



February 2019

DEFENSE CONTRACTING

Enhanced Information Needed on Contractor Workplace Safety

GAO Highlights

Highlights of [GAO-19-235](#), a report to congressional committees

Why GAO Did This Study

DOD is the largest contracting agency in the federal government, obligating about \$320 billion for contracts in fiscal year 2017. Some DOD contracts—including some in the manufacturing and construction industries—involve work that can be dangerous, and questions have been raised about working conditions for these workers.

The National Defense Authorization Act for Fiscal Year 2018 includes a provision for GAO to review issues related to the safety and health records of DOD contractors. This report examines: (1) the incidence of prior serious safety or health violations among selected companies with DOD manufacturing and construction contracts, and (2) how DOD and selected DOD components address contractor workplace safety and health during the acquisition process. GAO matched federal contracting data for fiscal year 2017 to OSHA inspection data for fiscal years 2013-2017 (most recent available); interviewed officials from OSHA, DOD, selected military departments, and selected DOD components; reviewed documentation from six selected DOD contract files; and reviewed relevant federal laws and regulations, policy, and guidance.

What GAO Recommends

GAO is making one recommendation to OSHA and two recommendations to DOD to enhance available information on contractor workplace safety. OSHA neither agreed nor disagreed with GAO's recommendation, but planned to take action to address it. DOD agreed with the recommendations.

View [GAO-19-235](#). For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov, or Chelsa Gurkin at (202) 512-7215 or gurkinc@gao.gov.

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What GAO Found

Some selected companies with Department of Defense (DOD) manufacturing or construction contracts in fiscal year 2017 were previously cited for serious safety or health violations, according to GAO's analysis of federal data. Of the 192 companies with DOD contracts GAO selected for review, 106 had been inspected by the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) or state occupational safety and health agencies during fiscal years 2013 through 2017. These inspections resulted in 83 companies being cited for at least one violation, including 52 with at least one serious violation (see figure). However, available data do not allow a determination of whether these violations occurred during work on a DOD contract because OSHA inspection data do not include that information.

Number of Selected Defense Contractors Previously Cited for Occupational Safety or Health Violations, Based on Inspections Conducted from FY 2013 to 2017



Source: GAO analysis of federal procurement data and OSHA inspection data. | GAO-19-235

The incidence of violations among all inspected companies with DOD contracts cannot be determined because OSHA does not require its staff to obtain and enter a corporate identification number in its inspection data, which is needed to match contracting data to inspection data. As a result, OSHA's data do not consistently include these numbers, and users of OSHA's website cannot use these numbers to search for companies' previous violations. According to federal internal control standards, management should share the quality information necessary to achieve the entity's objectives. 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.

DOD contracting officials have opportunities during the acquisition process to address contractor workplace safety and health. For example, before awarding certain types of contracts, officials may consider workplace safety and health information when they evaluate prospective contractors' performance on past contracts. However, the past performance information that is available for officials to consider varies by DOD component. One component has a practice of requiring construction contractors to be rated on workplace safety at the completion of the contract, but DOD does not require a safety performance rating department-wide. As a result, contracting officials in other components may lack readily accessible information on contractors' past safety performance, and DOD may miss opportunities to consider safety concerns when awarding new contracts, particularly those in high-risk industries with relatively high rates of occupational injuries, such as manufacturing and construction.

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Abbreviations

BLS	Bureau of Labor Statistics
CPARS	Contractor Performance Assessment Reporting System
DOD	Department of Defense
DOL	U.S. Department of Labor
DUNS	Data Universal Numbering System
EIN	Employer Identification Number
FAPIIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
IMIS	Integrated Management Information System
MARAD	Maritime Administration
MOA	Memorandum of Agreement
NAVSEA	Naval Sea Systems Command
OIS	Occupational Safety and Health Information System
OSH Act	Occupational Safety and Health Act of 1970
OSHA	Occupational Safety and Health Administration
SAM	System for Award Management
SUPSHIP	Supervisor of Shipbuilding, Conversion, and Repair
TIN	Taxpayer Identification Number
USACE	U.S. Army Corps of Engineers
VPP	Voluntary Protection Programs

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February 21, 2019

Congressional Committees

The Department of Defense (DOD) is the largest contracting agency in the federal government, obligating about \$320 billion for contracts for goods and services in fiscal year 2017. Over half of these obligations were for contracts in the manufacturing and construction industries, which have relatively high rates of occupational injuries.¹ Reports of worker injuries and deaths at several companies with DOD contracts have raised questions about safety for workers employed by DOD contractors and related oversight.² The Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) is the federal agency responsible for

¹The manufacturing and construction industries had estimated rates of non-fatal workplace injuries that were higher than the estimated rate for private industry overall in 2016, according to the Department of Labor's Bureau of Labor Statistics (BLS) data. Specifically, the estimated rate for private industry overall in that year was 2.8 injuries per 100 full-time workers, the estimated rate for manufacturing was 3.3, and the estimated rate for construction was 3.2. The 95 percent confidence intervals for each of them are: private industry overall (2.77 to 2.83), manufacturing (3.24 to 3.36), and construction (3.06 to 3.34). The difference between the estimated rates for manufacturing and private industry overall and the difference between the estimated rates for construction and private industry overall are both statistically significant.

²Private sector employers, including federal contractors, are generally required to comply with applicable workplace safety and health standards established in accordance with the Occupational Safety and Health Act of 1970 (OSH Act), Pub. L. No. 91-596, 84 Stat. 1590 (codified as amended at 29 U.S.C. §§ 553, 651-78). We reported in 2010 that federal agencies, including DOD, awarded contracts to some selected companies that were previously found to have violated federal labor laws, including workplace safety and health standards. See GAO, *Federal Contracting: Assessments and Citations of Federal Labor Law Violations by Selected Federal Contractors*, [GAO-10-1033](#) (Washington, D.C.: Sept. 17, 2010).

overseeing safety and health-related working conditions for the nation's workers, including those employed by DOD contractors.³

The National Defense Authorization Act for Fiscal Year 2018 included a provision for GAO to report on issues related to the safety and health records of DOD contractors.⁴ In this report, we review: (1) the incidence of prior serious safety or health violations among selected companies with DOD manufacturing and construction contracts, and (2) how DOD and selected DOD components address contractor workplace safety and health during the acquisition process.⁵

To describe the incidence of prior serious safety or health violations among selected companies with DOD manufacturing and construction contracts, we matched federal contracting data to OSHA inspection data for selected contractors.⁶ OSHA categorizes a violation as “serious” when there is a substantial probability that death or serious physical harm could result, and the employer knew, or could have known with the exercise of reasonable diligence, of the hazard.⁷ First, we used federal contracting

³Specifically, OSHA is responsible for enforcing the OSH Act. However, states may choose to operate their own occupational safety and health programs under an OSHA-approved plan. OSHA or state agencies are responsible for oversight of workplace safety and health with respect to private sector employers, including DOD contractors. By contrast, federal agencies, including DOD, are generally responsible for establishing and maintaining workplace safety and health programs for their federal employees, consistent with OSHA's regulations. The responsibilities of DOD safety and health officials in contractor plants and contractor operations on DOD property are generally limited to helping to ensure the safety of DOD-owned equipment; protection of the production base; protection of government property and on-site DOD personnel from accidental losses; and the protection of the public. See DOD Instruction Number 6055.1, August 19, 1998.

⁴Pub. L. No. 115-91, § 814, 131 Stat. 1283, 1461-62 (2017).

⁵For ease of reference in this report, we may also use the term “safety” to refer to workplace safety and health.

⁶Specifically, we matched contracting data from the Federal Procurement Data System-Next Generation (FPDS-NG) and the System for Award Management (SAM) to inspection data from the Occupational Safety and Health Information System (OIS) and Integrated Management Information System (IMIS). OSHA's systems include data from both OSHA and state agencies.

⁷In our analysis, we also included violations categorized as “willful,” defined by OSHA as violations where an employer has demonstrated either an intentional disregard for the requirements of the OSH Act or a plain indifference to employee safety and health; and violations categorized as “repeated,” defined by OSHA as violations where an employer has been cited previously for the same or a substantially similar condition or hazard. See OSHA Field Operations Manual, CPL-02-00-160, August 2, 2016.

data to select the 100 companies with the largest DOD manufacturing contracts and the 100 companies with the largest DOD construction contracts (as measured by federal obligations) in fiscal year 2017.⁸ We focused on the manufacturing and construction industries because they have relatively high rates of occupational injuries, according to data from DOL's Bureau of Labor Statistics (BLS), and over half of DOD contract obligations in that year were for contracts in these industries, according to federal contracting data. Next, we identified duplicate or related companies, and entities that were not private companies with DOD contracts performed within the United States, and narrowed the list of 200 companies to 192 companies. In fiscal year 2017, DOD obligations for contracts with these 192 companies accounted for about 79 percent of DOD's obligations for contracts in the manufacturing and construction industries and about 46 percent of DOD's total contract obligations. We then matched information about the 192 companies to OSHA's inspection data from fiscal years 2013 through 2017.

We assessed the reliability of the federal contracting data and OSHA inspection data by (1) performing electronic testing of relevant data elements, (2) reviewing existing information about the data and the systems that produced them, and (3) collecting information from federal officials knowledgeable about the data. Based on these reviews, we found these data to be sufficiently reliable for our purposes. While our selected companies accounted for nearly half of DOD's total contract obligations in fiscal year 2017, our results are not generalizable to all companies that were awarded DOD manufacturing and construction contracts in fiscal year 2017. That year, about 29,000 companies had DOD manufacturing or construction contracts, and we reviewed a non-generalizable sample of 192 companies. In addition, limitations in the data do not allow a determination of whether the safety and health violations we identified occurred during work on a DOD contract because OSHA data do not include that information. Furthermore, our counts of violations include only those in citations issued by OSHA or state agencies to our selected contractors as determined by our matching process, and only those that resulted from closed inspections where the violations and penalties are considered final. Our counts of violations exclude any in citations issued only to subcontractors, and might exclude

⁸The number of companies we selected is much smaller than the total number of companies with DOD manufacturing and construction contracts in fiscal year 2017 (about 29,000). We did not review the safety and health violation records of all companies with DOD manufacturing or construction contracts due to data limitations.

those in citations issued to any of the selected contractors' subsidiaries or locations not identified by our matching process.⁹

To review how DOD and selected DOD components address contractor workplace safety and health in the acquisition process, we reviewed relevant federal laws and regulations, reviewed relevant DOD policy and guidance, and interviewed DOD officials. In addition, we selected two military departments (Army and Navy) and selected two components within these departments (the U.S. Army Corps of Engineers (USACE) and the Naval Sea Systems Command (NAVSEA)). We selected the Army and Navy based on contract obligation amounts, and we selected USACE and NAVSEA based on the industries in which they award most of their contracts.¹⁰ We reviewed relevant USACE and NAVSEA policy and guidance, and interviewed officials from the Army, Navy, USACE, and NAVSEA. To provide examples of how selected DOD components address contractor workplace safety and health, we selected a non-generalizable sample of three USACE and three NAVSEA contracts, for which we reviewed relevant contract file documentation and interviewed knowledgeable contracting officials.¹¹ While this review primarily focused on the award phase of the contracting process, NAVSEA and USACE officials also provided some information on the pre-award and contract performance phases of the contracting process, which we include in this report where relevant. For a detailed description of our objectives, scope, and methodology, see appendix I.

We conducted this performance audit from February 2018 to February 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

⁹According to OSHA officials, in certain circumstances, OSHA may cite both a prime contractor and a subcontractor for a violation, but in these cases the data would be recorded under two separate inspection numbers, which may or may not be linked in OSHA's database.

¹⁰Specifically, we selected the Army and the Navy because they were the two military departments with the largest contract obligation amounts in fiscal year 2017. We selected USACE and NAVSEA because they primarily contract with companies in the construction industry and the ship building and repairing industry, which had relatively high estimated rates of non-fatal occupational injuries in 2016, according to BLS data.

