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## Take the High Road

The Case for Requiring Maryland's Taxpayer-Funded Construction Contractors to Demonstrate Their Adherence to Safety Standards

## **Acknowledgments**

This report was written by Michael Tanglis, Senior Researcher for Public Citizen's Congress Watch division, and edited by Congress Watch Research Director Taylor Lincoln.

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Public Citizen's Congress Watch  
215 Pennsylvania Ave. S.E  
Washington, D.C. 20003  
P: 202-546-4996  
F: 202-547-7392  
<http://www.citizen.org>

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## Methodology

On Sept. 6, 2016, Public Citizen filed a Public Information Act (PIA)<sup>1</sup> request with the Maryland Department of General Services (DGS). Public Citizen requested “all available data on companies awarded construction and construction related services contracts by DGS.”<sup>2</sup> After a discussion with the Director of Records Management at DGS, Public Citizen modified its request to include five years of awarded contracts by the DGS. On October 4, 2016, the DGS Director of Records Management sent Public Citizen “all available data on DGS construction contracts awarded within the last five years, in XLS format.”<sup>3</sup>

### **Maryland Department of General Services (DGS) Construction Data Overview**

The dataset included 997 contracts awarded by DGS between July 6, 2011, and Sept. 7, 2016, worth \$256,675,254. While technically five years and two months, this range will be described throughout this report as a “five year” timeframe.

It included seven fields: vendor (contractor) name, contract award date, contract award amount, project title, facility (where work occurred), project type and project number.

Twenty-eight percent of the contracts (282 out of 997) had an awarded value of \$100,000 or more. The 282 contracts, worth \$232,274,651, were awarded to 162 different vendors.

### **Searching the Occupational Safety and Health Administration (OSHA) Database**

Public Citizen searched the Department of Labor, Occupational Safety and Health Administration (OSHA) online database of OSHA citations and violations<sup>4</sup> for each of the 162 vendors with at least one contract of \$100,000 or more to determine how many closed OSHA inspections each vendor had in the past 10 years – Dec. 31, 2006, through Dec. 31, 2016. First, details from the inspections with resulting violations were recorded. For reference, closed inspections that did not result in any violation were also recorded.

Vendors described as having no violations may have had violations prior to 2007. Likewise, many vendors described as having a certain number of violations in the past 10 years may have been cited for additional violations prior to 2007.

### **Verifying Vendor Addresses and Connecting Violations to Each Vendor**

DGS was unable to provide the addresses of the vendors in the dataset. Because different vendors can have the same name or share a very common name (e.g., “Smith Construction”), address is extremely important when researching OSHA violations. As OSHA notes on its website, “be aware that different companies may have similar names and close attention to the address may be necessary to avoid misinterpretation.”<sup>5</sup> Public Citizen verified that each OSHA violation included in

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<sup>1</sup> Maryland Attorney General Brian E. Frosh, *Maryland Public Information Act*, <http://bit.ly/2mTNLpB>.

<sup>2</sup> Public Information Act request on file with author.

<sup>3</sup> Response on file with author.

<sup>4</sup> *Establishment Search*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2mpWPEE>.

<sup>5</sup> *Note to Users, Establishment Search*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2mpWPEE>.

this analysis was in fact a violation by the vendor from the DGS dataset. First, at the advice of DGS, Public Citizen searched the DGS eMaryland Marketplace<sup>6</sup> for each vendor name that appeared in the DGS contract dataset. The address listed for each vendor was then added to the dataset.

Each OSHA inspection lists the inspected entity's mailing address.<sup>7</sup> Many vendor addresses obtained through the eMaryland Marketplace matched the address listed on the OSHA inspection of the vendor. When the address listed on an OSHA inspection did not match the eMaryland Marketplace address, Public Citizen searched the Maryland Department of Assessments and Taxation Business Services database in order to verify a separate address as one also used by the DGS vendor.<sup>8</sup> In some cases, an address was verified by checking the "contact us" page of the vendor.

If an address listed on the OSHA inspection could not be verified as belonging to the specific DGS vendor, it was not included in the analysis.

As such, seven vendors that received DGS contracts worth \$100,000 or more, Johnson Controls Inc.,<sup>9</sup> Whiting-Turner Contracting,<sup>10</sup> Turner Construction,<sup>11</sup> Gilbane Building Co.,<sup>12</sup> the Limbach Co.,<sup>13</sup> Trane,<sup>14</sup> and Siemens,<sup>15</sup> were excluded from this analysis. As these vendors have locations across the United States and the world, verifying each inspection address as a company address is challenging. These vendors, and the 19 contracts worth a total of more than \$22 million awarded to them, were excluded from this analysis. Public Citizen also excluded 5 contracts for which the vendor field was left blank.

With the aforementioned exclusions, the final dataset analyzed included 973 contracts worth more than \$232 million, 270 of which were worth \$100,000 or more. The 270 contracts were awarded to 158 vendors. In total, the 158 vendors were awarded 556 DGS contracts (of all award values) worth more than \$219 million over the past five years.

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<sup>6</sup> *Vendor Search*, eMaryland Marketplace, <http://bit.ly/2m8lPhJ>.

<sup>7</sup> *Inspection Detail, Inspection Information, Mailing, Towson Mechanical Incorporated Inc.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Nov. 14, 2013), <http://bit.ly/2lOyPI2>.

<sup>8</sup> For example, according to eMaryland Marketplace, Towson Mechanical Inc. is registered with the address 8651 Oakleigh Road Parkville, MD 21234. According to OSHA's database, Towson has been the subject of 11 inspections with violations in the past 10 years. See, <http://bit.ly/2kL9xgk>. Six of its 11 OSHA inspections with violations indicated a mailing address of 8651 Oakleigh Road, Parkville, MD 21234. But five inspections with violations indicate an address of 2045 York Rd., Timonium, MD 21093. By searching the Maryland Department of Assessments and Taxation Business Services database, Department ID for D06127286 <http://bit.ly/2kG7v1A>, Public Citizen was able to verify the address 2045 York Rd., Timonium, MD as Towson's principal office address, while the Parkville address is listed as its mailing address. Therefore, Public Citizen was able to verify that all inspections were of the same Towson Mechanical and not a different company with the same name.

<sup>9</sup> See, <http://www.johnsoncontrols.com/>.

<sup>10</sup> See, [http://www.whiting-turner.com/about\\_us/offices/offices.html](http://www.whiting-turner.com/about_us/offices/offices.html).

<sup>11</sup> See, <http://www.turnerconstruction.com/office-network>.

<sup>12</sup> See, <http://www.gilbaneco.com/>.

<sup>13</sup> See, <http://www.limbachinc.com/>.

<sup>14</sup> See, <http://www.trane.com/Index.aspx>.

<sup>15</sup> See, <http://www.siemens.com/us/en/home.html>.

