2810 (115<sup>th</sup> Congress), Sec. 814, <https://www.congress.gov/bill/115th-congress/house-bill/2810/text>.

<sup>2</sup> Government Accountability Office, “DEFENSE CONTRACTING: Enhanced Information Needed on Contractor Workplace Safety,” GAO-19-235, February 21, 2019, <https://www.gao.gov/products/GAO-19-235>.

<sup>3</sup> GAO reviewed 192 contractors. 106 of these contractors had been inspected by either OSHA or state workplace safety agencies.

<sup>4</sup> *Id.*, p. 14.

<sup>5</sup> *Id.*, p. 15.

<sup>6</sup> *Id.*, p. 16.

contractor safety information is available on the OSHA website.”<sup>7</sup> GAO reported that “DOD, Army, Navy, USACE [United States Army Corps of Engineers], and NAVSEA [Naval Sea Systems Command] policy and guidance do not specifically direct contracting officials to consider information about prospective contractors’ safety records before awarding contracts.”<sup>8</sup>

The prevalence of workplace safety and health violations among DOD contractors revealed by GAO’s findings is unacceptable. GAO made two recommendations for DOD officials in the report:

1. inform contracting officers that “the OSHA website is a resource for information about contractors’ workplace safety and health records,” and
2. “explore the feasibility of requiring a safety performance rating in industries that have relatively high rates of occupational injuries, such as manufacturing, construction, and ship building and repairing.”<sup>9</sup>

I appreciate that, in his response to GAO, Assistant Secretary Robert McMahon concurred with these recommendations and committed to implementing them in a timely manner. In order to better understand DOD’s plans for addressing GAO’s findings and recommendations, I ask that you respond to the following questions no later than July 8, 2019:

1. How is DOD implementing GAO’s recommendation that it “provide information to contracting officials to advise them that the OSHA website is a resource for information about contractors’ workplace safety and health records?”
2. What is the timeframe for implementation?
3. Does DOD plan to distribute this information to all contracting officers? If not, why not?
4. Will this information include explanations of how to use the OSHA website to search for OSHA citations<sup>10</sup> and reports of severe injuries?<sup>11</sup>
5. Does DOD plan to provide training to contracting officers to ensure that they can find and interpret prospective contractors’ safety records, and consider them in evaluating whether the company meets responsibility standards?
6. GAO noted that, in soliciting offers from prospective contractors, contracting officers “can designate safety in the solicitation as among the criteria that they will use to

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<sup>7</sup> *Id.*, p. 21.

<sup>8</sup> *Id.*, p. 21.

<sup>9</sup> *Id.*, pp. 31-32.

<sup>10</sup> Occupational Safety and Health Administration, “Establishment Search,” accessed April 17, 2019, <https://www.osha.gov/pls/imis/establishment.html>.

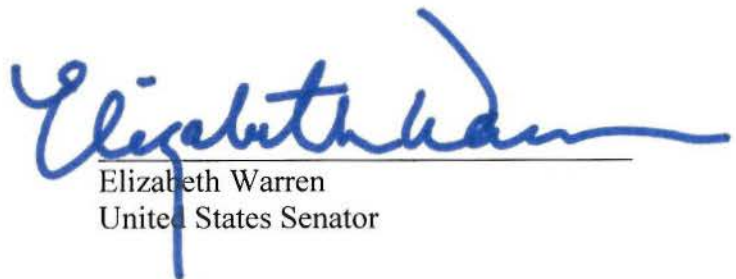
<sup>11</sup> Occupational Safety and Health Administration, “Severe Injury Reports,” accessed April 17, 2019, <https://www.osha.gov/severeinjury/index.html>.

evaluate proposals and require prospective contractors to submit related information.”<sup>12</sup> In light of GAO’s findings, will DOD consider requiring such designations in all solicitations involving high-risk industries and, in those cases, requiring that prospective contractors submit related information? If not, why not?

7. In light of GAO’s findings, will DOD consider asking OSHA to review the safety records of prospective contractors in high-risk industries? If not, why not?
8. With regard to GAO’s second recommendation, GAO reported, “without a safety performance rating for contractors in industries with relatively high rates of occupational injuries..., contracting officials may lack complete, readily accessible information on prospective contractors’ workplace safety performance. As a result, DOD may miss opportunities to address safety and health concerns when awarding contracts in these high-risk industries.”<sup>13</sup> Your response to GAO’s recommendation that DOD require a safety performance rating in high-risk industries indicated that DOD “will review safety performance ratings already used and assess broader ways to apply them.”<sup>14</sup>
  - a. Has DOD conducted the review of safety performance ratings? If so, what did this review show?
  - b. If not, what is the timeline for doing so?
  - c. In light of GAO’s findings, what factors will DOD use in evaluating the efficacy of existing performance ratings systems?
  - d. GAO noted that DOD “does not require a safety performance rating” for some construction contracts or for non-construction contracts, even in other high-risk industries. Will DOD consider broadening the use of safety performance ratings for all construction contracts and contracts in all high-risk industries? If not, why not?

Thank you for your attention to this important matter. I look forward to your response.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>12</sup> Government Accountability Office, “DEFENSE CONTRACTING: Enhanced Information Needed on Contractor Workplace Safety,” GAO-19-235, p. 22, February 21, 2019, <https://www.gao.gov/products/GAO-19-235>.

<sup>13</sup> Government Accountability Office, “DEFENSE CONTRACTING: Enhanced Information Needed on Contractor Workplace Safety,” GAO-19-235, p. 25, February 21, 2019, <https://www.gao.gov/products/GAO-19-235>.

<sup>14</sup> *Id.*, p. 45.