¹¹For a detailed description of our contract selection process, see appendix I. In selecting contracts, we identified prior OSHA violations at the parent company level, which may include violations at different company locations. As a result, the work that was performed for the selected contracts did not necessarily occur at company locations where prior OSHA violations had occurred.

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Federal Acquisition Process and Applicable Provisions

To support its mission, DOD uses contracts to procure many different types of supplies (such as ships, planes, and munitions) and services (such as management, maintenance, and technical services). The federal acquisition process generally includes three phases:

- **the pre-award phase**, which includes acquisition planning and activities such as conducting market research and defining contract terms and conditions prior to soliciting proposals;
- **the award phase**, which includes activities such as soliciting offers from prospective contractors, evaluating prospective contractors' proposals and qualifications, and awarding the contract; and
- **the contract performance phase**, which includes monitoring contract performance.¹²

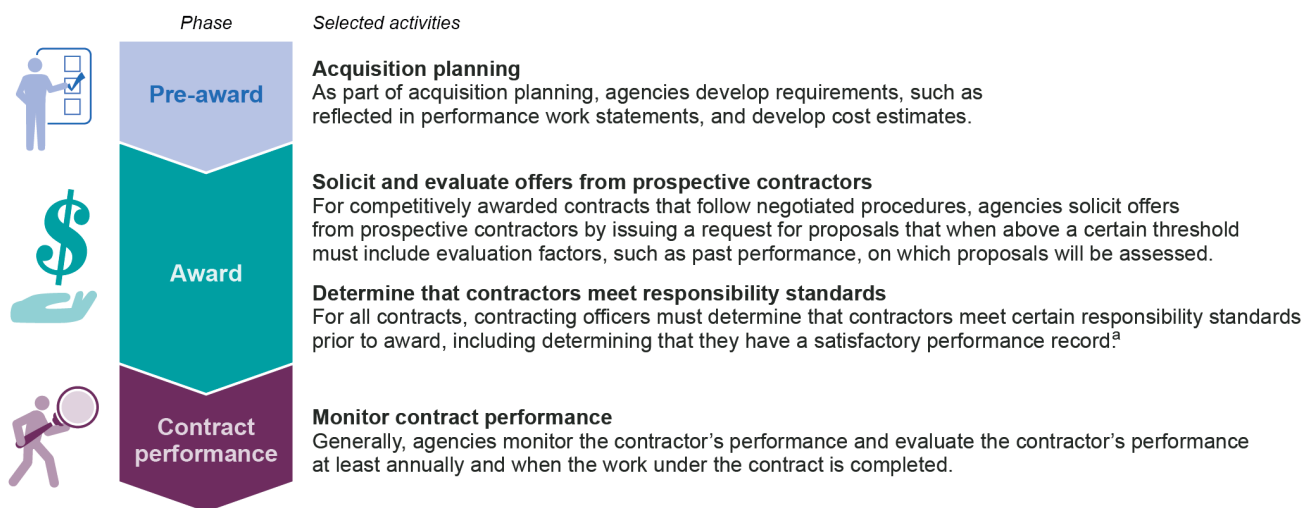
Within these phases, contracting officials complete certain activities as provided by applicable federal statutes and the Federal Acquisition Regulation (FAR). These activities differ somewhat based on the unique circumstances of each contract, including, for example, whether a contract is awarded competitively through full and open competition¹³ or

¹²While this review primarily focused on the award phase, NAVSEA and USACE officials also provided some information on the pre-award and contract performance phases, which we include in this report where relevant.

¹³In this report, when we refer to contracts that are competitively awarded, we are generally referring to contracts that are awarded through full and open competition, unless otherwise noted. Federal statutes and the FAR generally require that federal agencies award contracts through full and open competition, but authorize the use of other than full and open competition under certain conditions. The exceptions include: (1) only one responsible source exists and no other supplies or services will satisfy agency requirements; (2) unusual and compelling urgency exists; or (3) when authorized or required by statute (for example, statutorily allowed sole-source awards to socially and economically disadvantaged small businesses). When using other than full and open competition, agencies must solicit offers from as many potential sources as is practicable under the circumstances.

non-competitively through other than full and open competition, and whether negotiated procedures are used. (See fig.1.)

Figure 1: Phases and Selected Activities in the Federal Acquisition Process Relevant to Contractor Workplace Safety and Health



Source: GAO analysis of the Federal Acquisition Regulation (FAR). | GAO-19-235

^aThe determination of responsibility, which is a forward-looking analysis of the prospective contractor's capacity to perform, differs from the comparative analysis of past performance used in evaluating offers.

Before awarding a contract in excess of the simplified acquisition threshold (generally \$150,000 at the time of our review), the FAR requires contracting officials to review information in the Federal Awardee Performance and Integrity Information System (FAPIIS), which can include descriptions of a prospective contractor's past safety and health violations.¹⁴ Furthermore, for competitively awarded acquisitions using negotiated procedures and expected to exceed the simplified acquisition threshold, agencies generally must evaluate prospective contractors' past performance.¹⁵ Contracting officials enter and view performance

¹⁴FAR § 9.104-6. FAPIIS contains brief descriptions of civil, criminal, and administrative proceedings in connection with the award or performance of federal grants or contracts that result in a criminal conviction or civil finding of fault and liability resulting in a fine or penalty of \$5,000 or more, as well as terminations for default, administrative agreements, and nonresponsibility determinations, within the past five years for entities holding a federal contract or grant with a value of \$550,000 or more.

¹⁵FAR § 15.304(c)(3)(i).

assessments in the Contractor Performance Assessment Reporting System (CPARS).¹⁶ In evaluating past performance, agencies may review a contractor's past performance assessments, which can contain information about prior safety incidents and may be used to support award decisions.¹⁷

While the FAR prescribes policies and requirements that apply to executive agencies, there can be wide variation concerning the acquisition practices at individual agencies. For example, USACE often can take advantage of a robust competitive market and frequently uses competitively awarded fixed-price contracts. NAVSEA, by contrast, operates within an industrial base that has far fewer participants that often are uniquely qualified to produce specific classes of ships. As a consequence, many of NAVSEA's contracts are negotiated on a sole-source or limited competition basis.

¹⁶CPARS is a government-wide information system for collecting and processing contractor performance information. In CPARS, contractors are generally evaluated on six areas: (1) technical (quality of product or service), (2) cost control, (3) schedule/timeliness, (4) management or business relations, (5) small business subcontracting, and (6) other (as applicable). For each of these areas, contracting officials enter a performance rating—exceptional, very good, satisfactory, marginal, or unsatisfactory—and provide a supporting written narrative. FAR § 42.1503(b)(2) and 42.1503(b)(4). According to the CPARS website, CPARS supports the FAR requirement to consider past performance information prior to contract award. www.cpars.gov.

¹⁷FAR § 42.1503(g). Past performance is relevant for future source selection purposes. FAR § 42.1501.

OSHA's Oversight of Workplace Safety and Health

Under the Occupational Safety and Health Act of 1970 (OSH Act), OSHA sets and directly enforces occupational safety and health standards for the private sector in about half the states.¹⁸ The remaining states have chosen to set and enforce their own occupational safety and health standards for these employers under a state plan approved by OSHA.¹⁹ State standards and their enforcement must be “at least as effective” in providing safe and healthful employment as the federal standards. Most private sector employers, including federal contractors, are covered by the OSH Act and must comply with any applicable state or federal occupational safety and health standards. In addition to the OSH Act, several other federal laws require federal contractors, depending on the type and amount of the contract, to comply with occupational safety and health standards.²⁰

OSHA and the states have approximately 2,100 compliance officers responsible for enforcing health and safety standards at more than 8

¹⁸29 U.S.C. §§ 655, 657-659. Occupational safety and health standards are a type of regulation that requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. 29 U.S.C. § 652(8). For OSHA's standards, see generally 29 C.F.R. pts. 1910 (general industry), 1915-1918 (maritime, including shipyards, marine terminals, and longshoring), 1926 (construction), and 1928 (agriculture). In areas where OSHA has not issued a standard addressing a specific hazard, employers are still responsible for complying with the OSH Act's "general duty" clause, which requires each employer to provide a place of employment which is "free from recognized hazards that are causing or are likely to cause death or serious physical harm" to employees. 29 U.S.C. § 654(a)(1). OSHA has also issued recordkeeping and reporting regulations, which require certain employers to maintain logs of workplace injuries and illnesses, and require employers to report fatalities and serious injuries to OSHA. See generally 29 C.F.R. pt. 1904.

¹⁹See 29 C.F.R. pt. 1952. OSHA does not oversee state and local government employers or workers; however, if a state chooses to have its own plan, it must cover these workers. 29 U.S.C. § 667. Federal employers are generally responsible for maintaining their own occupational safety and health programs, consistent with OSHA's regulations. See 29 U.S.C. § 668; Exec. Order No. 12196, 45 Fed. Reg. 12,769 (Feb. 27, 1980); 29 C.F.R. pt. 1960. OSHA may inspect federal employers, although it does not assess them financial penalties.

²⁰For example, the Service Contract Act (SCA), Walsh-Healey Public Contracts Act (PCA), and Contract Work Hours and Safety Standards Act (CWHSSA) require contractors performing contracts subject to these laws to maintain safe workplaces and/or comply with safety and health standards established by the Secretary of Labor. As discussed in this report, OSHA sets and enforces safety and health standards under the OSH Act, including issuing citations and financial penalties. The SCA, PCA, and CWHSSA also establish certain wage-related requirements for covered contracts, which are enforced by DOL's Wage and Hour Division, according to DOL officials.

million worksites across the nation, which employ approximately 130 million workers.²¹ According to data provided by OSHA officials, in fiscal year 2017, OSHA and the states conducted about 76,000 inspections.²² A little less than half of these inspections were in the construction industry (about 34,000), and about one-fifth were in the manufacturing industry (about 14,000).

OSHA and state occupational safety and health agencies conduct both programmed and unprogrammed inspections. Programmed inspections—which represented about 44 percent of all federal OSHA inspections in fiscal year 2017—are planned based on workplace injury incidence rates, previous citation history, or random selection. Programmed inspections include those conducted under OSHA’s emphasis programs, which focus on a particular safety or health hazard or a specific industry. OSHA’s nine current national emphasis programs include one on shipbreaking, which covers some companies with DOD contracts.²³ In addition, OSHA has regional and local emphasis programs. Unprogrammed inspections—which represented the other 56 percent of all federal OSHA inspections in fiscal year 2017—are unplanned and are conducted in response to reports of imminent danger, fatalities, severe injuries, worker complaints, referrals from other government agencies, and catastrophic events that cause worker deaths and hospitalizations.²⁴

²¹According to OSHA officials, these numbers reflect private sector employers.

²²About 32,000 of these inspections were conducted by OSHA, and about 44,000 were conducted by state agencies.

²³Some companies with DOD contracts are engaged in shipbreaking, or breaking down vessels after they have become obsolete. OSHA’s national emphasis program on shipbreaking is designed to reduce or eliminate hazards associated with this work. OSHA entered into a Memorandum of Agreement (MOA) with the Department of Defense’s Department of the Navy (Navy), the Department of Transportation’s Maritime Administration (MARAD), and the Environmental Protection Agency, which was renewed in 2015. Under this MOA, OSHA agreed to conduct safety and health inspections of all government vessels contracted to be recycled under contract with the Navy and MARAD. In fiscal year 2017, OSHA inspected one Navy vessel and two MARAD vessels under the shipbreaking national emphasis program, according to OSHA officials. As of 2018, OSHA’s other national emphasis programs are on: 1) combustible dust, 2) federal agencies, 3) hazardous machinery, 4) hexavalent chromium, 5) lead, 6) primary metal industries, 7) process safety management, and 8) trenching and excavation.