## Executive Summary

- **46 percent – 73 vendors – have received OSHA violations in the past 10 years.**
  - These vendors have received 486 total OSHA violations for which they paid \$370,297 in total penalties.
  - These vendors have been awarded 66 percent – \$146 million – of the more than \$219 million awarded to vendors awarded at least one contract worth \$100,000.
- **35 percent – 56 vendors – have received serious OSHA violations, indicating OSHA found a hazard that “could cause an accident or illness that would most likely result in death or serious physical harm,” in the past 10 years.**
  - These vendors have received 215 total serious OSHA violations for which they paid \$253,867 in total penalties.
  - These vendors have been awarded 53 percent – \$115 million – of the more than \$219 million awarded to vendors awarded at least one contract worth \$100,000.
- **Three vendors had a fatality occur on a worksite they operated in the past 10 years. Two of the fatalities occurred during work on a Maryland government contract. In each case, the employer was cited for violations.**
  - **Brayman Construction** – On August 22, 2007, while working on \$83 million project for the West Virginia Department of Transportation, Division of Highways, a Brayman Construction employee was “crushed under [a] 22,084-pound panel.” The 47-year-old carpenter left behind a spouse and three children. Brayman was cited for two serious violations and one other-than-serious violation, for which it paid a \$38,800 penalty. Brayman has been awarded one DGS contract since the fatality, on Nov. 14, 2012, worth \$421,750.
  - **American Paving Corp.** – On May 4, 2009, an employee “flagging” and “directing traffic” on Route 413 Marion, Md., at a worksite run by the American Paving Corp. died after being struck by a car. The work was being done as part of a \$1.9 million contract with the State Highway Administration. American Paving was cited for one serious violation, for which it paid a \$3,825 penalty. American Paving has been awarded one DGS contract since the fatality, on March 21, 2012, worth \$193,142.
  - **Corman Construction** – On Jan. 16, 2015, Corman Construction was “reconstructing the roadway” in Jarrettsville, Md., as part of \$6.2 million contract with the Maryland State Highway Administration (SHA). An excavator knocked a large concrete barrier onto two employees working below, injuring one and killing another. The deceased victim, a U.S. Army veteran who served in Afghanistan, was just 30 years old. He left behind his parents, three sisters, two brothers, and a young son. Corman was cited for one serious violation and one other-than-serious violation, for which it paid a \$5,540 penalty. Corman has been awarded one DGS contract in the past five years, on May 2, 2012, worth \$ 1,126,102.

## Introduction

Every day, more than 100,000<sup>16</sup> Maryland workers head to work in the second-deadliest industry in Maryland – the construction industry,<sup>17</sup> according to Bureau of Labor Statistics (BLS) 2015 fatal occupational injury rates. The deadliest industry was the transportation and utilities industry.<sup>18</sup> According to BLS, 18 workers in the construction industry died in Maryland in 2015.<sup>19</sup>

The Occupational Safety and Health Act of 1970 (OSH Act) was passed “to assure safe and healthful working conditions for working men and women.”<sup>20</sup> The law established the Occupational Safety and Health Administration (OSHA) and delegated to OSHA the responsibility to create standards (also known as rules or regulations) to enforce the law. OSHA’s enforcement responsibilities include inspecting worksites “to assure compliance with OSHA requirements and help employers and workers reduce on-the-job hazards and prevent injuries, illnesses and deaths in the workplace.”<sup>21</sup>

By its own admission, OSHA “is a small agency.”<sup>22</sup> To expand its reach, the OSH Act encouraged “states to develop and operate their own job safety and health programs,”<sup>23</sup> which OSHA “approves and monitors.”<sup>24</sup> Currently, 28 states (which include two U.S. territories) have OSHA-approved State Plans,<sup>25</sup> including Maryland, which has its own Occupational Safety and Health (MOSH), within its Department of Labor, Licensing & Regulation (DLLR).<sup>26</sup>

In 2016, OSHA and its state partners (hereinafter OSHA) performed 75,053 inspections nationwide.<sup>27</sup> According to OSHA, it has “approximately 2,200 inspectors responsible for the health and safety of 130 million workers, employed at more than 8 million worksites around the nation – which translates to about one compliance officer for every 59,000 workers.”<sup>28</sup> In other words, OSHA inspects a just a tiny fraction of workplaces each year. As the Center for Progressive Reform points out, “OSHA casts an exceedingly small shadow on the American workplace” and “enforcement of existing standards is sporadic at best.”<sup>29</sup>

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<sup>16</sup> *Maryland Occupational Wage Estimates Construction and Extraction Occupations*, MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION, <http://bit.ly/2m8pifT>.

<sup>17</sup> *Fatal Occupational Injury Rates by Industry, 2015, Maryland*, BUREAU OF LABOR STATISTICS (2015), <http://bit.ly/2m8slQ6>.

<sup>18</sup> *Id.*

<sup>19</sup> *Fatal Occupational Injuries in Maryland*, BUREAU OF LABOR STATISTICS (2015), <http://bit.ly/2ILzAAY>.

<sup>20</sup> The Occupational Safety and Health Act, 29 U.S.C. § 651(2)(b) (1970).

<sup>21</sup> *OSHA Inspections Fact Sheet*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2l0suwd>.

<sup>22</sup> *Commonly Used Statistics*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2l0tjFu>.

<sup>23</sup> *State Plans Office of State Programs*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2lLt798>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See, <https://www.dllr.state.md.us/labor/mosh/>.

<sup>27</sup> *Commonly Used Statistics (FY 2016 total federal inspections: 31,948, FY 2016 total State Plan inspections: 43,105)*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2l0tjFu>.

<sup>28</sup> See, *Commonly Used Statistics*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2l0tjFu>.

<sup>29</sup> *Improving Federal Worker Safety, Is OSHA Up to the Job?* CENTER FOR PROGRESSIVE REFORM, <http://bit.ly/2mbe8ss>.

OSHA prioritizes its inspections according to risk. Inspections spurred by an accident, a worker fatality, or a worker complaint, are of the highest priority. But the most common type of inspection is a “programmed”<sup>30</sup> one, which occurs when an employer is selected “based upon objective or neutral selection criteria.”<sup>31</sup>

The selection criterion includes a focus on “high hazard”<sup>32</sup> dangerous industries, like the construction industry. Inspections of the construction industry will often relate to an “emphasis program,” which is “intended to address hazards or industries that pose a particular risk to workers.”<sup>33</sup> Further, within the construction industry,<sup>34</sup> some work is more dangerous than others and vendor to vendor comparisons should be made with that in mind (e.g., roofing is more dangerous than tile installation).<sup>35</sup>

Consequently, OSHA ends up doing more inspections of construction industry employers than those in other industries. This of course, makes sense.

But even with focus on the construction, OSHA still lacks the resources to keep close tabs on employers. And each year, preventable workplace deaths continue to occur.

