

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

June 17, 2019

Loren Sweatt
Deputy Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Ms. Sweatt:

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 2018,¹ GAO reviewed the safety and health records of Department of Defense (DOD) contractors and existing DOD procedures to evaluate them during the contracting process.² As part of this review, GAO identified several problems with the quality, consistency, and accessibility of the Occupational Safety and Health Administration's (OSHA) data.

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.³ 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."⁴ The DOD contractors that received citations averaged almost 5 citations (405 total) and 2.3 serious citations (195 total) per company.⁵ Tragically, at least seven workers died in connection with the serious violations.⁶

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

² 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>.

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

⁴ *Id.*, p. 14.

⁵ *Id.*, p. 15.

⁶ *Id.*, p. 16.

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 reported that it was unable to determine the full incidence of violations among companies it reviewed, because “OSHA does not require its staff to obtain and enter a corporate identification number in its inspector data, which is needed to match contracting data to inspection data” and that “unless OSHA explores the feasibility of requiring a corporate identification number in its inspection data, website users will likely have difficulty obtaining accurate information on individual companies’ previous violations.”⁷ This is a significant barrier to any efforts that DOD has taken or will take to improve contracting officers’ review of prospective contractors’ safety records in determining whether those companies meet responsibility standards.

In its response to the GAO report, DOD committed to issuing guidance to contracting officers on accessing occupational safety and health data on OSHA’s website. But unless OSHA’s data consistently include corporate identification numbers, DOD contracting officers may encounter significant difficulties in doing so. Considering the remarkably large prevalence of occupational health and safety violations among DOD contractors indicated by GAO’s findings, rectifying these gaps in OSHA’s data is an important step toward improving the occupational health and safety for the millions of American workers employed by these companies.

Specifically, GAO recommended that OSHA “explore the feasibility of requiring a corporate identification number in its inspection database and enabling its website to be searched by that number.”⁸ This would drastically improve the quality and usefulness of OSHA’s data, both for DOD contracting officers conducting responsibility determinations of prospective contractors and for a wide range of other purposes. GAO reported that “collecting corporate identification numbers as part of inspections could benefit both OSHA and users of OSHA’s website,” because, according to OSHA officials, knowing these numbers can help in collecting financial penalties from companies that have violated OSHA standards. In addition, OSHA officials said that requiring these numbers would make it easier to search OSHA’s inspection data.⁹

In order to better understand OSHA’s plans for implementing this recommendation, I ask that you answer the following questions no later than July 8, 2019:

1. In your response to GAO’s report, you wrote that OSHA “will continue to promote the collection of the EIN/TIN [Employer Identification Number/Taxpayer Identification Number] whenever possible.”¹⁰ What specific steps is OSHA taking, or will OSHA take, to do so?
 - a. What is the timeline for doing so?

⁷ Government Accountability Office, “DEFENSE CONTRACTING: Enhanced Information Needed on Contractor Workplace Safety,” GAO-19-235, What GAO Found, February 21, 2019, <https://www.gao.gov/products/GAO-19-235>.

⁸ Government Accountability Office, “DEFENSE CONTRACTING: Enhanced Information Needed on Contractor Workplace Safety,” GAO-19-235, p. 31, February 21, 2019, <https://www.gao.gov/products/GAO-19-235>.

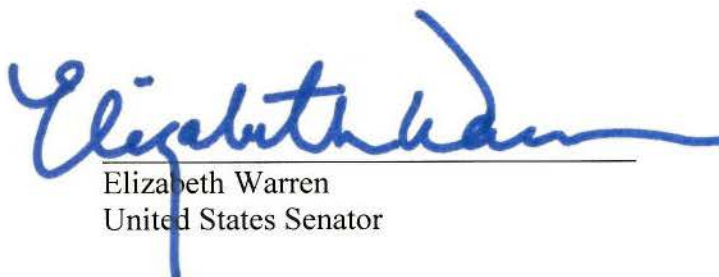
⁹ *Id.*, p. 20.

¹⁰ *Id.*, p. 44.

2. You noted, “OSHA currently routinely attempts to collect the employer’s EIN during each inspection,” but that only “42% of establishments inspected between February 2011 and May 2017 provided an EIN.”¹¹ To what factors do you attribute most employers’ failure to report an EIN?
 - a. What advice are you providing field staff in cases where businesses do not provide EINs?
3. I appreciate your commitment that “the agency will reinforce the importance of collecting the information,” but, considering that less than half of companies are currently reporting an EIN, will OSHA consider directing field staff to collect an EIN or other corporate identification number from *all* companies that they inspect? If not, why not?
4. You wrote that “there is a financial cost associated with any redesign of the agency’s data system in order to create a searchable data field.”¹² Please provide an estimate of, and explanation for, those costs.
5. In light of GAO’s concerning findings regarding the prevalence of occupational safety and health violations among DOD contractors, will OSHA consider providing training, in person or through written or electronic materials, for DOD contracting offices to better understand how to use the OSHA website to find a company’s OSHA violations and reports of severe injuries?
6. Will OSHA consider working with DOD to review the safety records of prospective DOD contractors in high-risk industries? If not, why not?
7. What other steps does OSHA plan to take to better protect the occupational health and safety of workers employed by these companies?

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator

¹¹ *Id.*, p. 43.

¹² Government Accountability Office, “DEFENSE CONTRACTING: Enhanced Information Needed on Contractor Workplace Safety,” GAO-19-235, p. 43, February 21, 2019, <https://www.gao.gov/products/GAO-19-235>