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March 19, 2018

The Honorable Ellen Lord
Undersecretary of Defense (Acquisition, Technology and Logistics)
3010 Defense Pentagon
Washington, DC 20301-3010

Dear Undersecretary Lord:

I write to direct your attention to language in the conference report to accompany the National Defense Authorization Act for Fiscal Year 2018 (NDAA) urging the Department of Defense (DOD) to ensure that its contractors comply with federal worker protection laws. I am requesting a staff-level briefing on the Department's plans to implement these instructions.

As you know, the Department spends hundreds of billions of dollars each year on goods and services provided by contractors and subcontractors.¹ The responsible use of these funding streams is extraordinarily important for taxpayers and the Pentagon itself. The Federal Acquisition Regulation, which governs the procurement of goods and services for the entire federal government, requires that contracts be awarded only to "responsible prospective contractors," and that a prospective contractor must "have a satisfactory record of integrity and business ethics" in order to be deemed responsible.² In addition, certain federal labor laws, such as the Davis-Bacon Act (40 U.S.C. § 3144) and the Service Contract Act (41 U.S.C. § 354), require the debarment of contractors that violate provisions of those statutes.³

However, federal agencies often fail to adequately enforce these and other laws and regulations meant to prevent federal dollars from flowing to companies that abuse their workers.

¹ "Department of Defense" [agency profile]. *USASpending.gov* (Accessed March 12, 2018). Online at: <https://www.usaspending.gov/#/agency/1173>.

² "General Standards." 49 CFR 9.104. Online at: <https://www.gpo.gov/fdsys/pkg/CFR-1999-title48-vol1/pdf/CFR-1999-title48-vol1-sec9-104-1.pdf>.

³ Manuel, K. "Debarment and Suspension of Government Contractors: An Overview of the Law Including Recently Enacted and Proposed Amendments." *Congressional Research Service* (Nov. 19, 2008). Online at: <https://fas.org/sgp/crs/misc/RL34753.pdf>.

In fact, many of the largest penalties imposed by the Occupational Safety and Health Administration (OSHA) over the past few years were assessed based on violations committed by federal contractors, some with large DOD contracts.⁴ In one tragic example, employees at VT Halter Marine, Inc., a large Navy contractor, were killed and maimed in several horrific accidents resulting from the company's willful violations of safety standards. While OSHA fined VT Halter for these violations, the value of those fines pales in comparison to the hundreds of millions of dollars that VT Halter has continued to receive in DOD contracts, even after its illegal, deadly practices were discovered. When asked about VT Halter, a Navy spokesperson told a reporter that "we are not the overlords of private shipyards when it comes to workplace safety."⁵

The FY18 NDAA recognized DOD's responsibility to address workplace safety violations, and required a Government Accountability Office (GAO) study of DOD's existing procedures to evaluate the safety and health records of current and prospective contractors. The conference report accompanying the NDAA further noted that "the Department of Defense should aim to ensure that parties contracting with the Federal Government abide by existing law, including worker protection laws," that "identifying and helping to improve the compliance of contractors with worker protection violations will help avoid setbacks and delays stemming from contracting with non-compliant contractors," and that the DOD has the authority and should seek to preference contractors that comply with worker protection laws.⁶ In addition to the inclusion of this language in the NDAA conference report, I was glad to hear Secretary of the Navy Richard Spencer comment during his confirmation hearing that workplace safety violations by DOD contractors do "not support a sustainable environment" and commit to review the Navy's procedures for evaluating prospecting contractors' workplace safety records.⁷

While I look forward to the results of GAO's study, there is no reason for DOD to wait for those results before acting to protect the contract workforce that contributes every day to our national defense. It is long past time for the Department of Defense, along with all federal contracting agencies, to take seriously the risks of awarding massive taxpayer-funded contracts to companies that seriously endanger their employees, and to ensure that anyone working under a federal contract can go home safely at the end of the day. Therefore, I request a staff-level briefing no later than April 2, 2018 on the Department's efforts to implement the NDAA conference report's instructions. I further request that you detail, in writing, your plans to continue to improve DOD's monitoring of its contractors' compliance with occupational safety and health standards into the future.

⁴ "Breach of Contract: How Federal Contractors Fail American Workers on the Taxpayer's Dime." *Office of Sen. Elizabeth Warren* (March 6, 2017). Online at: [https://www.warren.senate.gov/files/documents/2017-3-](https://www.warren.senate.gov/files/documents/2017-3-6_Warren_Contractor_Report.pdf)

[6_Warren_Contractor_Report.pdf](https://www.warren.senate.gov/files/documents/2017-3-6_Warren_Contractor_Report.pdf).


⁵ Gollan, J. "The Deadly Danger of Trump's Naval Buildup." *POLITICO Magazine* (Feb. 10, 2017). Online at: <https://www.politico.com/magazine/story/2017/02/us-navy-ship-builders-deadly-security-military-214760>.

⁶ "Conference Report to Accompany H.R. 2810." National Defense Authorization Act for Fiscal Year 2018. *U.S. House of Representatives* (Nov. 2017). Online at: <http://docs.house.gov/billssthisweek/20171113/HRPT-115-HR2810.pdf>.

⁷ Spencer, R. V. "Remarks by the Honorable Richard V. Spencer." *Senate Armed Services Committee* (July 11, 2017). Online at: <http://www.navy.mil/navydata/people/secnav/Spencer/Testimony/SASC%20Confirmation%20Hearing%20Testimony%20July%2011.pdf>.

Please do not hesitate to reach out to Sasha Baker or Sam Weinstock of my staff at 202-224-4543 with any questions or concerns. I look forward to working with you on this important matter for our nation's military and the hard-working Americans who support it.

Sincerely,



Elizabeth Warren
United States Senator