Therefore, states must find other ways to ensure safe workplaces. And, it is not just the government that should work toward safer working conditions. Businesses, along with a moral obligation, also have a financial incentive to create safe work environments as it saves them money: “The average workplace injury can cost a business more than \$25,000 in indirect costs,” according to MOSH.<sup>36</sup>

As Emily Gardner of Public Citizen and Michael Belcher of the American Society of Safety Engineers wrote in 2016: “Certain Maryland companies, such as HESS Construction, already screen subcontractors for their safety records. In addition, certain jurisdictions across the country screen contractors for their safety plans ... They understand that construction projects should not begin until employers have a proper plan in place to protect their workers.”<sup>37</sup>

For these and other reasons, in 2014, the Maryland General Assembly passed a law directing the Maryland Department of Labor, Licensing and Regulation (DLLR) to convene a workgroup, which included business and construction associations, labor groups and non-profit advocates (including Public Citizen).<sup>38</sup> The workgroup was established in part to analyze proposed legislation aimed at

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<sup>30</sup> *OSHA Instruction, Field Operations Manual (FOM)*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Effective Date: Aug. 2, 2016), 31, <http://bit.ly/2lLu1m0>.

<sup>31</sup> *Id.*

<sup>32</sup> See, *Construction Industry*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2mbem2M>.

<sup>33</sup> See, *Local Emphasis Programs*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2mbi38N>.

<sup>34</sup> See, *Construction Industry*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2mbem2M>.

<sup>35</sup> See, *2015 Census of Fatal Occupational Injuries (revised data) “Industry by event or exposure, 2015 (XLSX 74K)”* BUREAU OF LABOR STATISTICS, <http://bit.ly/2lLlr5T>.

<sup>36</sup> See, *Transcript of MOSH Consultation Overview Video - MOSH Training and Education*, MARYLAND OCCUPATIONAL SAFETY AND HEALTH, <http://bit.ly/2mlr6Q0>.

<sup>37</sup> Emily A. Gardner and Michael Belcher, *Protect Maryland Construction Workers From Dangerous Worksites*, THE WASHINGTON POST (March 14, 2016), <http://wapo.st/2mjayN7>.

<sup>38</sup> See, MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION, REPORT FROM THE WORKGROUP TO STUDY OCCUPATIONAL SAFETY AND HEALTH PREQUALIFICATION REQUIREMENTS ON PUBLIC WORKS PROJECTS, Appendix A, 9 (2014), <http://bit.ly/2mDZ2cr>.

ensuring vendors awarded government contracts were operating safe worksites. The workgroup “agreed that safety on public projects should be a priority of the Maryland General Assembly”<sup>39</sup> and recommended that the Maryland legislature pass a bill that included three components: Pre-Award Requirements, Post Award Requirements, and Enforcement.<sup>40</sup>

This analysis will focus on a portion of the workgroup’s recommendations. For contracts with an award value of \$100,000 or more, the workgroup recommended the “winning contractor and their sub-contractors ... submit safety and health performance indicator data,”<sup>41</sup> through a safety questionnaire.<sup>42</sup> The questionnaire would focus on a contractor’s “prior safety performance”<sup>43</sup> which would include disclosure of “willful, serious, and repeat OSHA citations.”<sup>44</sup> Winning bidders would also be required to develop a contractor safety plan “that would generally explain how the contractor provides for: active commitment and leadership; hazard anticipation, identification and control; and hazard avoidance, communication and training.”<sup>45</sup>

In order to assess whether the disclosure of safety indicator data is justified and necessary, it makes sense to examine prior safety performance through the lens of OSHA violations of the vendors that have already been awarded contracts. (OSHA violations are one form of *lagging* indicator data, as opposed to *leading* indicator data.<sup>46</sup>) To do this, we obtained records of construction contracts awarded by the Maryland Department of General Services (DGS) during the past five years. After exclusions cited in the methodology, we analyzed the OSHA citation history of 158 vendors that were awarded at least one contract worth \$100,000 or more by DGS in the past five years.

Such an examination will begin to provide an answer to two key questions: First, if Maryland were to require vendors that were awarded contracts worth \$100,000 or more disclose their “willful, serious, and repeat OSHA citations,”<sup>47</sup> what might it find?

And second, does the evidence indicate that improved safety measures are warranted?

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Workgroup Members: American Society of Safety Engineers, Maryland and D.C, AFL-CIO, CHOICE, AGC of Maryland, Maryland SHA, Maryland Association of Counties, Alliance for Construction Excellence, Maryland Association of Counties, Center for Construction Research and Training, Associated Builders and Contractors, NCS Incorporated (Electrical), and Public Citizen.

<sup>39</sup> MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION, REPORT FROM THE WORKGROUP TO STUDY OCCUPATIONAL SAFETY AND HEALTH PREQUALIFICATION REQUIREMENTS ON PUBLIC WORKS PROJECTS, 7 (2014), <http://bit.ly/2mDZ2cr>.

<sup>40</sup> *Id.*, 5-7.

<sup>41</sup> *Id.*, 6.

<sup>42</sup> *Id.*, Appendix A, 36-39.

<sup>43</sup> *Id.*, 6.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> This analysis focuses on one specific type of indicator data (OSHA citations). The workgroup acknowledged it’s important to examine both lagging indicator data (like OSHA citations) and leading indicator data (like safety plans) when evaluating companies. See MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION, REPORT FROM THE WORKGROUP TO STUDY OCCUPATIONAL SAFETY AND HEALTH PREQUALIFICATION REQUIREMENTS ON PUBLIC WORKS PROJECTS, 4 (2014), <http://bit.ly/2mDZ2cr>.

<sup>47</sup> *Id.*

## I. 46 Percent of 158 Department of General Services Vendors Have Received OSHA Violations in the Past 10 years

After an OSHA inspection, if an employer is found to have a violation, it will be sent an OSHA “citation and notification of penalty.” A single citation can include numerous separate violations. Violations are categorized by type. There are four main violation types. [See Table 1]

**Table 1 – OSHA Inspection Types**

Types of Violation	Definition	Federal Penalty (adjusted for inflation as of Jan. 13, 2017) <sup>48</sup>
Other-than-Serious	“A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as ‘other-than-serious.’” <sup>49</sup>	\$12,675 per violation
Serious	“A serious violation exists when the workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.” <sup>50</sup>	\$12,675 per violation
Repeated	“A Federal agency may be cited for a repeated violation if the agency has been cited previously for the same or a substantially similar condition and, for a serious violation, OSHA's nationwide inspection history for the agency lists a previous OSHA Notice issued within the past five years; or, for an other-than-serious violation, the establishment being inspected received a previous OSHA Notice issued within the past five years.” <sup>51</sup>	\$126,749 per violation
Willful	“A willful violation is defined as a violation in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety.” <sup>52</sup>	\$126,749 per violation

**Figure 1 – Percentage of Vendors with OSHA Violations (All Types)**



Of the 158 vendors that were awarded at least one contract worth \$100,000 or more by DGS in the past five years, 73 of them – 46 percent – have received OSHA violations in the past 10 years. [See Figure 1]

In total, the 73 vendors have received 486 violations, for which they paid \$370,297 in penalties.