²⁴Covered employers are required to report to OSHA any work-related fatality within 8 hours, and any work-related amputation, in-patient hospitalization, or loss of an eye within 24 hours. 29 C.F.R. § 1904.39.

Before beginning an inspection, OSHA or state compliance officers generally hold a brief opening conference to inform employer and employee representatives of the purpose of the inspection and their rights during the inspection, and provide a copy of the complaint, if applicable. After completing an inspection, if OSHA or state compliance officers determine that the employer has violated any safety or health standards, they may issue a citation, including a deadline for correcting the hazards, and related financial penalties (see fig. 2).²⁵ If OSHA issues a citation, it is required to do so within 6 months of the occurrence of a violation.²⁶ After receiving a citation, the employer may request an informal conference with OSHA officials to present evidence or views that they believe would support an adjustment to the citation or penalty, but an informal conference is not required.²⁷ The employer may also contest the citation.²⁸ Employers are required to certify that the hazards have been corrected by the deadline and provide supporting documentation.²⁹ If they do not, OSHA may conduct a follow up inspection, and may issue additional citations and penalties if the hazards were not corrected.

²⁵29 U.S.C. § 658. The OSH Act sets maximum civil penalty amounts based on the type of violation (e.g., serious, willful, or repeated). Certain violations, such as willful violations that cause the death of an employee, may be subject to criminal penalties. 29 U.S.C. § 666. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires civil penalty amounts to be annually adjusted for inflation. See Pub. L. No. 114-74, § 701, 129 Stat. 584, 599-601. For the maximum amounts for penalties assessed after January 2, 2018, see Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2018, 83 Fed. Reg. 7, 17 (Jan. 2, 2018). Actual penalty amounts are determined based on a variety of factors. For example, penalties may be adjusted based on the size of the employer's business, the gravity of the violation, the good faith of the employer, and the history of previous violations.

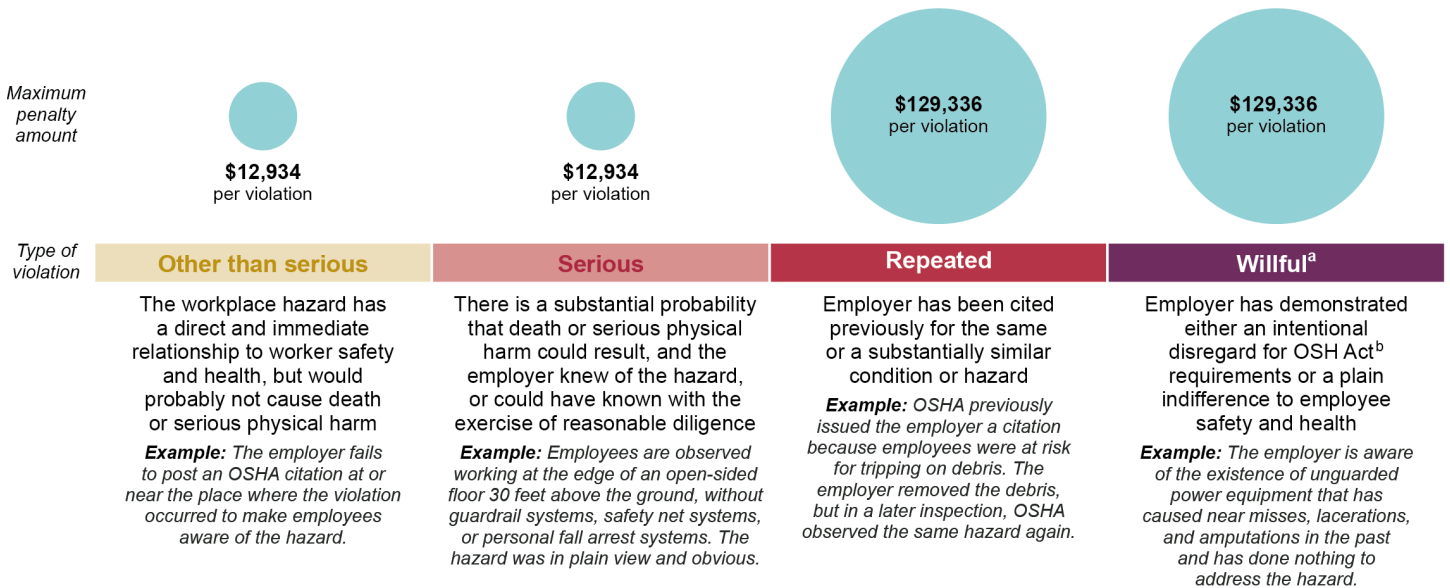
²⁶29 U.S.C. § 658(c).

²⁷29 C.F.R. § 1903.20.

²⁸Employers may contest OSHA citations or penalties before the Occupational Safety and Health Review Commission, an independent agency that conducts administrative hearings to decide such contests. 29 U.S.C. §§ 659(a), 661; 29 C.F.R. § 1903.17. According to OSHA officials, in fiscal year 2017, employers contested OSHA citations in 8.1 percent of inspections that identified violations. In fiscal year 2014, the most recent year for which complete data are available, officials said it took an average of 404 days to close contested inspections. Employers may also appeal decisions of the Commission in federal court. 29 U.S.C. § 660(a).

²⁹29 C.F.R. § 1903.19.

Figure 2: Selected Types of Occupational Safety and Health Violations and Maximum Civil Penalty Amounts, 2018



Source: GAO review of Occupational Safety and Health Administration (OSHA) documentation. | GAO-19-235

Notes: This figure does not include penalties for failure-to-abate violations, or violations of the posting requirements, which may have associated financial penalties. Actual penalty amounts are determined based on a variety of factors; for example, penalties may be adjusted based on factors such as the size of the employer's business or the history of previous violations. Maximum penalty amounts are set by the Occupational Safety and Health Act of 1970, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires that they be adjusted annually for inflation. The amounts shown in this figure apply to penalties assessed after January 2, 2018 and on or before January 23, 2019.

^aWillful violations that result in the death of an employee may also be subject to criminal penalties.

^bOccupational Safety and Health Act of 1970.

When an employer is inspected and OSHA finds violations, various factors might affect the number of violations identified. For example, an inspection with a narrow focus may identify fewer violations than a full inspection of the same worksite. OSHA officials said that construction inspections are often focused on a particular issue, such as protecting workers from falls or securing a trench, and thus may not be as comprehensive as a full inspection of a general industry facility. In addition, the number of violations identified during an inspection could be affected by factors such as company size, industry, and the presence of other safety oversight efforts. For example, OSHA officials said that in the construction industry they routinely cite both a general contractor and a subcontractor for the same violation, but do so to a lesser extent in other industries. Officials also noted that on USACE construction sites, both USACE and contractor representatives conduct safety inspections, which

enhances employer compliance with both OSHA standards and the USACE Safety and Health Requirements Manual.³⁰

Debarment for Violations of Safety and Health Standards

DOL has authority under the Contract Work Hours and Safety Standards Act to debar federal contractors in the construction industry from receiving federal contracts if they have committed “repeatedly willful or grossly negligent” violations of OSHA safety and health standards.³¹ However, as of October 2018, officials said that DOL had not debarred a construction contractor for this reason in the last 10 years.³² According to officials, DOL does not have debarment authority for violations of safety and health standards in industries other than construction, although it has debarment authority for other types of labor law violations.

Some Defense Contractors Were Previously Cited for Serious Safety or Health Violations, but Total Incidence is Unknown Because Comprehensive Data Are Not Available

³⁰USACE Engineer Manual (EM) No. 385-1-1, *Safety and Health Requirements Manual* (Nov. 30, 2014).

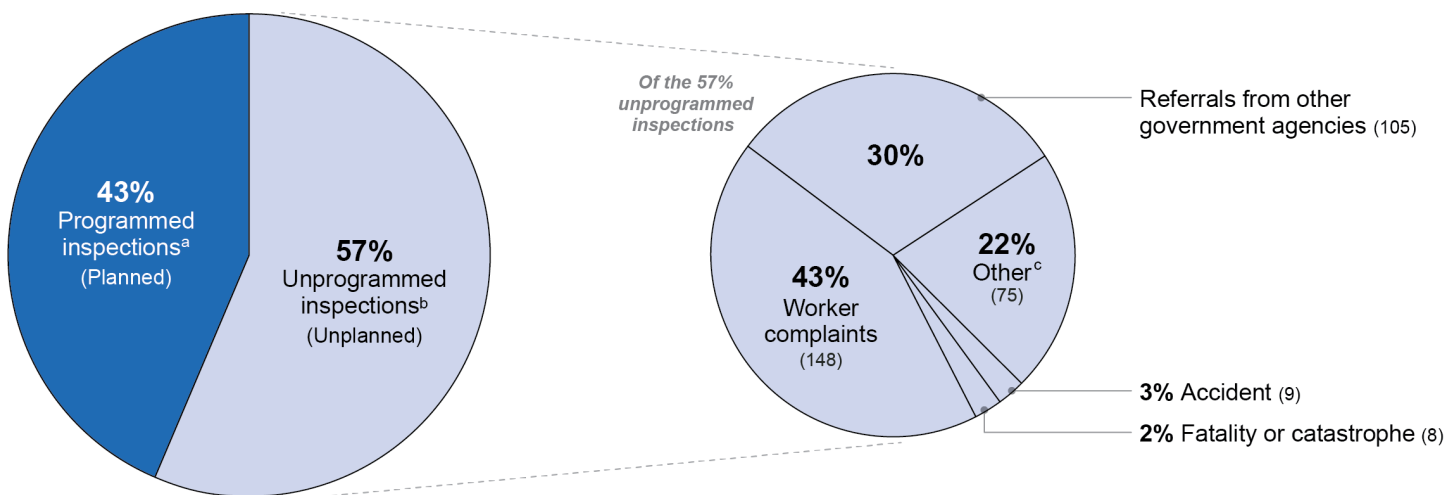
³¹See 40 U.S.C. § 704(c).

³²In 2011, we found that suspensions and debarments made up about 16 percent of contractor exclusions reported government-wide in the General Services Administration’s Excluded Parties List System for fiscal years 2006 through 2010. See GAO, *Suspension and Debarment: Some Agency Programs Need Greater Attention, and Governmentwide Oversight Could Be Improved*, [GAO-11-739](#) (Washington, D.C.: August 31, 2011).

Some Selected Companies with DOD Manufacturing or Construction Contracts in Fiscal Year 2017 Were Previously Cited for Serious Safety or Health Violations

Of the 192 companies we selected with DOD manufacturing or construction contracts in fiscal year 2017, we found that a little more than half (106) were inspected by OSHA or state occupational safety and health agencies from fiscal years 2013 to 2017. Of the companies that were inspected, 59 had construction contracts, and 47 had manufacturing contracts in fiscal year 2017. During this 5-year time period, OSHA or state agencies conducted 609 inspections of these 106 companies. Most of these inspections (about 81 percent) were conducted by OSHA. The percentages of programmed and unprogrammed inspections of our selected companies from fiscal years 2013 to 2017 were similar to these percentages for all federal OSHA inspections in fiscal year 2017. (See fig.3.)

Figure 3: Occupational Safety and Health Inspections of 106 Selected Companies with Department of Defense Contracts in Fiscal Year 2017, by Type of Inspection, Fiscal Years 2013 to 2017



Source: GAO analysis of Occupational Safety and Health Administration inspection data. | GAO-19-235

Note: This figure includes inspections conducted by both the federal Occupational Safety and Health Administration (OSHA) and state occupational safety and health agencies. Most of these inspections (81 percent) were conducted by federal OSHA. Not all inspections result in the employer being cited for a violation.

^aProgrammed inspections—which represented about 44 percent of all federal OSHA inspections in fiscal year 2017—are planned based on workplace injury incidence rates, previous citation history, or random selection.

