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July 20, 2020

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

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

Defense Contractors: Information on Violations of Safety, Health, and Fair Labor Standards

The Department of Defense (DOD) is the largest contracting agency in the federal government, obligating more than \$380 billion on contracts for goods and services in fiscal year 2019. DOD’s contract spending accounted for about 65 percent of the government’s total contract spending.¹ Some DOD contracts involve work that can be dangerous, such as manufacturing and construction. The Department of Labor’s (Labor) Occupational Safety and Health Administration (OSHA) is the federal agency responsible for overseeing safety and health-related working conditions, and its Wage and Hour Division (WHD) is responsible for enforcing requirements related to minimum wage, overtime pay, and child labor standards.² We previously reported that DOD has awarded contracts to some companies that Labor found to have violated federal labor laws, including workplace safety, health, and wage standards.³

¹Total federal contract obligations for fiscal year 2019 were \$586.2 billion.

²Specifically, OSHA is responsible for enforcing the Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, (codified as amended at 29 U.S.C. §§ 553, 651-78). WHD is responsible for enforcing the Fair Labor Standards Act of 1938, Pub. L. No. 75-718 (codified as amended at 29 U.S.C. §§ 201-19).

³GAO, *Defense Contracting: Enhanced Information Needed on Contractor Workplace Safety*, GAO-19-235 (Washington, D.C.: Feb. 21, 2019); and *Federal Contracting: Assessments and Citations of Federal Labor Law Violations by Selected Federal Contractors*, GAO-10-1033 (Washington, D.C.: Sept. 17, 2010).

The National Defense Authorization Act for Fiscal Year 2020 included a provision for us to report on the number of DOD contractors that Labor found to have willful or repeated violations of certain labor laws, specifically the Occupational Safety and Health Act of 1970 (OSH Act) or the Fair Labor Standards Act of 1938 (FLSA).⁴ This report examines, for fiscal years 2015 through 2019, (1) the number of DOD contractors cited for willful or repeated safety, health, or fair labor standards violations under the OSH Act or the FLSA, and (2) the nature of the violations.

We analyzed Federal Procurement Data System-Next Generation (FPDS-NG) data to identify companies that had contracts with DOD in fiscal years 2015 through 2019 and compared them to Labor data on companies that were cited for willful or repeated safety, health, or fair labor standards violations. We also used the Labor data to identify information on the nature of the violations. We assessed the reliability of the federal contracting and Labor data by performing electronic testing of relevant data elements and reviewing existing information about the data and the systems that produced them, among other steps. Based on these reviews, we found these data to be sufficiently reliable for purposes of reporting on DOD contractors cited for willful or repeated safety, health, or fair labor standards violations, and we discuss certain limitations to these data in this report. To address both objectives, we reviewed relevant federal laws and regulations, and agency documents. For a detailed description of our objectives, scope, and methodology, see enclosure.

We conducted this performance audit from February 2020 to July 2020 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.

Background

Safety and health standards. Most private sector employers, including federal contractors, are covered by the OSH Act and must comply with any applicable state or federal occupational

⁴National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 886 (2019).

safety and health standards. OSHA generally sets and enforces occupational safety and health standards for private sector employers.⁵

Fair labor standards. The FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards. WHD is responsible for enforcing these standards, among other federal labor laws applicable to millions of U.S. workers.

To carry out their responsibilities, OSHA and WHD conduct workplace inspections and investigations, respectively, to determine whether employers are complying with applicable work standards. They may issue citations for violations and take certain enforcement actions such as assessing monetary penalties when an employer is in violation of those standards. According to our analysis of Labor data, for fiscal years 2015 through 2019, about 209,300 OSHA inspections and about 106,600 WHD FLSA investigations of employers found violations of any type.⁶ This report focuses on willful and repeated violations.⁷ Table 1 describes willful and repeated violations under the OSH Act and FLSA.

⁵OSHA directly enforces these standards in about half the states. The remaining states have chosen to set and enforce their own occupational safety and health standards for these employers under an OSHA-approved state plan. State standards and their enforcement must be “at least as effective” in providing safe and healthful employment as the federal standards.

⁶The data on OSHA inspections presented in this report include both federal and state occupational safety and health agency inspections.

⁷OSHA identifies other types of violations. For information on the different types of violations, see OSHA Field Operations Manual, CPL-02-00-164, Apr. 14, 2020.

Table 1: Selected Types of Violations under the OSH Act and FLSA

Occupational Safety and Health Act of 1970 (OSH Act)	
Type of violation	Occupational Safety and Health Administration (OSHA) definition of violation^a
Willful	Employer has demonstrated either an intentional disregard for OSH Act requirements or a plain indifference to employee safety and health.
Repeated	Employer has been cited previously for the same or a substantially similar condition or hazard.
Fair Labor Standards Act of 1938 (FLSA)	
Type of violation	Wage and Hour Division definition of violation^b
Willful	Employer knew that its conduct was prohibited by the FLSA or showed reckless disregard for the requirements of the FLSA.
Repeated	Employer previously violated the minimum wage, overtime, or child labor requirements of FLSA, and was previously notified by the Wage and Hour Division that it had allegedly violated the law, or if a court or other tribunal found a previous violation, unless that finding is pending appeal or has been set aside following an appeal.