The two vendors that have received the most violations in this analysis, 28 each, are Cole Roofing Co. and John W. Tieder Inc. [See Table 2]

<sup>48</sup> See, OSHA Penalties, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Adjusted for Inflation as of Jan. 13, 2017), <http://bit.ly/2msMZIS>.

<sup>49</sup> See, *Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2IOzLWY>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

**Table 2 – Vendors with the Most Violations  
(Of the 158 Vendors With ≥20 Violations) \***

Vendor	Violations (All Types)		Total Award Amount of All DGS Contracts
	# of Violations	Total Penalties	
Cole Roofing Co.	28	\$23,278	\$1,126,040
John W. Tieder Inc.	28	\$12,464	\$332,090
Harkins Builders Inc.	24	\$36,279	\$23,590,676
Alliance Roofing & Sheet Metal	24	\$9,452	\$680,943
Ruff Roofers Inc.	21	\$15,620	\$2,303,901
Willow Construction	20	\$16,335	\$264,200
Total of 6 Vendors	145	\$113,428	\$28,297,850
Total of All 73 Vendors With Violations	486	\$370,297	\$145,967,497

Source: Public Citizen analysis of OSHA enforcement inspections database.

\* This table reflects all OSHA violations received by company over the past 10 years. The total award amount of all DGS contracts represents contracts awarded to that vendor by DGS in the past five years. The violations occurred during all work / contracts in which the company was involved during the past 10 years and are not specific to the DGS contract work.

These findings warrant some context. Larger vendors are likely to have many active construction worksites. A small vendor, which may not even have been inspected by OSHA, is not necessarily “safer” than a large vendor, even if the small vendor has no violations and the larger vendor has many. For example, the most frequently inspected vendor in this analysis, the Christman Company,<sup>53</sup> has 275 full time professionals, \$700 million in annual revenue, and \$2 billion in construction projects currently underway, according to its website.<sup>54</sup> Only 9 percent of the Christman Company’s inspections led to violations, while the inspections of all other vendors in this analysis resulted in a violation 48 percent of the time.

Six vendors had 20 or more violations. On average, inspections of these six vendors resulted in a violation 52 percent of the time. These six vendors account for 23 percent of all the inspections, and 28 percent of the inspections with violations, in this analysis. [See Table 3]

<sup>53</sup> See, *Company*, THE CHRISTMAN COMPANY, <http://www.christmanco.com/Company>.

<sup>54</sup> *Id.*

**Table 3 – Percentage of Inspections That Resulted in a Violation  
(Of Vendors With 20 or More Violations)**

Vendor	# of Inspections	# of Insp. With Violations	Pct.
Cole Roofing Co.	13	11	85%
John W. Tieder Inc.	14	12	86%
Harkins Builders Inc.	55	13	24%
Alliance Roofing & Sheet Metal	8	8	100%
Ruff Roofers Inc.	10	8	80%
Willow Construction	15	8	53%
Total of 6 Vendors	115	60	52%
Total of All 73 Vendors With Violations	491	218	44%

Source: Public Citizen analysis of OSHA enforcement inspections database.

The majority – 54 percent – of violations in this analysis are categorized as “other-than-serious.” An other-than-serious violation is defined as one “that has a direct relationship to job safety and health, but is not serious in nature.”<sup>55</sup> Vendors in this analysis have received 262 violations categorized as other-than-serious, which resulted in \$92,593 in penalties.

In general terms, OSHA describes a violation categorized as other-than-serious as one in which the “most likely result would be abrasions or bruises.”<sup>56</sup> But violations categorized this way should not be viewed as necessarily insignificant, as they are often the result of a negotiation between OSHA and an employer on a violation that was initially determined to be serious.

According to a 2016 Center for Progressive Reform (CPR) report *OSHA’s Discount on Danger*, due to OSHA’s “massive caseload,”<sup>57</sup> OSHA often agrees to informal settlements<sup>58</sup> that are different than the initial citations. According to CPR, the settlement “may include reducing the proposed penalty, reclassifying or completely withdrawing citations, or extending the abatement date.”<sup>59</sup>

OSHA argues it needs to reclassify violations as part of a settlement “to incentivize them [employers] to settle cases,”<sup>60</sup> rather than contest the citation, according to CPR. Therefore, violations regardless of their categorization type should be taken seriously.

<sup>55</sup> See, *Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2lOzIWY>.

<sup>56</sup> *Introduction to OSHA Instruction Guide*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (April 2011), <http://bit.ly/2m8kaZf>.

<sup>57</sup> MARTHA T. MCCLUSKEY, THOMAS O. MCGARITY, SIDNEY SHAPIRO, AND KATHERINE TRACY, CENTER FOR PROGRESSIVE REFORM, *OSHA’S DISCOUNT ON DANGER*, (June 2016), 13, <http://bit.ly/2mqaxHv>.

<sup>58</sup> *Id.*, at 7, <http://bit.ly/2mqaxHv>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

**66 Percent – Nearly \$146 million – of the Money DGS Awarded to the 158 Vendors Was Awarded to Vendors With OSHA Violations**

As mentioned throughout this report, 158 vendors have been awarded at least one contract worth \$100,000 or more by DGS in the past five years. Many of these vendors were also awarded multiple contracts worth less than \$100,000.

The majority, 66 percent, of the more than \$219 million awarded by DGS over the past five years, was awarded to vendors with OSHA violations in the past 10 years. In total, \$146 million in taxpayer-funded contracts was awarded to vendors with OSHA violations.

**Figure 2 – Money Awarded to the 158 Vendors by DGS**



## II. 35 Percent of the 158 DGS Vendors Have Received Serious OSHA Violations in the Past 10 years

An employer receives a serious violation when OSHA finds that a “hazard could cause an accident or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.”<sup>61</sup> According to OSHA, an example of a serious violation “would be not providing guarding or fall protection for workers on a 25 foot scaffold,” which “would most likely result in death, broken bones and/or other serious injuries”<sup>62</sup> if the employee fell.

**Figure 3 – Percentage of Vendors With Serious OSHA Violations**



Thirty-five percent of the 158 vendors that have been awarded contracts worth \$100,000 or more have received serious OSHA violations in the past 10 years. [See Figure 3]

Thirteen of these vendors have received more than five serious OSHA violations over the past decade. These 13 vendors have been awarded 87 contracts worth more than \$43.5 million in total. [See Table 4]

The vendor with the most serious violations in the past 10 years is Willow Construction (17 serious violations). Willow Construction is followed by John W. Tieder Inc. (15 serious violations) and Cole Roofing Co. (13 serious violations).