^bUnprogrammed inspections—which represented about 56 percent of all federal OSHA inspections in fiscal year 2017—are unplanned and conducted in response to reports of imminent danger, fatalities, severe injuries, worker complaints, referrals from other government agencies, and catastrophic events.

^cThe “other” category includes monitoring, follow-up, and employer reported referral inspections, among others. Employer reported referral inspections are conducted in response to employer reports of work-related in-patient hospitalizations, amputations, and losses of an eye. OSHA began tracking

these inspections in 2015, following the issuance of a rule requiring employers to report these severe injuries to OSHA.

OSHA's enforcement policy is designed to focus OSHA's inspection resources on the most hazardous workplaces. Officials told us that employers, including DOD contractors, may not be inspected if they do not meet OSHA's criteria for programmed inspections and do not experience a safety or health incident that would lead to an unprogrammed inspection. In addition, officials said employers that participate in OSHA's Voluntary Protection Programs (VPP) must have high-quality safety and health programs, are exempt from regular programmed inspections, and are only inspected if OSHA is notified of a safety or health incident.³³ According to OSHA officials, of the 86 selected companies that were not inspected by OSHA or state agencies from fiscal years 2013 to 2017, one currently participates in the VPP.

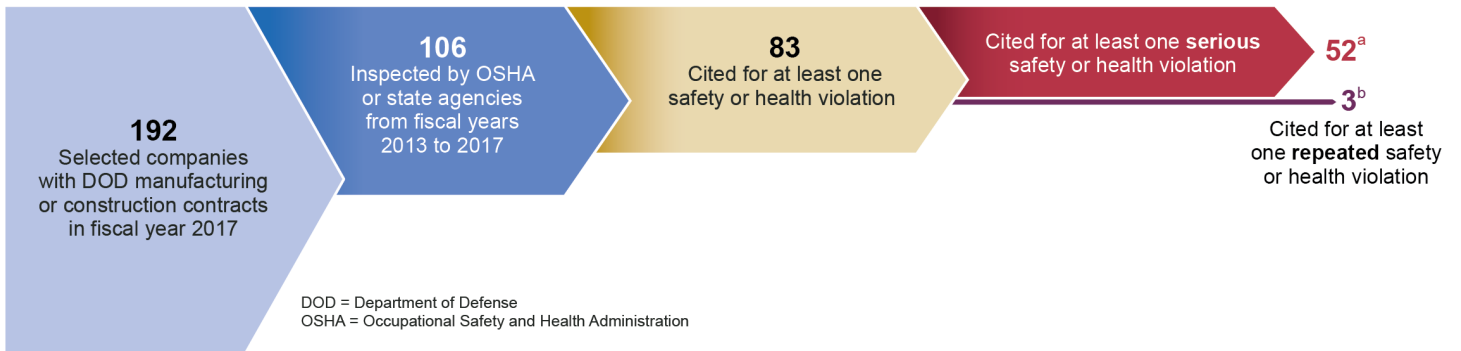
Our analysis found that of the 106 selected companies that were inspected during this time period, 83 were cited for at least one safety or health violation of any type, and of those, 52 were cited for serious violations (when there was a substantial probability that death or serious physical harm could result, and the employer knew, or could have known with the exercise of reasonable diligence, of the hazard).³⁴ Three companies were cited for at least one repeated violation.³⁵ (See fig. 4.) However, we were unable to determine from the available data whether these safety and health violations occurred during work on a DOD contract because OSHA inspection data do not include that information.

³³According to OSHA officials, as of March 2018, there were about 2,000 sites enrolled in the VPP. However, officials said they generally do not collect information on whether VPP participants are federal contractors.

³⁴As previously noted, we are only reporting the results of closed inspections where the violations and penalties are considered final.

³⁵Two of these three companies were also cited for serious violations (one company was cited for 17 serious violations and 5 repeated violations; the other was cited for 6 serious violations and 1 repeated violation). The third company was cited for one repeated violation but was not cited for any serious violations.

Figure 4: Selected Department of Defense Contractors Previously Cited for Occupational Safety or Health Violations



Source: GAO analysis of Federal Procurement Data System—Next Generation data and OSHA inspection data. | GAO-19-235

Note: Available data do not allow a determination of whether these safety and health violations occurred during work on a DOD contract because OSHA inspection data do not include that information.

^aTwo of these companies were also cited for repeated violations.

^bTwo of these companies were also cited for serious violations.

The 83 selected companies that were cited for workplace safety or health violations from fiscal years 2013 to 2017 had a total of 405 violations, including 195 serious violations, 7 repeated violations, and 203 violations of other types.³⁶ These companies were assessed financial penalties totaling about \$1.2 million over that time period, including about \$742,000 in penalties for serious violations. In fiscal year 2017, the 83 companies previously cited for violations of any type had DOD contracts totaling about \$113 billion, and the 52 companies previously cited for serious violations had DOD contracts of \$46 billion (as measured by federal obligations). (See table 1.)

³⁶None of the selected companies that were inspected from fiscal years 2013 to 2017 were cited for willful violations. As previously noted, OSHA defines willful violations as violations where an employer has demonstrated either an intentional disregard for the requirements of the OSH Act or a plain indifference to worker safety and health.

Table 1: Civil Penalty Amounts Assessed to Selected Companies for Occupational Safety or Health Violations from Fiscal Years 2013 to 2017, and Department of Defense (DOD) Obligations for Contracts with Those Companies in Fiscal Year 2017

	Total penalties	Minimum penalty	Maximum penalty	Average penalty	DOD contract obligations in fiscal year 2017
Selected companies cited for violations of any type based on inspections conducted from fiscal years 2013 to 2017 (83) ^a	\$1.2 million	\$0	\$46,500	\$5,418	\$113 billion ^c
Selected companies cited for serious violations based on inspections conducted from fiscal years 2013 to 2017 (52) ^b	\$742,000	\$360	\$42,750	\$7,205	\$46 billion ^d

Source: Occupational Safety and Health Administration (OSHA) inspection data and Federal Procurement Data System-Next Generation data. | GAO-19-235

Note: The penalties above include only those that were assessed as a result of manufacturing and construction inspections conducted from fiscal years 2013 to 2017. Available data do not allow a determination of whether these penalty amounts were connected to violations that occurred during work on a DOD contract because OSHA data do not include that information.

^aOf the 192 companies we selected with DOD manufacturing and construction contracts in fiscal year 2017, 106 were inspected by OSHA or state occupational safety and health agencies from fiscal years 2013 to 2017, and 83 were cited for violations of any type, including other-than-serious, serious, and repeated violations.

^bThe 52 companies cited for serious violations are a subset of the 83 companies cited for violations of any type. Two of the companies with serious violations were also cited for repeated violations.

^cDOD's total obligations in fiscal year 2017 for manufacturing and construction contracts with the 83 companies. This amount represents 61 percent of total DOD obligations for manufacturing and construction contracts in fiscal year 2017.

^dDOD's total obligations in fiscal year 2017 for manufacturing and construction contracts with the 52 companies. This amount represents 25 percent of total DOD obligations for manufacturing and construction contracts in fiscal year 2017.

Furthermore, for some of the selected companies cited for serious violations, the related OSHA inspection data described worker injuries or deaths.³⁷ As previously noted, 52 of the selected companies were cited for a total of 195 serious violations from fiscal years 2013 to 2017. For some, but not all, of these serious violations, the related inspection data described accidents in which 7 workers died, 20 were hospitalized for severe injuries—including fractures, chemical burns, other burns, and amputations—and 4 had severe injuries that did not require

³⁷These numbers include all of the fatalities and injuries described in the inspection data for the serious violations we identified. OSHA's inspection data do not address whether these violations caused the injuries or deaths. The data contain information on the cause of the injury or death, such as a fall, but the data do not address—and we did not determine—whether this cause was a direct result of the violation itself.

hospitalization.³⁸ According to the inspection data, the accidents in which 7 workers died included the following:

- a hydrogen blast in a melting chamber resulted in one worker being pinned under a 20,000 pound lid, another receiving second degree burns, and a third being killed;
- a barge capsized after a crane tilted over, and one worker drowned;
- a worker fell 98 feet from an elevator and was killed;
- a worker sustained a fatal electric shock when replacing jumper wires on a high voltage transmission corner tower, and another worker was injured;
- an autoclave exploded, striking and killing a worker with extreme force; and
- a vessel became unmoored due to high winds and struck a pier which then collapsed, pulling two workers underwater, one of whom died.

The Incidence of Violations among All Inspected Companies with DOD Contracts Is Unknown Because OSHA's Data Do Not Consistently Include Corporate Identification Numbers

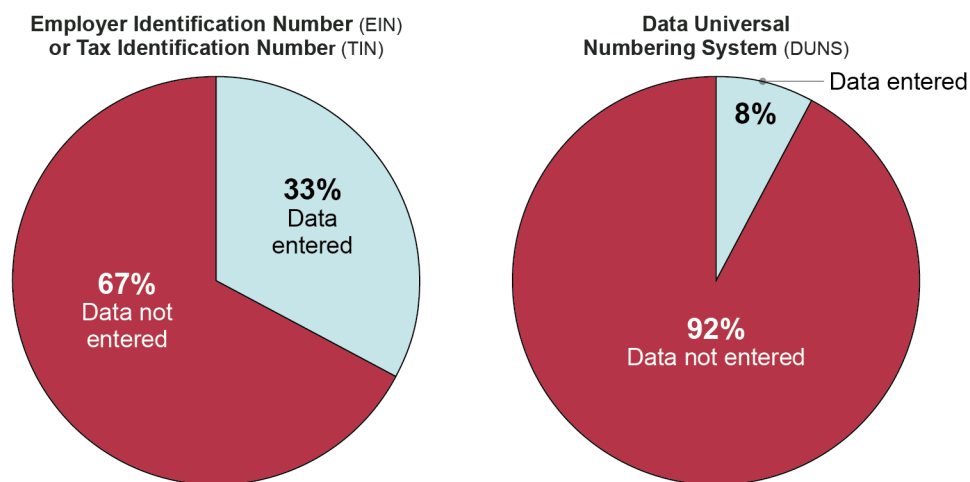
While we could identify some selected companies with DOD contracts in fiscal year 2017 that were previously cited for safety or health violations, the incidence of these violations among all inspected companies with DOD contracts is unknown because data limitations prevent comprehensive matching of federal contracting data with OSHA inspection data. Specifically, the corporate identification numbers used in the federal contracting databases—the Employer Identification Number/Taxpayer Identification Number (EIN/TIN) and the Data Universal Numbering System (DUNS) number—are not well-populated in OSHA's database because OSHA has not designated them as required fields.³⁹ OSHA officials are required to enter certain types of data in OSHA's inspection database—such as the employer's name and address, the type of inspection, and any violations that were identified during the inspection—and have the option to enter the employer's EIN/TIN and DUNS number. However, at the time of our review, for manufacturing and construction inspections initiated from fiscal years 2013 to 2017, the

³⁸The data did not allow us to determine whether these deaths and injuries occurred during work on a DOD contract because OSHA data do not include that information.

³⁹We previously found that the full extent of federal government contracts awarded to companies cited for labor violations was not known because OSHA's inspection database and DOL's Wage and Hour Division (WHD) database did not contain the DUNS number used in federal contracting data. See [GAO-10-1033](#).

EIN/TIN of the inspected company was entered in OSHA’s inspection data for about one-third of all inspections, and the DUNS number was entered for about 8 percent of all inspections (see fig. 5).⁴⁰ OSHA has acknowledged that it is difficult to match records across different databases without corporate identification numbers.⁴¹

Figure 5: Extent to Which Corporate Identification Numbers Were Populated by OSHA in its Data for Manufacturing and Construction Inspections, Fiscal Years 2013 to 2017



Source: GAO analysis of Occupational Safety and Health Administration (OSHA) inspection data. | GAO-19-235

Note: OSHA’s legacy inspection database did not include an EIN/TIN data field. According to an OSHA official, OSHA gradually transitioned from the legacy inspection database to the current inspection database during 2014 and 2015. When we analyzed data from only the current inspection database, which includes an EIN/TIN field, we found that the EIN/TIN was entered in about 43 percent of manufacturing and construction inspections.