Sources: GAO review of Department of Labor’s Occupational Safety and Health Administration and Wage and Hour Division documents, and relevant federal laws and regulations. | GAO-20-587R

^aSee OSHA Field Operations Manual, CPL-02-00-164, Apr. 14, 2020.

^bSee 29 C.F.R. §§ 578.3, 579.2.

Available Data Indicate about 1 Percent of DOD Contractors Were Cited for Willful or Repeated Labor Violations from Fiscal Years 2015 through 2019

For fiscal years 2015 through 2019, about 114,000 companies had contracts with DOD, totaling approximately \$1.7 trillion in obligations. Of those companies, at least 727 (about 1 percent) had been cited for willful or repeated violations under the OSH Act or the FLSA over this time frame. (See fig. 1). Available data generally do not indicate whether the violations occurred while the employees were performing work related to a DOD contract.⁸ For the same time frame, these 727 companies had \$208.5 billion in DOD contract obligations (about 12 percent of the total), and represent a range of industries, including manufacturing; professional, scientific, and technical services; and construction.

⁸OSHA data do not indicate whether the violations occurred during work on a DOD contract. WHD does record contracting agency information in certain cases.

Figure 1: Companies with DOD Contracts Cited for Willful or Repeated Violations under the Fair Labor Standards Act of 1938 or the Occupational Safety and Health Act of 1970, Fiscal Years 2015 through 2019



DOD = Department of Defense
 FLSA = Fair Labor Standards Act of 1938
 OSH Act = Occupational Safety and Health Act of 1970

Sources: GAO analysis of Federal Procurement Data System-Next Generation, Occupational Safety and Health Administration, and Wage and Hour Division data. | GAO-20-587R

Note: There were at least 28 companies with DOD contracts that were cited under both the OSH Act and the FLSA for willful or repeated violations.

Because of limitations in available data, we could not determine the total incidence of willful or repeated violations of safety, health, or fair labor standards among all companies with a DOD contract in this time frame. Specifically, about 43 percent of OSHA data do not include key company identification numbers.⁹ These numbers are necessary to match federal contracting data to violation data. We recommended in February 2019 that OSHA explore ways to address this issue. While OSHA neither agreed nor disagreed with this recommendation, it issued a memorandum in May 2019 directing its staff to make every reasonable effort to collect this information during inspections and enter it into its database.¹⁰ About 1 percent of WHD data on FLSA violations were missing these key company identification numbers.¹¹

⁹Of the 11,625 OSHA inspections that found willful or repeated violations for fiscal years 2015 through 2019, 4,960 were missing the key company identifier—either the Employer Identification Number or the Data Universal Numbering System number.

¹⁰We previously found that OSHA has not designated the corporate identification numbers used in federal contracting databases as required fields. OSHA officials are required to enter certain other data—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 company’s identification number. We recommended that OSHA explore the feasibility of requiring a corporate identification number in its inspection database. See GAO-19-235.

¹¹Of the 6,849 WHD investigations that found willful or repeated violations for fiscal years 2015 through 2019, 51 were missing this information.

Most Frequently Cited Violations under the OSH Act Related to Toxic Substances and Machinery, and under the FLSA the Failure to Pay Overtime

Our analysis of Labor data showed that OSHA inspections found over 2,150 willful or repeated violations, and WHD investigations found almost 5,200 willful or repeated violations among companies with a DOD contract for fiscal years 2015 through 2019.¹²

OSH Act willful violations. The top three most frequently cited federal standards for willful violations related to toxic and hazardous substances. Specifically, two standards were related to protecting employees from lead exposure, and one was related to protecting shipyard employees working with certain toxic materials.

OSH Act repeated violations. The top three most frequently cited federal standards for repeated violations related to machinery and machine guarding, including protecting machine operators and other employees from hazards such as rotating parts and sparks, and general environmental controls standards that relate to conducting periodic inspections of energy control procedures.

FLSA willful violations. The top three most frequently cited willful violations were the failure to pay overtime, the failure to pay minimum wage, and the failure to keep accurate records.

FLSA repeated violations. The top three most frequently cited repeated violations were failure to pay overtime, failure to pay minimum wage, and failure to meet certificate terms and pay commensurate rates for workers with disabilities.

Agency Comments

We provided a draft of the report to Labor and DOD for review and comment. Labor and DOD provided technical comments, which we incorporated as appropriate.