<sup>61</sup> See, *Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2lOzIWY>.

<sup>62</sup> *Introduction to OSHA Instruction Guide*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (April 2011), <http://bit.ly/2m8kaZf>.

**Table 4 – DGS Contractors With the Most Serious OSHA Violations  
(Of the 158 Vendors With >5 Serious Violations)\***

Vendor	# of Violations (All Types)	Serious Violations		Total Award Amount of All DGS Awarded Contracts
		# of Serious Violations	Penalty Amount	
Willow Construction	20	17	\$16,335	\$264,200
John W. Tieder Inc.	28	15	\$12,464	\$332,090
Cole Roofing Co.	28	13	\$14,589	\$1,126,040
Harkins Builders Inc.	24	9	\$14,460	\$23,590,676
Alliance Roofing & Sheet Metal	24	9	\$8,752	\$680,943
Brayman Construction Corp.	17	7	\$62,110	\$421,750
Rainbow Construction Corp.	11	7	\$7,447	\$3,306,000
American Paving Corp.	8	7	\$7,575	\$193,142
Ruff Roofers Inc.	21	6	\$7,370	\$2,303,901
Joseph M. Zimmer Inc.	11	6	\$5,517	\$553,000
Harper & Sons Inc.	11	6	\$3,630	\$3,331,055
JLN Construction Services	10	6	\$4,584	\$6,258,394
JCS Communications Inc.	10	6	\$1,935	\$1,141,575
Total of 13 Vendors	223	114	\$166,768	\$43,502,766
Total of All 73 Vendors With Violations	486	215	\$253,867	\$145,967,497

Source: Public Citizen analysis of OSHA enforcement inspections database.

\* This table reflects all OSHA violations received by company over the past 10 years. The total award amount of all DGS contracts represents contracts awarded to that vendor by DGS in the past five years. The violations occurred during all work / contracts in which the company was involved during the past 10 years and are not specific to the DGS contract work.

The 13 vendors with more than five serious violations have received 53 percent of all serious violations and 66 percent of the total penalties paid for serious violations. These same 13 vendors also account for 46 percent of all the violations of all types.

On average, the 13 vendors with more than five serious violations received at least one serious violation 39 percent of the time that they were inspected. [See Table 5]

**Table 5 – Percentage of Inspections That Resulted in a Violation  
(Of the 158 Vendors With >5 Serious Violations)**

Vendor	# of Insp.	# of Insp. With Serious Violations	Pct.
Willow Construction	15	8	53%
John W. Tieder Inc.	14	7	50%
Cole Roofing Co.	13	7	54%
Harkins Builders Inc.	55	7	13%
Alliance Roofing & Sheet Metal	8	7	88%
Brayman Construction Corp.	20	5	25%
Rainbow Construction Corp.	6	3	50%
American Paving Corp.	4	3	75%
Ruff Roofers Inc.	10	4	40%
Joseph M. Zimmer Inc.	7	5	71%
Harper & Sons Inc.	3	2	67%
JLN Construction Services	3	3	100%
JCS Communications Inc.	1	1	100%
Total of 13 Vendors	159	62	39%
Total of All Vendors	491	129	26%

Source: Public Citizen analysis of OSHA enforcement inspections database.

**53 Percent – More Than \$115 million – of the Money DGS Awarded to the 158 Vendors Was Awarded to Vendors With Serious OSHA Violations**

**Figure 4 – Money Awarded to Vendors by DGS**



More than half, 53 percent, of the money awarded by DGS in the past five years to the 158 vendors was awarded to vendors with serious OSHA violations in the past 10 years.

In total, more than \$115 million of the more than \$219 million in taxpayer-funded contracts was awarded to vendors with serious OSHA violations.

For their serious OSHA violations, these same vendors have paid \$255,092 in total penalties.

### III. Repeat and Willful Violations

A repeat violation occurs when an employer “has been cited previously for the same or a substantially similar condition.”<sup>63</sup> Repeat violations can result in a penalty of up to \$126,749 per violation.<sup>64</sup> Six DGS vendors have been cited for repeat violations over the past 10 years. [See Table 6]

**Table 6 – Six DGS Vendors with Repeat OSHA Violations**

Vendor	# of Violations (All Types)	Repeat Violations		Total Award Amount of All DGS Contracts
		# of Repeat Violations	Penalty Amount	
Cole Roofing Co.	28	2	\$7,824	\$1,126,040
Joseph M. Zimmer Inc.	11	2	\$7,660	\$553,000
Ariosa & Co. LLC	10	2	\$378	\$449,610
Harkins Builders Inc.	24	1	\$4,400	\$23,590,676
Citiroof Corp.	6	1	\$2,265	\$2,061,711
Harper & Sons Inc.	11	1	\$1,310	\$3,331,055

Source: Public Citizen analysis of OSHA enforcement inspections database.

Four of the six vendors with repeat violations have already been cited in this analysis as among the vendors with the most violations (Table 2) or among those with the most serious violations (Table 4). Cole Roofing Co., which has been cited for repeat violation twice, is tied for having the most OSHA violations overall in our dataset, and is the vendor with the third most serious violations. Harkins Builders has the third most violations overall, and has the fourth most serious violations. And Joseph M. Zimmer and Harper & Sons both have more than five serious violations in the past 10 years.

None of the 158 vendors analyzed have had a willful OSHA violation in the past 10 years. This is good news, as a willful violation is considered one of the most troubling types of violations. According to OSHA, a willful violation is one “in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety.”<sup>65</sup> Currently, willful violations can result in a penalty of up to \$126,749 per violation<sup>66</sup> and a willful violation involving the death of a worker can become a “criminal willful violation.”<sup>67</sup>

<sup>63</sup> See, *Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2lOzLWy>.

<sup>64</sup> See, *OSHA Penalties*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (adjusted for inflation by OSHA as of Jan. 13, 2017), <http://bit.ly/2msMZlS>.

<sup>65</sup> See, *Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2lOzLWy>.

<sup>66</sup> See, *OSHA Penalties*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Adjusted for inflation by OSHA as of Jan. 13, 2017), <http://bit.ly/2msMZlS>.

<sup>67</sup> *OSHA Instruction, Field Operations Manual (FOM)*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Effective Date: Aug. 2, 2016), 83, <http://bit.ly/2lLu1m0>.