In addition, OSHA’s website with information about safety and health violations cannot currently be searched by a company’s EIN/TIN or DUNS number. OSHA makes information about violations publicly available on

⁴⁰OSHA’s legacy inspection database did not include an EIN/TIN data field. According to an OSHA official, OSHA gradually transitioned from the legacy inspection database to the current inspection database during 2014 and 2015. When we analyzed data from only the current inspection database, which includes an EIN/TIN field, we found that the EIN/TIN was entered in about 43 percent of manufacturing and construction inspections.

⁴¹In other contexts, OSHA has noted that “...without the EIN it is very difficult to match the establishments in OSHA’s data collection to the establishments in BLS’s data collection. Not having the EIN increases the resources necessary to produce the match and reduces the accuracy of the match.” See 83 Fed. Reg. 36,494 (July 30, 2018).

its website, which can be searched by company name and industry code, among other fields.⁴² However, when searching OSHA's website by company name, interested parties may experience challenges obtaining relevant information because company names differ across databases. When we searched the OSHA website by company name as part of selecting USACE and NAVSEA contracts for review, we were unable to determine whether 18 of the 66 company names we searched had been inspected. For example, when we searched the OSHA website using the first word in one company's name, the search results included 34 inspections, but none of the company names in the search results exactly matched the company name in the federal contracting data.

OSHA officials said the EIN/TIN and DUNS numbers are not required fields because employers or their on-site representatives do not always have these numbers. Officials told us that smaller companies, such as small construction companies, are less likely to have these numbers than larger companies. When companies do have corporate identification numbers, officials said that the employer's on-site representative who interacts with the OSHA compliance officer—such as a foreman—might not know these numbers, and OSHA officials may not have the opportunity to meet with other employer representatives who would be more likely to know these numbers. However, if an employer requests an informal conference with OSHA officials after being cited for a violation, the conference provides an opportunity for OSHA officials to obtain the employer's corporate identification number from knowledgeable representatives. In addition, OSHA officials said requiring a corporate identification number in OSHA's inspection database could prevent closing an inspection record and issuing any related citations if they were unable to obtain this number within the required six-month timeframe.⁴³ Officials added that delays in issuing citations could also lead to delays in addressing workplace hazards, because employers are not required to begin addressing these hazards until they receive a citation. However, OSHA officials noted that if an employer's EIN/TIN or DUNS number is not available during an inspection, the number can be added to the inspection database at a later time.

⁴²OSHA determines which information it will make publicly available on its website, including the fields by which its inspection data can be searched. For OSHA's website with information about violations, see <https://www.osha.gov/pls/imis/establishment.html>.

⁴³As previously noted, if OSHA issues a citation, it is required to do so within 6 months of the occurrence of a violation. 29 U.S.C. § 658(c).

Collecting corporate identification numbers as part of inspections could benefit both OSHA and users of OSHA's website. OSHA officials said that the EIN is useful for collecting financial penalties from companies that have been cited for violations. In addition, OSHA officials told us that requiring the EIN/TIN or DUNS number in OSHA's inspection database would make it easier to search for companies in OSHA's online inspection data. According to federal internal control standards, management should externally communicate the necessary quality information to achieve the entity's objectives. Quality information is appropriate, current, complete, accurate, accessible, and provided on a timely basis.⁴⁴ Without exploring the feasibility of requiring a corporate identification number in OSHA's inspection database and enabling OSHA's website to be searched by that number, contracting officials and other interested parties are likely to experience challenges obtaining accurate information about companies' safety and health violations.

DOD Officials Have Several Opportunities to Address Workplace Safety and Health During the Acquisition Process, but May Not Have Complete Information

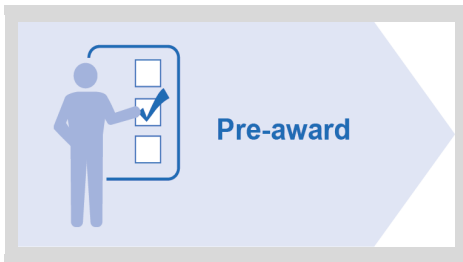
Officials at DOD have multiple opportunities to address contractor safety throughout the acquisition process. For example, during the award phase, officials can consider safety information when they evaluate contractors' past performance for contracts awarded competitively using negotiated procedures. However, not all contracting officials are aware that relevant contractor safety information is available on the OSHA website. During the contract performance phase, USACE and NAVSEA both take additional steps related to contractor safety and health, including accident prevention and accident reporting. Only USACE, however, has a practice of requiring contracting officials to assess contractor safety performance on construction contracts at the completion of the contract.⁴⁵ As a consequence, safety performance information for other contracts across DOD may not be readily accessible to officials when awarding new contracts.

⁴⁴GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

⁴⁵USACE ECB 2014-13 Contractor Performance Assessment Reporting System (CPARS) Transition Guidance (issued May 22, 2014; expires May 22, 2016). Although this guidance has expired, USACE officials told us that USACE still follows it and confirms this periodically during monthly meetings and annual training sessions.

While Not Required, DOD Can Consider Workplace Safety and Health in Various Ways Before Awarding Contracts

The FAR does not specifically require contracting officials to consider information about prospective contractors' records of safety performance before awarding a contract. Furthermore, DOD, Army, Navy, USACE, and NAVSEA policy and guidance do not specifically direct contracting officials to consider information about prospective contractors' safety records before awarding contracts, according to officials. However, contracting officials have several opportunities to consider contractor safety and health records and other safety information during the pre-award and award phases of the contracting process.



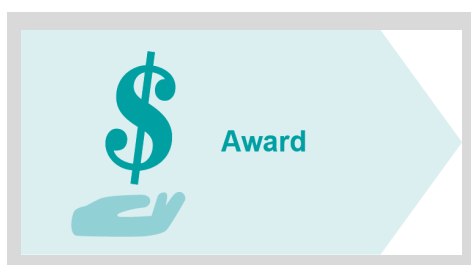
Developing requirements and drafting the solicitation. As part of acquisition planning, contracting and program officials develop requirements. In addition, when drafting a solicitation, the FAR or agency guidance may prescribe the use of certain clauses. For example, the FAR requires that fixed-price construction contracts above the simplified acquisition threshold include a provision related to workplace safety.⁴⁶ Specifically, these contracts must include an Accident Prevention clause that requires the contractor to provide appropriate safety barricades, signs, and signals, and comply with OSHA safety and health standards, among other requirements.⁴⁷ In addition, for DOD construction fixed-price contracts above the simplified acquisition threshold, this Accident Prevention clause requires contractors to comply with the USACE Safety and Health Requirements Manual.⁴⁸ USACE contracting officials also told us that if contracts include work associated with asbestos abatement, lead abatement, or hazardous waste remediation, clauses specific to these areas are also included in the solicitation and resulting contract. NAVSEA also uses clauses as applicable to the specific work performed, for shipbuilding procurements or ship repair, in its contracts, and NAVSEA stated that many of these clauses are related to safety and

⁴⁶In 2016, the simplified acquisition threshold was generally \$150,000. See 80 Fed. Reg. 38,293 (Oct. 1, 2015). In December 2017, the simplified acquisition threshold increased to \$250,000. See 41 U.S.C. § 134. Although DOD issued a class deviation implementing this increase, this change has not yet been implemented in the FAR. FAR Case 2018-004, Increased Micro-Purchase and Simplified Acquisition Thresholds (open as of Jan. 25, 2019).

⁴⁷FAR § 36.513 and § 52.236-13.

⁴⁸USACE Engineer Manual (EM) No. 385-1-1, *Safety and Health Requirements Manual*, (Nov. 30, 2014). This manual requires contractors to submit an accident prevention plan and to immediately notify DOD of any OSHA or other regulatory agency inspections and provide DOD with any related citations or reports, among other requirements.

environmental issues.⁴⁹ Further, program officials can include specific requirements for unique or high-risk activities.⁵⁰ For example, one of our selected NAVSEA contracts specified that the contractor must ensure that all required safety and emergency devices, such as emergency escape breathing devices, were onboard the ship before the contractor conducted sea trials.



Soliciting and evaluating offers from prospective contractors. For contracts awarded competitively using negotiated procedures, contracting officials are required to identify the factors on which they will evaluate prospective contractors' proposals and their relative weights. Contracting officials can designate safety in the solicitation as among the criteria that they will use to evaluate proposals and require prospective contractors to submit related information. For example, solicitations for two of our selected contracts included aspects of safety in the evaluation of certain factors.⁵¹

Safety also may be considered during the evaluation of contractor past performance. For acquisitions following negotiated procedures that are expected to exceed the simplified acquisition threshold, the FAR generally requires an evaluation of prospective contractors' past performance, which can include compliance with safety requirements on past contracts.⁵² The evaluation must include past performance as an evaluation factor unless the contracting officials document the reason past performance is not an appropriate evaluation factor for the acquisition. In evaluating past performance, the contractor's performance assessments in CPARS may be reviewed and used by contracting officials to support future award decisions.⁵³ For example, for one NAVSEA contract, the assessments identified instances when the contractor's safety program failed to comply with NAVSEA's safety

⁴⁹NAVSEA Contracts Directorate, Book of Standard Component Contract Clauses, Solicitation Provisions and Text, April 2015 Edition.

⁵⁰Contractor safety requirements are typically defined by program officials rather than contract officials.

⁵¹Of our six selected contracts, four were awarded competitively, and three of these followed negotiated procedures. The fourth used sealed bidding procedures.

⁵²FAR § 15.304(c)(3)(i).

⁵³FAR § 42.1503(g). Past performance information is relevant for future source selection purposes. FAR § 42.1501(a).

standards. In noncompetitive acquisitions following negotiated procedures, there is no requirement that there be evaluation criteria that include past performance. In these situations, opportunities for considering safety issues may be limited to the responsibility determination.

Determining that contractors meet responsibility standards. Prior to contract award, contracting officials must determine that prospective contractors are “responsible,” which is also known as the responsibility determination.⁵⁴ The responsibility determination has several required elements, some of which may include consideration of workplace safety and health.⁵⁵ For example, before awarding a contract, contracting officials must:

- determine that prospective contractors have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them, which may include assessing whether contractors have applicable safety programs;⁵⁶ and
- determine that prospective contractors have a satisfactory performance record⁵⁷ which for contracts that will be in excess of the simplified acquisition threshold includes reviewing and considering prospective contractors’ performance and integrity information in

⁵⁴FAR §§ 9.103, 9.104-1. For example, to be determined responsible, a prospective contractor must have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). FAR § 9.104-1(e). Generally prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors; however, a contracting official may directly determine a prospective subcontractor’s responsibility when it is in the government’s interest to do so. FAR § 9.104-4.

⁵⁵FAR § 9.104-1.

⁵⁶FAR § 9.104-1(e).

⁵⁷FAR § 9.104-1(c). The determination of responsibility, which is the prospective contractor’s capacity to perform, differs from the comparative past performance evaluations used in evaluating offers.