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¹²More specifically, 213 OSHA inspections found 1,054 willful violations and 1,103 repeated violations. We were not able to determine the breakdown of willful and repeated violations resulting from the 171 WHD investigations due to data limitations.

We are sending copies of this report to the appropriate congressional committees; the Secretary of Defense; the Secretary of Labor; and other interested parties. In addition, the report is available at no charge on the GAO website at <https://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 Thomas Costa at (202) 512-7215 or costat@gao.gov. Contact points for our Office 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 were Tatiana Winger (Assistant Director); Joe E. Hunter (Analyst-in-Charge); Rose Brister; Matthew T. Crosby; Suellen Foth; Meredith Moore; and Roxanna T. Sun.



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Enclosure

Enclosure: Objectives, Scope, and Methodology

The National Defense Authorization Act for Fiscal Year 2020 included a provision for us to report on Department of Defense (DOD) contractors with willful or repeated violations of certain labor laws, specifically the Occupational Safety and Health Act of 1970 (OSH Act) or the Fair Labor Standards Act of 1938 (FLSA).¹³ This report examines, for fiscal years 2015 through 2019, (1) the number of DOD contractors cited for a willful or repeated violation of safety, health, or fair labor standards under the OSH Act or the FLSA, and (2) the nature of the violations.¹⁴

To describe the incidence of willful or repeated safety, health, or fair labor standards violations among companies with DOD contracts, we matched federal contracting data to the Department of Labor's (Labor) Occupational Safety and Health Administration (OSHA) inspection data and Wage and Hour Division (WHD) investigation data for fiscal years 2015 through 2019. OSHA maintains inspection data in the Occupational Safety and Health Information System (OIS), and WHD maintains FLSA investigation data in the Wage and Hour Investigative Support and Reporting Database.¹⁵ First, we used Federal Procurement Data System-Next Generation (FPDS-NG) data to identify companies with DOD contracts (as measured by federal obligations) in fiscal years 2015 through 2019.¹⁶ Then, we used automated matching procedures to compare the federal contracting data to Labor data to determine which of the companies we identified had been found to have violated the OSH Act or the FLSA.¹⁷ Specifically, we compared the Employer Identification Numbers (EINs) and Data Universal Numbering System (DUNS) numbers entered in the federal contracting databases to those entered in the Labor databases.

¹³National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 886 (2019).

¹⁴For OSH Act violations, see OSHA Field Operations Manual, CPL-02-00-164, Apr. 14, 2020; and for FLSA violations, see WHD's minimum wage, overtime, and child labor violation regulations at 29 C.F.R. §§ 578.3 and 579.2.

¹⁵We excluded OSHA inspection data from the Integrated Management Information System (IMIS) for our time frame. IMIS is a legacy information system that OSHA discontinued in fiscal year 2015, when the agency fully transitioned to using OIS. Labor officials reported there were 9,640 inspections in total in IMIS for fiscal years 2015 through 2019 and estimated that, of those, between 198 and 210 were inspections with willful or repeated violations.

¹⁶The scope of our work did not include DOD subcontractors.

¹⁷We analyzed data on closed inspections or investigations where the violations and penalties are considered final.

These company identification numbers are necessary to match federal contracting data to Labor violation data.

We used FPDS-NG to identify the DUNS numbers for companies with DOD contracts for our specified time frame.¹⁸ To identify the DUNS numbers for companies in the Labor data, we matched the EINs in the Labor data to System for Award Management (SAM) data.¹⁹ We then matched the DUNS numbers derived from the Labor data to the DUNS numbers of companies with DOD contracts we identified through FPDS-NG. We considered a company to be a match if the EINs or DUNS were identical. As noted in this report, about 43 percent of OSHA data on inspections with willful or repeated violations do not include key company identification numbers.²⁰ About 1 percent of WHD data on investigations with willful or repeated violations were missing these key company identification numbers.²¹

To determine the nature of the violations, we analyzed Labor data on the type of violation (i.e., willful or repeated) and other available data, such as the federal OSHA standards cited and the frequency of violations cited under different provisions of the FLSA. To address both objectives, we reviewed relevant federal laws and regulations, and agency documents.

We assessed the reliability of the federal contracting data and the Labor 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 purposes of reporting on DOD contractors cited for willful or repeated safety, health, or fair labor standards violations for fiscal years 2015 through 2019.

We conducted this performance audit from February 2020 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and

¹⁸FPDS-NG contains the DUNS number but not the EIN.

¹⁹SAM contains both the DUNS number and the EIN. While OSHA inspection and WHD investigation data contain both the EIN and the DUNS number, the EINs are better populated in the Labor data than the DUNS numbers.

²⁰Of the 11,625 OSHA inspections that found willful or repeated violations for fiscal years 2015 through 2019, 4,960 were missing the key company identifiers.

²¹Of the 6,849 WHD investigations that found willful or repeated violations for fiscal years 2015 through 2019, 51 were missing the key company identifiers.

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.

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