## IV. Profiles of Selected Vendors

### Cole Roofing Co. – Tied for the Most OSHA Violations – 28

Cole Roofing, a “family owned and operated” company in Baltimore, Md.,<sup>68</sup> was awarded more than \$1.1 million in DGS contracts over the past five years. OSHA has cited Cole Roofing for violations 85 percent of the time it has inspected one of its worksites. Cole has been cited for 28 OSHA violations over the past 10 years – 13 serious, 13 other-than-serious, and 2 repeat violations – for which it has paid \$23,278 in penalties.<sup>69</sup>

Both of Cole Roofing Co.’s repeat violations were issued in 2015. A repeat violation occurs when a violation is found when an employer “has been cited previously for the same or a substantially similar condition.”<sup>70</sup> Cole Roofing has paid more in penalties for repeat violations than any other vendor in this analysis – \$7,824.<sup>71</sup>

Cole Roofing Co. had an accident on a worksite in 2008.<sup>72</sup> After the accident inspection, Cole was cited for two serious and two other-than-serious violations for which it paid \$3,300 in penalties.<sup>73</sup>

### John W. Tieder Inc. – Tied for the Most OSHA Violations – 28

John W. Tieder Inc., a Maryland electrical contractor,<sup>74</sup> has been awarded \$332,090 in DGS contracts over the past five years. According to John W. Tieder’s website, it has been awarded many government contracts in Maryland and Delaware in the past. Almost all of the 18 “most recent” projects listed on its website have involved a government entity.<sup>75</sup> Half of the projects listed were in Maryland while the other half were in Delaware.<sup>76</sup> OSHA has cited John W. Tieder for violations 86 percent of the time it has inspected one of its worksites.

In total, John W. Tieder’s has received 28 violations in the past 10 years – 15 serious and 13 other-than-serious – resulting in \$12,464 in penalties.<sup>77</sup>

### Willow Construction – The Vendor With the Most Serious Violations – 17

In total, Willow Construction, a Maryland construction company,<sup>78</sup> has been cited for OSHA violations 53 percent of the time that one of its worksites has been inspected.

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<sup>68</sup> See, *Our History*, COLE ROOFING, <http://coleroofing.com/company/>.

<sup>69</sup> *Inspection Details, Cole Roofing Co. Inc.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Multiple Open Dates Ranging: Jan. 10, 2008 - July 15, 2015), <http://bit.ly/2mfQWut>.

<sup>70</sup> See, *Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2lOzIWY>.

<sup>71</sup> *Inspection Details, Cole Roofing Co. Inc.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Dec. 31, 2006 - Dec. 31, 2016) <http://bit.ly/2lpjop9>.

<sup>72</sup> *Inspection Detail, Cole Roofing Co. Inc.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Jan. 10, 2008), <http://bit.ly/2lPGDKs>.

<sup>73</sup> *Id.*

<sup>74</sup> Search for “John W. Tieder Inc.,” MARYLAND BUSINESS EXPRESS, <http://bit.ly/2lLv716>.

<sup>75</sup> See, *Our Most Recent Installations*, TIEDER CONTROLS, <http://bit.ly/2mTMiPL>.

<sup>76</sup> *Id.*

<sup>77</sup> *Establishment Search Results*, John W. Tieder, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Search Date Range: Dec. 31, 2006 to Dec. 31, 2016), <http://bit.ly/2lHKNaJ>.

While the most common type of violation issued by OSHA is “other-than-serious,” Willow is an exception. Eighty-five percent of Willow’s violations were categorized as serious. In the past 10 years, Willow has received 20 violations – 17 serious and three other-than-serious – for which it has paid \$16,335 in penalties.<sup>79</sup>

Willow Construction has been awarded one contract by DGS, worth \$264,200 in the past five years.

#### **Ruff Roofers – The Vendor Awarded the Most Contracts of all Values – 58**

Ruff Roofers, “Maryland’s preferred roofing contractor,”<sup>80</sup> according to its website, was awarded four contracts worth \$100,000 or more in the past five years. It was also awarded 54 contracts worth less than \$100,000, making it the vendor with the most contracts awarded by DGS over the past five years. In total, all 58 contracts were worth \$2,303,901.

During the past 10 years, 80 percent of the time Ruff Roofers has been inspected, it was cited for violations. Ruff Roofers has received 21 violations – six serious and 15 other-than-serious violations – for which it paid \$15,620 in penalties.<sup>81</sup>

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<sup>78</sup> *About the Company*, WILLOW CONSTRUCTION, <http://bit.ly/2lGczc>.

<sup>79</sup> *Establishment Search Results, Willow Construction*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Search Date Range: Dec. 31, 2006 to Dec. 31, 2016), <http://bit.ly/2m3PO8z>.

<sup>80</sup> See, <http://www.ruffroofers.com/>.

<sup>81</sup> *Establishment Search Results, Ruff Roofers*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Search Date Range: Dec. 31, 2006 to Dec. 31, 2016), <http://bit.ly/2lZEo6C>.

## V. 91 Percent of Vendors That Have Been Inspected Have Received an OSHA Violation and 70 Percent Have Received a Serious Violation

In order to be cited for a violation, a vendor must be inspected by OSHA. Only 51 percent of the 158 vendors covered in this report have been inspected in the past 10 years.

Ninety-one percent of vendors that have been inspected at least once have received a violation in the past 10 years. Perhaps more significantly, 70 percent of vendors that have been inspected at least once have received at least one serious violation. As discussed above, the term “serious” refers to infractions in which a “hazard could cause an accident or illness that would most likely result in death or serious physical harm.”<sup>82</sup>

This suggests that if OSHA had shined a light on the other 49 percent of vendors, it likely would have found more violations, including more serious violations. But one cannot interpret those numbers to mean that if the other vendors had been inspected, the same percentage would have received violations. In order to form any hypothesis like that, one would have to control for numerous factors to ensure an equal comparison (such as the company’s size and the nature of the work the company does, etc.). OSHA is more likely to inspect businesses that perform higher risk work and larger employers, which are more likely to have committed violations.

Without these controls, broad judgements about the vendors that have not been inspected – like how many would receive violations if they were inspected – should not be made.

Additionally, some inspections occur as a “response to alleged hazardous working conditions,” according to OSHA.<sup>83</sup> These inspections, known as “unprogrammed” inspections, occur in response to “imminent dangers,” “fatalities/catastrophes,” “complaints” and “referrals.”<sup>84</sup> Thirteen percent of the inspections in this analysis occurred in response to events such as these.

As such, the fact that 49 percent of the 158 vendors have not been inspected in the past 10 years does provide some insight, though admittedly a small amount, into the safety history of those vendors. Essentially, the fact that these employers have not been inspected due to one of their employees being badly or fatally injured, or in response to an employee complaint, is worth noting.

The fact that 91 percent of vendors that were inspected have received at least one violation may suggest that it’s almost inevitable that an inspection will result in a citation, but this is not actually the case. In fact, 56 percent of the time the vendors in this analysis were inspected, the inspection was closed with no violation.

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<sup>82</sup> See, *Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2lOzlwY>.

<sup>83</sup> *OSHA Instruction, Field Operations Manual (FOM)*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Effective Date: Aug. 2, 2016), 31, <http://bit.ly/2lLu1m0>.