FAPIIS, which may include information about proceedings related to safety and health violations.⁵⁸

For one of our selected contracts, the FAPIIS search result in the contract file described OSHA safety and health violations. While they were not required to do so, none of the responsibility determinations for our six selected contracts contained information about workplace safety. If contracting officials considered safety when making this determination, we did not locate it in the contract files.⁵⁹

Information on Safety in Performance Assessments Varies and Can Be Incomplete

The information available to contracting officials in the federal contracting databases about contractors' past performance varies by DOD component. Specifically, USACE has a practice of requiring officials to assess and rate contractors' performance on construction contracts with respect to safety, among other required factors, in CPARS at the completion of the contract.⁶⁰ USACE contracting officials enter a safety performance rating—exceptional, very good, satisfactory, marginal, or unsatisfactory—and provide a supporting written narrative in a specific tab in CPARS. As a result, information on safety performance is summarized in a single location within CPARS, and thus, readily accessible to federal contracting officials, including those at DOD, when a

⁵⁸FAR § 9.104-6. FAPIIS contains brief descriptions of civil, criminal, and administrative proceedings in connection with the award or performance of federal grants or contracts that result in a criminal conviction or civil finding of fault and liability, resulting in a fine or penalty of \$5,000 or more, as well as terminations for default, administrative agreements and nonresponsibility determinations, within the past five years for entities holding a federal contract or grant with a value of \$550,000 or more. An official responsible for FAPIIS told us that information on OSHA violations is not normally captured in FAPIIS reports, but that these reports may contain information on OSHA violations if contractors choose to report it in the System for Award Management, which sends data to FAPIIS.

⁵⁹FAR § 9.105-2(b) states that documents and reports supporting a determination of responsibility or non-responsibility, including the use of FAPIIS information as provided for in FAR § 9.104-6, must be included in the contract file. FAR § 9.104-6(d) requires the contracting official to document in the contracting file, for each contract in excess of the simplified acquisition threshold, to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. However, neither FAR provision specifies the format or contents of these documents and reports.

⁶⁰USACE ECB No. 2014-13 requires officials to provide a safety rating in CPARS. Safety factors they are to consider are the adequacy and implementation of the contractor's safety plan; identification and correction of safety deficiencies; and a quantitative evaluation of accidents and injuries.

previous USACE construction contractor is considered for future contract awards. For all other DOD contracts, according to officials we interviewed, information on contractors' safety performance may be included in various places throughout CPARS, but is not required to be summarized as a separate rating in a single location.

The contract file documentation we reviewed illustrated these differences. For two of our selected USACE contracts, we found that this safety performance rating was available to officials for their consideration when awarding the contract.⁶¹ Based on our review of the contract file for one of these contracts, source selection officials identified less than satisfactory comments related to the safety performance rating in CPARS. As a result, they considered the rating, as well as the actions explained by the contractor to mitigate the safety issues. These officials determined that the corrective actions were sufficient, according to the documentation we reviewed. In contrast, for one of our selected NAVSEA contracts, we found that the past performance assessments in CPARS contained no information about workplace safety or health—either satisfactory or unsatisfactory. The past performance for the remaining NAVSEA contract file for which we obtained a CPARS report contained information on workplace safety and health—for example, the assessments noted corrective action requests were submitted for safety incidents.⁶²

According to federal internal control standards, management should use quality information—information that is complete and accessible—to achieve its objectives.⁶³ Without a safety performance rating for contractors in industries with relatively high rates of occupational injuries, such as manufacturing or ship building and repairing, 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—for example, by considering

⁶¹We were not able to obtain documentation of CPARS reports available prior to contract award for the third USACE contract.

⁶²According to NAVSEA, the corrective action request is the method by which the government informs the contractor of a condition that is not in conformance with contractual requirements, and may also be used for conditions that are not quality related, such as safety and environmental deficiencies. We were not able to obtain documentation of CPARS reports available prior to contract award for the third NAVSEA contract.

⁶³[GAO-14-704G](#).

whether and how prospective contractors resolved or mitigated violations or safety issues on prior contracts.

In addition, DOD contracting officials may not be aware that the OSHA website is a resource for additional information about contractors' workplace safety and health records. Since CPARS only includes past performance assessments for federal government contracts, contracting officials may not know about OSHA violations committed by companies during work that took place outside of these contracts, or when the company was not a federal contractor. DOD officials told us that they expect contracting officials to use their discretion in evaluating safety performance; however, DOD has not advised its contracting officials that the OSHA website is a resource for additional information on workplace safety records. For one of our selected contracts, the contracting official told us he was not aware of a past OSHA violation when determining contractor responsibility. According to the contracting official, OSHA issued the citation for non-Navy work performed at the contractor's commercial shipyard. Several contracting officials told us that they would likely only consider violations they deemed relevant, for example, those that occurred at the facility where the contract will be performed. However, without knowing that a past violation occurred, the official we interviewed for our selected contract may not have had the opportunity to consider all of the available information when evaluating the contractor or addressing potential safety issues.

Moreover, contracting officials for the six USACE and NAVSEA contracts we reviewed said they have not sought information about contractor safety and health violations from the OSHA website, and several were unaware that the website contained information on violations. Without being made aware that the OSHA website is a resource for additional information, contracting officials may not have the opportunity to utilize all of the available information about prospective contractors' safety history. As a result, DOD contracting officials may miss opportunities to consider safety and health concerns when they are awarding new contracts.

Selected Components Take a Variety of Steps to Address Contractor Workplace Safety During Performance of the Contract

Officials from our two selected components—USACE and NAVSEA—also identified various actions they may take during the contract performance phase related to the workplace safety of their contractors.⁶⁴ For example, according to officials, during the contract performance phase, USACE and NAVSEA oversee contractors' compliance with contract requirements related to workplace safety and health. The steps they take may include ensuring that contractors submit accident prevention plans, when required, and conducting safety inspections, among other actions.



Monitoring for OSHA violations. As mentioned above, the FAR requires a clause regarding compliance with safety and health standards to be included in certain federal construction contracts.⁶⁵ USACE officials told us that this is monitored as a reportable item while work is being conducted, and that if violations occur during the performance of the contract, the contracting official is to enter information about the violations into CPARS. An Army official also told us that the Army recently implemented a system to track OSHA violations, but that it did not yet contain any data.

Accident prevention. The FAR requires compliance with the USACE Safety and Health Requirements Manual for certain DOD construction contracts.⁶⁶ According to the manual and USACE officials, USACE does not allow construction to begin until officials have reviewed and accepted the contractor's accident prevention plan, including changes if necessary. For example, the contract documentation we reviewed for a dredging contract included a memorandum outlining changes that were to be addressed in the accident prevention plan (for example, outlining credentials for the safety officer on the site). According to the manual, USACE requires contractors' submitted accident prevention plans to be job-specific and include work to be performed by subcontractors.

⁶⁴As noted above, our report focuses on the award phase, but we have included information on the pre-award and contract performance phases where it is relevant.

⁶⁵FAR §§ 36.513, 52.236-13. The FAR § 52.236-13 clause is required for fixed-price construction contracts expected to exceed the simplified acquisition threshold.

⁶⁶FAR §§ 36.513, 52.236-13(c). This provision is for fixed-price construction contracts expected to exceed the simplified acquisition threshold. The FAR requires contractors to comply with all pertinent provisions of the latest version of the Manual in effect on the date of the respective solicitation.

NAVSEA may require contractors to submit an occupational health and safety plan for ship repair work. For example, one of the files we reviewed for a maintenance, modernization, and repair contract for a certain class of ships included a safety plan—a required deliverable under the contract—covering topics such as fall protection, evacuation procedures, and accident notification.

Inspections. The USACE manual requires daily safety inspections of contractors' worksites by both contractor and USACE personnel, and officials told us that USACE procedures require these inspections to be entered in USACE's Resident Management System. The manual also requires the accident prevention plan or the USACE project safety and occupational health plan to provide for "frequent" safety inspections of the work sites, material, and equipment to ensure compliance with the plan and the USACE manual. For one of the USACE contracts we selected for review, CPARS documentation provided by USACE officials indicated that USACE staff noted repeated issues with safety requirements, including exposed live electrical wiring, lack of adequate lighting, and improper use of extension cords. This CPARS example indicates that the contractor worked to increase safety compliance. Finally, USACE's manual states that when an employee is deemed to be in imminent danger, contractor or USACE officials must immediately stop the unsafe work being performed.⁶⁷

For NAVSEA, officials told us that safety requirements and oversight responsibilities will vary depending on the type of work involved. For new construction, the Navy Supervisor of Shipbuilding, Conversion, and Repair (SUPSHIP) oversees safety. For repair and maintenance, the Regional Maintenance Centers are charged with safety oversight, among other administrative responsibilities. At both organizations, if problems are found, personnel issue corrective action requests. For example, a regional maintenance center staff member issued a corrective action request because the contractor failed to monitor the use of personal protective equipment and a contractor employee fell through a deck opening. As previously noted, the CPARS assessments for one of our selected contracts specifically noted that safety corrective action requests had been issued to that contractor. NAVSEA officials told us that quality

⁶⁷The USACE manual defines "employee" as a government or contractor person engaged in a USACE project.

assurance staff also have regular meetings with the contractors and monitor workplace safety.

Accident reporting. USACE policy is to investigate and report USACE accidents in order to prevent recurrences and to comply with OSHA, DOD, Army, and other requirements. USACE regulation requires contracting officials to inform contractors of their responsibilities for accident reporting and investigation, and ensure all accidents that occur within their area of responsibility are investigated and reported.⁶⁸ USACE also collects information about accidents at contractors' worksites, and disseminates summaries of incidents on a regular basis. For example, one summary described a fall by a contractor employee resulting in stitches and a broken nose. The summary reminds USACE personnel of the importance of protective equipment to prevent this type of incident. USACE officials also told us that they have on-site engineers who would typically address any safety concerns directly with the contractor and inform the contracting official responsible for entering information into CPARS.

Navy policy requires significant problems, including severe personnel injuries, to be reported to the NAVSEA Commander through the use of trouble reports.⁶⁹ In addition, the SUPSHIP supervisor implements hazard identification and reporting processes and ensures the collection, evaluation and reporting of data for the determination of contractor award fees and past performance data bases. SUPSHIP also assesses the overall effectiveness of contractor safety and health management systems and provides safety program assessments for quarterly reviews. Finally, the SUPSHIP Operations Manual provides that SUPSHIP personnel who are aware of any major or willful contractor violation of federal, state, or local laws and regulations (for example, recurring/major unsafe work practices) will report these violations.⁷⁰

Personnel training. According to a USACE official, USACE requires the designated quality control manager for each worksite to take the USACE

⁶⁸Department of the Army, USACE Engineering Regulation (ER) 385-1-99, *Safety and Occupational Health: USACE Accident Investigation and Reporting*, (Mar. 15, 2010).

⁶⁹Commander Navy Regional Maintenance Center, CNRMC Instruction 4700.3E, *Unplanned Events, Critiques and Trouble Reports*, (May 16, 2017).

⁷⁰SUPSHIP Operations Manual, NAVSEA S0300-02-MAN-010, Chapter 12, § 12.1.2, (Revised Mar. 29, 2018).

Construction Quality Management course before being approved to work on a project. The course aims to ensure that construction is performed according to plans and specifications, on time, within budget, and in a safe work environment. In addition, contractor safety managers are required by the USACE manual to be on all project sites for USACE construction contracts and must complete certain OSHA training or equivalent training. This program provides training on the recognition, avoidance, abatement, and prevention of workplace hazards.

According to officials, NAVSEA recommends that its personnel working in acquisition of defense systems or maintenance of ships and aircraft undergo acquisition safety training. A NAVSEA contracting official told us that the first draft of this training has been developed and will be required training for NAVSEA contracting personnel. Officials said that the aim of this training is ensure that safety is considered when developing contract requirements.

Conclusions

DOD obligates hundreds of billions of dollars each year on contracts, including those for work in high-risk industries such as construction and ship building and repairing, and some companies have received DOD contracts after being cited for serious workplace safety or health violations. Even if these violations did not occur during work on a DOD contract, they could be relevant to decisions about new DOD contracts, for example, when a prospective contractor has not previously received federal contracts or when past performance information does not address workplace safety.