<sup>84</sup> *Id.*

## VI. Worksite Fatalities on Government Projects

Three vendors covered in our analysis, American Paving Corp., Brayman Construction Corp., and Corman Construction, had a fatality occur on one of their worksites in the past 10 years. Each was cited for OSHA violations over those tragedies.

**Table 7 – DGS Contractors With Employee Fatalities in the Past 10 Years**

Contractor	Fatalities		Total Award Amount of All DGS Contracts
	# of Fatalities	Penalty Amount*	
Brayman Construction Corp. <sup>85</sup>	1	\$38,800	\$421,750
American Paving Corp. <sup>86</sup>	1	\$3,825	\$193,142
Corman Construction Inc. <sup>87</sup>	1	\$5,540	\$1,126,102

Source: Public Citizen analysis of OSHA enforcement inspections database.

\* Reflects all penalties paid for violations cited during fatality related inspection.

Two of the vendors, American Paving Corp. and Corman Construction, had fatalities in the past 10 years that occurred not only in Maryland, but also while working under a government contract, according to reports. The third fatality occurred in West Virginia on a Brayman Construction Corp. worksite, also during a government funded project.

### Brayman Construction Corp.

Brayman Construction Corp. has paid more in penalties than any other vendor in this analysis over the past 10 years, \$67,715 in total.<sup>88</sup> Brayman has been inspected 20 times, 40 percent of which led to at least one violation. OSHA has cited Brayman for 17 violations, 7 serious and 10 other-than-serious.<sup>89</sup> In 2008, Brayman was inspected due to an employee complaint, which led to one serious and two other-than-serious violations and \$12,000 in penalties.<sup>90</sup>

Brayman Construction has been awarded one contract by DGS over the past five years, with an award value of \$421,750. The contract was awarded to Brayman after it had a fatality on a worksite.

<sup>85</sup> *Inspection Detail, Brayman Construction Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Aug. 22, 2007), <http://bit.ly/2miA4mm>.

<sup>86</sup> *Inspection Detail, American Paving Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: May 4, 2000), <http://bit.ly/2mHHbpe>.

<sup>87</sup> *Inspection Detail, Corman Construction Inc.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Jan. 16, 2015), <http://bit.ly/2mqbSxY>.

<sup>88</sup> *Inspection Detail, Brayman Construction Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Search Date Range: Dec. 31, 2006 to Dec. 31, 2016), <http://bit.ly/2mZHRjm>.

<sup>89</sup> *Id.*

<sup>90</sup> *Inspection Detail, Brayman Construction Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: April 23, 2008), <http://bit.ly/2mHlyZb>.

### **Brayman Construction Corp. Fatality – Employee Dies While Working on a West Virginia Department of Transportation Contract**

On Aug. 22, 2007,<sup>91</sup> while working on the Kanawha River Bridge in Charleston, W.V., a Brayman Construction employee was “crushed under [a] 22,084-pound panel.”<sup>92</sup>

The work was part of West Virginia Department of Transportation, Division of Highways project “worth nearly \$83 million to build a bridge over the Kanawha River connecting Dunbar with Charleston on Interstate 64,” according to reports.<sup>93</sup> Brayman summarizes the project under the heading “heavy civil projects” on its website.<sup>94</sup>

According to the OSHA inspection, after a very large metal panel was put into place by a crane, an employee “climbed the panel to release the crane from the load.”<sup>95</sup> The metal panel should have been held up with rebar – allowing it to stay in place when it was released from the crane. Instead, the employee, and the metal form to which he was strapped, came crashing to the ground – killing the 47-year-old carpenter just one day before his birthday.<sup>96</sup> He left behind a spouse and three children.<sup>97</sup>

In its initial citation related to the fatality, OSHA found two serious and one willful violation.<sup>98</sup> The two serious violations had an initial penalty of \$3,150 while the willful violation had an initial penalty of \$63,000.<sup>99</sup>

But after informal settlements, the willful violation was removed, and Brayman was cited for two serious violations and one other-than-serious violation, for which it paid a \$38,800 penalty.<sup>100</sup>

### **American Paving Corp.**

American Paving Corp. has been inspected four times over the past 10 years. Three of these inspections resulted in eight total violations, seven serious and one other-than-serious.<sup>101</sup> American Paving has paid \$7,575 in penalties for its violations.<sup>102</sup>

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<sup>91</sup> *Inspection Detail, Brayman Construction Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Aug. 22, 2007), <http://bit.ly/2miA4mm>.

<sup>92</sup> *Id.*

<sup>93</sup> *Pa. Worker Dies in Construction Accident*, PITTSBURG POST-GAZETTE, (Aug. 23, 2007), <http://bit.ly/2lOzrgY>.

<sup>94</sup> <http://brayman.com/kanawha-river-bridge/>

<sup>95</sup> *Inspection Detail, Brayman Construction Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Aug. 22, 2007), <http://bit.ly/2miA4mm>.

<sup>96</sup> *Pa. Worker Dies in Construction Accident*, PITTSBURG POST-GAZETTE, (Aug. 23, 2007), <http://bit.ly/2lOzrgY>.

<sup>97</sup> *Id.*

<sup>98</sup> *Inspection Detail, Brayman Construction Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Aug. 22, 2007), <http://bit.ly/2miA4mm>.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Inspection Detail, American Paving Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Sep. 9, 2000), <http://bit.ly/2mjVeB6>.

<sup>102</sup> *Id.*

Before it was dissolved in 2015,<sup>103</sup> American Paving received one DGS contract, with an award value of \$193,142, over the past five years. The contract was awarded to American Paving after it had a fatality on a worksite.

### **American Paving Corp. Fatality – Employee Dies While Working on a Maryland State Highway Administration (SHA) Contract**

On May 4, 2009, an employee “flagging” and directing traffic on Route 413 Marion, Md., at a worksite run by the American Paving Corp. died after being struck by a car.<sup>104</sup> According to MOSH investigation documents obtained by Public Citizen, after being struck, “the victim was transported to [Peninsula Regional Medical Center] where she later died in surgery.”<sup>105</sup> According to an interview of the site foreman, the victim was hit so hard she “was knocked out of her shoes and socks.”<sup>106</sup>

The 45-year-old<sup>107</sup> victim had been working for American Paving through a temp agency, Barrett Business Services Incorporated.<sup>108</sup> She had worked for American Paving “many times in the past,” according to American Paving employees.<sup>109</sup> When the site foreman was asked if he had “any problems or concerns with how she [the victim] performed her job,” he responded: “No, nothing.”<sup>110</sup>

American Paving Corp.’s president at the time, Don Nichols, informed MOSH inspectors that the fatality occurred during work on a government contract, saying the company was “in the process of satisfying a \$1,857,150 contract with the State Highway Administration.”<sup>111</sup>

MOSH was critical of the placement of three traffic warning signs that were placed much farther from the employee who was struck than safety standards allow. MOSH’s “citation and notification of penalty” document, which provides details of the violations, stated: “An employee performing flagging duties was exposed to being struck by passing vehicular traffic since traffic warning signs, utilized for temporary traffic control, were incorrectly positioned.”<sup>112</sup>

Regulations called for three warning signs to be placed within varying distances of the employee. A “Flagger” sign that was supposed to be no more than 800 feet away was placed at a distance of 3,891 feet. A “One Lane Road” sign that needed be placed within 2,500 feet was set at 4,898 feet. And a “Road Work ½ Mile” sign was set more than a mile from the victim. According to MOSH’s

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<sup>103</sup> Search <http://bit.ly/2lLv716> for American Paving Corp. *See*, Amendments, Articles of Dissolution 03/23/2015

<sup>104</sup> *Accident Report Detail, American Paving Corp.*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: May 4, 2009), <http://bit.ly/2lEXzY>.