However, the incidence of serious safety and health violations among all inspected DOD contractors remains unknown because OSHA does not require a corporate identification number in its inspection data. Furthermore, OSHA's website currently cannot be searched by a corporate identification number. Without these enhancements to OSHA's inspection data and website, DOD contracting officials and other interested parties are likely to experience challenges obtaining accurate information about contractors' workplace safety and health records.

In addition, DOD contracting officials may be unaware of OSHA's website because DOD has not advised them that this resource exists. Despite some data limitations, OSHA's website currently can be used to obtain information about contractors' workplace safety and health records in some cases. While DOD contracting officials are not required to consider information about contractors' workplace safety and health before

awarding contracts, they have multiple opportunities to do so. Unless DOD provides information about OSHA's website to contracting officials, they may remain unaware that this resource exists, and may miss opportunities to consider safety and health concerns when awarding new contracts.

Furthermore, some DOD contracting officials may lack readily accessible information on contractors' past workplace safety performance because DOD does not require a safety performance rating for contracts department-wide. One of the DOD components we selected has a practice of requiring construction contractors' performance to be rated with respect to workplace safety at the completion of each contract. However, DOD does not require a safety performance rating for other components' construction contracts or contracts in other industries with similarly high rates of occupational injuries, such as manufacturing. Without exploring the feasibility of requiring a department-wide safety performance rating for all contracts in high-risk industries, DOD may miss opportunities to reduce risks by considering safety concerns when awarding new contracts in these industries.

Recommendations for Executive Action

We are making three recommendations, including one to OSHA and two to DOD. Specifically:

The Assistant Secretary of Labor for Occupational Safety and Health should explore the feasibility of requiring a corporate identification number in its inspection database and enabling its website to be searched by that number. This should include exploring the following issues:

- which corporate identification number would be most appropriate to require;
- options for obtaining this number from employers; and
- options for entering this number in its database that would prevent or minimize delays in closing inspection records. (Recommendation 1)

The Secretary of Defense should provide information to contracting officials to advise them that the OSHA website is a resource for information about contractors' workplace safety and health records. (Recommendation 2)

The Secretary of Defense should explore the feasibility of requiring a safety performance rating for contracts in industries that have relatively

high rates of occupational injuries, such as manufacturing, construction, and ship building and repairing. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report to DOL and DOD for review and comment. DOL's Occupational Safety and Health Administration (OSHA) and DOD provided written comments, which are reprinted in appendixes II and III, respectively.

With respect to our first recommendation that OSHA explore the feasibility of requiring a corporate identification number in its database and enabling its website to be searched by that number, OSHA did not state whether it agreed with our recommendation. OSHA acknowledged the potential utility of obtaining a unique identifier from each employer and said it will continue to promote the collection of Employer Identification Numbers (EIN) or Tax Identification Numbers (TIN) whenever possible by issuing a revised memorandum to field staff to reinforce the importance of collecting this information. OSHA stated that it does not view EINs as confidential or protected from disclosure. However, OSHA expressed concerns about protecting TINs and Social Security Numbers from disclosure, and noted that it would not be able to make a data field available for public search if it contained either of these numbers. OSHA also raised concerns about the financial cost associated with redesigning the agency's data system. We encourage OSHA to explore options for addressing these concerns as it further considers how to implement our recommendation.

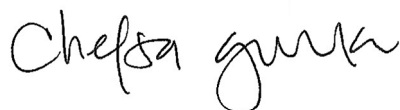
With respect to our second and third recommendations that DOD provide information to contracting officials about the OSHA website and explore the feasibility of requiring a safety performance rating for contracts in high-risk industries, DOD agreed with both recommendations and identified implementation timelines.

We are sending copies of this report to the appropriate congressional committees, the Secretary of the Department of Labor, the Secretary of the Department of Defense, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact William T. Woods at (202) 512-4841 or woodsw@gao.gov, or Chelsa Gurkin at (202) 512-7215 or gurkinc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



William T. Woods
Director, Contracting and National Security Acquisitions



Chelsa Gurkin
Acting Director, Education, Workforce, and Income Security Issues

List of Committees

The Honorable James M. Inhofe
Chairman
The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Richard Shelby
Chairman
The Honorable Richard Durbin
Ranking Member
Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable Adam Smith
Chairman
The Honorable Mac Thornberry
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Peter J. Visclosky
Chairman
The Honorable Ken Calvert
Ranking Member
Subcommittee on Defense
Committee on Appropriations
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the incidence of prior serious safety or health violations among selected companies with Department of Defense (DOD) manufacturing and construction contracts, and (2) how DOD and selected DOD components address contractor workplace safety and health during the acquisition process.

To describe the incidence of prior serious safety or health violations among selected companies with DOD manufacturing and construction contracts, we matched federal contracting data to the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) inspection data for selected contractors, interviewed OSHA officials, and reviewed relevant OSHA policy. Our data matching process is described below. To describe how DOD and selected DOD components address contractor workplace safety and health during the acquisition process, we selected two military departments (Army and Navy) and two components within these departments (the U.S. Army Corps of Engineers (USACE) and the Naval Sea Systems Command (NAVSEA)).¹ We interviewed officials from DOD and these departments and components, and reviewed relevant DOD and component-level policy and guidance. To provide illustrative examples, we selected a non-generalizable sample of three USACE and three NAVSEA contracts, reviewed relevant contract file documentation, and interviewed knowledgeable contracting officials.² Our criteria for selecting contracts and our review of contract file documentation are described below. While this review primarily focused on the award phase of the contracting process, NAVSEA and USACE officials also provided some information on the pre-award and contract performance phases of the contracting process, which we include in this report where relevant. For example, we interviewed USACE and NAVSEA safety officials about safety oversight practices during the contract performance phase. We also obtained examples of safety-related requirements for each of our selected contracts by interviewing

¹We selected the Army and Navy because they were the two military departments with the largest contract obligation amounts in fiscal year 2017. We selected USACE and NAVSEA because they primarily contract with companies in the construction industry and the ship building and repairing industry, which had relatively high estimated rates of non-fatal occupational injuries in 2016, according to DOL's Bureau of Labor Statistics (BLS) data.

²Depending on the type of source selection, the contract file documentation we reviewed included documents such as the contract solicitation, source selection plan, evaluation of contractor proposals, and the responsibility determination. In addition, we reviewed Federal Awardee Performance and Integrity Information System (FAPIS) records and Contractor Performance Assessment Reporting System (CPARS) reports that were saved as part of the contract file.

contracting officials and reviewing contract documentation. To address both objectives, we reviewed relevant federal laws and regulations.

Data Matching

To describe the incidence of prior serious safety or health violations among selected companies with Department of Defense (DOD) manufacturing and construction contracts, we matched federal contracting data to OSHA inspection data. OSHA categorizes a violation as “serious” when there is a substantial probability that death or serious physical harm could result, and the employer knew, or could have known with the exercise of reasonable diligence, of the hazard.³ Specifically, we matched contracting data from the Federal Procurement Data System-Next Generation (FPDS-NG) and the System for Award Management (SAM) to inspection data from the Occupational Safety and Health Information System (OIS) and Integrated Management Information System (IMIS).⁴ We assessed the reliability of the federal contracting data and OSHA inspection data by (1) performing electronic testing of relevant data elements, (2) reviewing existing information about the data and the systems that produced them, and (3) collecting information from federal officials knowledgeable about the data. Based on these reviews, we found the employer identification information in the federal contracting data, obligation amounts in the federal contracting data, and the OSHA inspection data to be sufficiently reliable for our purposes.

First, we used FPDS-NG data to select the 100 companies with the largest DOD manufacturing contracts and the 100 companies with the

³In our analysis, we also included violations categorized as “willful,” defined by OSHA as violations where an employer has demonstrated either an intentional disregard for the requirements of the OSH Act or a plain indifference to employee safety and health; and violations categorized as “repeated,” defined by OSHA as violations where an employer has been cited previously for the same or a substantially similar condition or hazard. See OSHA Field Operations Manual, CPL-02-00-160, August 2, 2016.

⁴OIS and IMIS contain information about workplace inspections conducted by OSHA or state occupational safety and health agencies. IMIS is a legacy information system that OSHA discontinued in fiscal year 2015, when the agency fully transitioned to using OIS. The data contained in OIS and IMIS include a unique identification number for each inspection, whether the inspection was conducted by OSHA or a state agency, the employer’s name and address, the date the inspection began, the type of inspection, the industry code for the inspection, any violations that were identified during the inspection (including the type of violation and the standard(s) that were violated), the related penalties that were assessed and any changes in these penalties, information on any worker injuries or fatalities, whether the inspection has been closed, and, if so, the date the inspection was closed.

largest DOD construction contracts (as measured by federal obligations) in fiscal year 2017.⁵ We focused on the manufacturing and construction industries because they have relatively high rates of occupational injuries, according to data from DOL's Bureau of Labor Statistics (BLS),⁶ and over half of DOD contract obligations in that year were for contracts in these industries, according to FPDS-NG data. Next, we identified duplicate or related companies, and entities that were not private companies with DOD contracts performed within the United States, and narrowed this list of 200 companies to 192 companies.⁷ In fiscal year 2017, DOD obligations for contracts with these 192 companies accounted for about 79 percent of DOD's obligations for contracts in the manufacturing and construction industries and about 46 percent of DOD's total contract obligations.

Then, to determine whether the 192 companies had been inspected by OSHA or state occupational safety and health agencies from fiscal years 2013 to 2017, we used automated matching procedures that compared the Employer Identification Numbers (EINs) and company names entered in the federal contracting databases to those entered in OSHA's inspection databases. Specifically, we used FPDS-NG to identify the Data Universal Numbering System (DUNS) numbers for our selected companies, and then used SAM to identify the EINs that corresponded to

⁵We did not review the safety and health violation records of all companies with DOD manufacturing or construction contracts due to data limitations.

⁶The manufacturing and construction industries had estimated rates of non-fatal workplace injuries that were higher than the estimated rate for private industry overall in 2016, according to data maintained by BLS. Specifically, the estimated rate for private industry overall in that year was 2.8 injuries per 100 full-time workers, the estimated rate for manufacturing was 3.3, and the estimated rate for construction was 3.2. The 95 percent confidence intervals for each of them are: private industry overall (2.77 to 2.83), manufacturing (3.24 to 3.36), and construction (3.06 to 3.34). The difference between the estimated rates for manufacturing and private industry overall and the difference between the estimated rates for construction and private industry overall are both statistically significant.

⁷One company was among both the top manufacturing and top construction companies, reducing the total to 199. We also identified five pairs of companies that were related; we counted each of these companies only once, reducing the total to 194. In addition, our review focused on private companies with DOD contracts performed within the United States; we eliminated two entities that were not within that scope, reducing the total to 192.

each of those DUNS numbers.⁸ Next, we matched those EINs to the EINs in the OSHA inspection data.⁹ We considered a company to be a match if the EINs were identical and either (1) the company names were the same or similar,¹⁰ or (2) the company names were different, but we identified a relationship between the two company names, such as a parent company/subsidiary relationship, through an internet search. Using this process, we initially identified 90 selected companies that were inspected by OSHA from fiscal years 2013 to 2017.

After completing this matching process, we sent a list of the remaining companies that we were unable to match to OSHA for review. Specifically, we asked OSHA officials to identify whether those companies were inspected from fiscal years 2013 to 2017, and provide inspection numbers for those companies that were inspected. OSHA officials reviewed this list and reported that OSHA had inspected some of the unmatched companies, and provided related inspection numbers. We then added those inspections to our analysis, which brought the total number of selected companies inspected by OSHA during this time period to 106 of 192.

Our results are not generalizable to all companies that were awarded DOD manufacturing and construction contracts in fiscal year 2017. That year, about 29,000 companies had DOD manufacturing or construction contracts, and we reviewed a non-generalizable sample of 192 companies. In addition, limitations in the data do not allow a determination of whether the safety and health violations we identified occurred during work on a DOD contract because OSHA data do not include that information.

Our counts of violations include only those in citations issued by OSHA or state agencies to our selected contractors as determined by our matching process, and only those that resulted from closed inspections where the

⁸FPDS-NG contains the DUNS number, but not the EIN. SAM contains both the DUNS number and the EIN.

⁹While the OSHA inspection data contains both the EIN and the DUNS number, we used the EIN for matching because the EINs were better populated in OSHA's inspection data than the DUNS numbers.

¹⁰To determine if company names were similar, we first standardized the format of company names and then used various methods, such as measuring the asymmetric spelling distance between words, to determine the degree of similarity between names.

violations and penalties are considered final.¹¹ In addition, our counts of violations exclude any in citations issued only to subcontractors. According to OSHA officials, in certain circumstances, OSHA may cite both a prime contractor and a subcontractor for a violation, but in these cases the data would be recorded under two separate inspection numbers, which may or may not be linked in OSHA's database.¹² As a result, we did not attempt to identify inspections and violations for subcontractors. Furthermore, our counts of violations might exclude those in citations issued to any of the selected contractors' subsidiaries or locations not identified by our matching process. We counted inspections and violations at the parent company level. Many of the companies we selected had multiple locations, and some may have had subsidiaries.¹³ OSHA inspections take place at the local worksite level. As a result, the number of violations we report reflects the total number of violations we identified across the selected companies' various locations or subsidiaries that were inspected from fiscal years 2013 to 2017. To the extent that our matching process did not capture every company location or subsidiary, our findings may underestimate the actual number of inspections and violations among our selected companies.

Contract Selection and Review of Contract File Documentation

To provide examples of how selected DOD components address contractor workplace safety and health during the acquisition process, we selected a non-generalizable sample of three USACE and three NAVSEA contracts. To select these contracts, we first identified the 50 companies with the largest DOD construction contracts and the 50 companies with the largest DOD manufacturing contracts (as measured by federal obligations) in fiscal year 2017. Because our review focused on USACE and NAVSEA, we narrowed this list to USACE construction contractors (45) and NAVSEA shipbuilding or ship repair contractors (18). Next, we searched OSHA's online inspection data to determine whether these contractors were cited for serious workplace safety or health violations

¹¹We excluded pending violations resulting from inspections that had not been closed by OSHA, for example, violations that were being contested. We also excluded violations that were later withdrawn by OSHA, for example, after an informal settlement conference.

¹²Also see OSHA, Multi-Employer Citation Policy, CPL 02-00-124, Dec. 10, 1999.

¹³Specifically, we used the global DUNS number in the federal contracting data to identify unique companies. Of the 192 companies we selected, 90 had more than one associated regular DUNS number, which indicates that those companies had multiple locations. In addition, 75 of the 192 companies had more than one associated EIN, which indicates that those companies may have had subsidiaries.

within the last five years (fiscal years 2013 to 2017).¹⁴ Then, we selected the three USACE contractors and the three NAVSEA contractors that had the highest number of serious violations for closed OSHA inspections.¹⁵ We counted serious violations at the parent company level, which may include violations at different company locations. For example, OSHA violations we identified for one selected contractor occurred during both tank manufacturing and ship repair at different locations within the United States.

After selecting these six companies, we identified the new USACE and NAVSEA contracts that were awarded to each selected company in fiscal years 2017 and 2016. We selected contracts that were awarded in fiscal year 2017 or 2016 because we expected that documentation for those contracts would be more readily available than for contracts awarded in previous years.

Starting with the contracts that were awarded in fiscal year 2017, we selected one contract for each of these six contractors that had the highest total contract value (including base and all options) and provided diversity with respect to the contracting office that awarded the contract and the location where the work was performed. We excluded contracts that were for design or planning, rather than actual construction, shipbuilding, or ship repair. We also considered the proximity of the violation dates to the contract award date, and excluded contracts where all of the violations occurred after the contract was awarded, or immediately before the contract was awarded. In three cases, to satisfy these inclusion and exclusion criteria, it was necessary to select a contract that was awarded in 2016 and/or a contract that had the second highest total value. Each of our six selected contracts had a total contract value that was above the simplified acquisition threshold, which for the timeframe of our sample was generally above \$150,000. (See table 2.) Of these six contractors, two had prior OSHA violations that occurred at the same location where the work on the selected contract was performed. However, we were unable to determine from the available data whether

¹⁴For OSHA's online inspection data, see <https://www.osha.gov/pls/imis/establishment.html>.

¹⁵One of the three NAVSEA contractors with the highest number of serious violations did not have an active ship building or repair contract with NAVSEA in fiscal year 2017. As a result, we replaced this contractor with the NAVSEA contractor with the next highest number of serious violations. In identifying serious violations, we included only those that resulted from closed inspections where the violations and penalties are considered final.

these violations occurred during work on a prior DOD contract, because OSHA data do not include that information.

Table 2: Characteristics of Selected U.S. Army Corps of Engineers (USACE) and Naval Sea Systems Command (NAVSEA) Contracts

Contract	Component	Industry	Fiscal year of contract award	Total contract value (in millions) ^a
A	USACE	Construction	2017	\$89
B	USACE	Construction	2016	\$48
C	USACE	Construction	2016	\$30
D	NAVSEA	Shipbuilding	2017	\$522
E	NAVSEA	Shipbuilding	2017	\$23
F	NAVSEA	Ship Repair	2017	\$2.5

Source: GAO analysis of contract file documentation. | GAO-19-235

^aEach of the six selected contracts had a total contract value that was above the simplified acquisition threshold, which was generally above \$150,000 for the timeframe of our sample.

For each of the six selected contracts, we reviewed available relevant documentation in the contract file to determine how, if at all, officials considered information about contractors' workplace safety and health in awarding the contract. These documents—depending on the type of source selection—included the contract solicitation, source selection plan, evaluation of contractor proposals, and the responsibility determination. In addition, we interviewed the contracting officials who awarded each of the six contracts to discuss how and why they considered available information about contractors' workplace safety and health before awarding the contract, including whether this information was considered as part of the responsibility determination. We also determined whether prior OSHA violations were recorded in the Federal Awardee Performance and Integrity Information System (FAPIIS), to the extent these records were saved in the contract file.¹⁶ In addition, we obtained and reviewed Contractor Performance Assessment Reporting System (CPARS) reports for any information about occupational safety and health

¹⁶FAPIIS contains brief descriptions of civil, criminal, and administrative proceedings in connection with the award or performance of federal grants or contracts that result in a criminal conviction or civil finding of fault and liability, resulting in a fine or penalty of \$5,000 or more, as well as terminations for default, administrative agreements and nonresponsibility determinations, within the past five years for entities holding a federal contract or grant with a value of \$550,000 or more. These reports were available in three of our six selected contract files.

performance on past contracts, such as comments on safety practices or accidents, or the presence of safety ratings, as available in the files. The results of this review of contract file documentation cannot be generalized.

We conducted this performance audit from February 2018 to February 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Labor

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



JAN 17 2019

Ms. Cindy Brown Barnes, Director
Education, Workforce and Income Security Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Brown Barnes:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) draft report, *Defense Contracting: Enhanced Information Needed on Contractor Workplace Safety*. The following comments are submitted on behalf of the Department of Labor's Occupational Safety and Health Administration (OSHA).

The report notes that data limitations prevent comprehensive matching of federal contracting data with safety and health inspection data, and recommends that OSHA explore the feasibility of requiring a corporate identification number, such as an employer identification number (EIN) or taxpayer identification number (TIN), in the inspection database and enabling a search field for that number. The agency agrees that it can be difficult to match records across different databases without a consistent field, and recognizes the potential utility in obtaining a unique, consistent identifier from each employer.

The agency agrees that EINs do not have the same level of protection as Social Security numbers or TINs. Many employers' EINs are available in a variety of public sources, including filings with the U.S. Securities and Exchange Commission, the Federal Communications Commission's Registration System and the DOL's Employee Benefits Security Administration. In addition, businesses must share EINs with contractors and clients on tax reporting documents such as the IRS Form 1099. As a result, OSHA does not view EINs as confidential or protected from disclosure.

It is equally important to remember that TIN and SSN are considered personally identifiable information (PII), with legal protections related to the use and disclosure of such information. For that reason, even if OSHA were to mandate collection, the agency would not be able to make a field available for public search if it contained SSNs or TINs.

OSHA currently routinely attempts to collect the employer's EIN during each inspection and when it is obtained, enters the EIN into the OSHA Information System (OIS). However, only 42% of establishments inspected between February 2011 and May 2017 provided an EIN, which was then entered in the OIS. In the majority of inspections, no EIN was provided.

Further, there is a financial cost associated with any redesign of the agency's data system in order to create a searchable data field. A preliminary estimate of changing the database suggests a substantial cost and at least 6 months to design and implement such a change, diverting resources from the agency's core mission of protecting worker safety and health. This is a conservative initial assessment of the database alone; the cost could be greater after more analysis is completed.

As the draft report notes, the existing Federal Awardee Performance and Integrity Information System is a central database for federal contractors to report information related to federal acquisition contractor responsibility determinations. This existing system, which contracting officers use on regular basis, could be modified to allow federal contractors to report appropriate safety and health information in the system. Such a system would allow for a more comprehensive search of the data, as OSHA does not have jurisdiction in State Plan states.

OSHA welcomes this process review, and appreciates the opportunity to respond to GAO's draft report. While OSHA has concerns about mandating input of a corporate identification number into the inspection database, and protecting PII, the agency will continue to promote the collection of the EIN/TIN whenever possible. To accomplish this, the agency will reinforce the importance of collecting this information to field staff through a revised memorandum.

Sincerely,



Loren Sweatt
Acting Assistant Secretary

Appendix III: Comments from the Department of Defense



SUSTAINMENT

ASSISTANT SECRETARY OF DEFENSE
3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

JAN 25 2019

Mr. William T. Woods
Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Woods:

This is the Department of Defense (DoD) response to the Government Accountability Office Draft Report, GAO-19-235, "Defense Contracting: Enhanced Information Needed on Contractor Workplace Safety," dated December 12, 2018 (GAO Code 102619).

We concur with your recommendations for the Department of Defense as follows:

RECOMMENDATION 2: The Secretary of Defense should provide information to contracting officials to advise them that the Occupational Safety and Health Administration (OSHA) website is a resource for information about contractors' workplace safety and health records.

DoD RESPONSE: Concur. The Principal Director, Defense Pricing and Contracting (DPC) will develop and issue guidance to contracting officials on the availability of the OSHA website by June 30, 2019.

RECOMMENDATION 3: The Secretary of Defense should explore the feasibility of requiring a safety performance rating for contracts in industries that have relatively high rates of occupational injuries, such as manufacturing, construction, and ship building and repairing.

DoD RESPONSE: Concur. The offices of the Assistant Secretary of Defense for Sustainment and DPC will review safety performance ratings already used and assess broader ways to apply them by January 31, 2020.

Thank you for your support to the Department of Defense.

Sincerely,

Robert H. McMahon

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

William T. Woods, (202) 512-4841 or woodsw@gao.gov
Chelsa Gurkin, (202) 512-7215 or gurkinc@gao.gov

Staff Acknowledgments

In addition to the contacts named above, Betty Ward-Zukerman (Assistant Director), Caitlin Croake (Analyst-In-Charge), Amy Sweet, Sonja Bensen, and Cathy Roark made key contributions to this report. Also contributing to this report were Marie Ahearn, Blake Ainsworth, Hiwotte Amare, Vincent Balloon, James Bennett, Linda Collins, Sarah Cornetto, Holly Dye, Andrea Evans, Laurier Fish, Suellen Foth, Kristen Jones, Sheila McCoy, Jean McSween, Diana Moldafsky, Stacy Ouellette, Anh Nguyen, Jason Rodriguez, Almeta Spencer, Kelly Turner, Kristin Van Wychen, Alyssa Weir, and Eve Weisberg.

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