<sup>105</sup> MOSH fatality investigation documents for MOSH Case No. F3659-03309 (on file with author).

<sup>106</sup> *Id.*

<sup>107</sup> Kye Parsons, *Highway Flagger Struck and Killed in Somerset County*, WBOC 16 NEWS, (May 20, 2009), <http://bit.ly/2mbp5KG>.

<sup>108</sup> MOSH fatality investigation documents for MOSH Case No. F3659-03309 (on file with author).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

summary, the American Paving foreman “conceded that the victim was even further from the signs by approximately 7/10 of a mile for the first hour of work,” according to MOSH.<sup>113</sup>

While the initial proposed penalty for the serious violation was \$4,425, American Paving eventually paid \$3,825 on June 19, 2009.<sup>114</sup>

According to the “Corporate Safety Program” submitted to MOSH during the fatality investigation, American Paving Corp. was a “wholly owned subsidiary of David A. Bramble, Inc.” at the time of the accident.<sup>115</sup> It was officially sold to David A Bramble Inc. in December 2014,<sup>116</sup> and the American Paving Corp. was officially dissolved in March 2015.<sup>117</sup>

David A. Bramble is not included in this analysis because it has not received any contracts from DGS in the past five years. But the company has received 25 OSHA violations in the past 10 years – 14 serious, three repeat and eight other-than-serious violations.<sup>118</sup> David A. Bramble paid \$26,856 in total penalties for the violations.

### **Corman Construction Inc.**

Corman Construction Inc. has been inspected 15 times in the past 10 years, 20 percent of which led to at least one violation. Corman has been cited by OSHA for seven total violations, one serious and six other-than-serious in the past 10 years,<sup>119</sup> for which it paid \$7,740 in penalties.<sup>120</sup>

Corman received one DGS contract with an award value of more than \$1.1 million over the past five years.

### **Corman Construction Inc. Fatality – Employee Dies While Working on a Maryland State Highway Administration (SHA) Contract**

On January 16, 2015, Corman Construction “was reconstructing the roadway”<sup>121</sup> at the corner of St. Clair Bridge Road and Route 24 in Jarrettsville, Md.<sup>122</sup> While work was being done, an excavator knocked a large concrete barrier onto two employees working below, injuring one and killing another.

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.* & *Inspection Detail*, American Paving Corp., OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: May 4, 2009), <http://bit.ly/2mHHbpe>.

<sup>115</sup> MOSH fatality investigation documents for MOSH Case No. F3659-03309 (on file with author).

<sup>116</sup> Search <http://bit.ly/2lLv716> for American Paving Corp. *See*, Amendments, Articles of Transfer 12/22/2014.

<sup>117</sup> Search <http://bit.ly/2lLv716> for American Paving Corp. *See*, Amendments, Articles of Dissolution 03/23/2015.

<sup>118</sup> *Inspection Details*, David A Bramble, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Search Date Range: Dec. 31, 2006 to Dec. 31, 2016), <http://bit.ly/2lBqHim>.

<sup>119</sup> *Inspection Details*, Corman Construction Inc., OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Dates: Aug. 12, 2009, Jan. 8, 2013, Jan. 16, 2015), <http://bit.ly/2mjYYIY>.

<sup>120</sup> *Id.*

<sup>121</sup> MOSH fatality investigation documents for MOSH Case No. W6686-001-15 (on file with author).

<sup>122</sup> *Inspection Details*, Corman Construction Inc., OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Jan. 16, 2015), <http://bit.ly/2mqbSxY>.

According to reports, the fatality occurred during a Maryland State Highway Administration (SHA) contract.<sup>123</sup> The *Baltimore Sun* reported in July 2014 that the \$6.2 million<sup>124</sup> project was commissioned “to shore up a portion of the Deer Creek stream bank in Rocks State Park to protect the section of Route 24 (Rocks Road) that runs parallel to the stream.” An SHA spokesperson told the *Baltimore Sun*: “Over the years, with some of the torrential storms we've had, the slope [along the creek] is starting to erode away.”<sup>125</sup>

MOSH inspection documents related to the fatality, which Public Citizen obtained through a Public Information Act request, stated: “employees were moving next to the west wall of the excavation to fill in some depressions” when the excavator “struck a concrete barrier causing the barrier to fall onto” two other employees.<sup>126</sup> The barrier, which was estimated by MOSH to weigh between 4,800 and 7,200 pounds,<sup>127</sup> landed on two employees: “one employee had his leg trapped under the jersey wall [concrete barrier] while the other employee was trapped with the wall on the upper portion of his body.”<sup>128</sup>

The victim was “pronounced dead upon arrival to a local hospital” while another employee sustained “non-life threatening leg and head injuries.”<sup>129</sup>

A third employee, who was operating the excavator that struck the barrier, was “badly shaken”<sup>130</sup> after the incident, according to a witness. The MOSH inspection report indicated the employee needed medical treatment as he “presumably” experienced “a panic attack or heart attack.”<sup>131</sup>

The deceased victim, a U.S. Army veteran who served in Afghanistan,<sup>132</sup> was just 30 years old. He left behind his parents, three sisters, two brothers, and a young son.<sup>133</sup>

After the initial on-site investigation, the MOSH inspector stated “the employer will have citations” for having the “jersey wall stored within 2 feet of the edge of the excavation,” and for having “no cave-in protection provided and no training for employees on working in an excavation.”<sup>134</sup>

MOSH inspectors were critical of the placement of the jersey walls or barriers, the “most widely used safety shape concrete barriers.” According to MOSH: “By placing the jersey wall within 2 feet of the edge of the excavation the employees are exposed to them falling or being knocked onto

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<sup>123</sup> Elizabeth Janney, *Worker Killed Near Rocks State Park, Officials Say*, BEL AIR PATCH (Jan. 17, 2015), <http://bit.ly/2lOxRvE>.

<sup>124</sup> David Anderson, *Route 24 at Rocks State Park Expected to Close July 28*, THE BALTIMORE SUN (July 19, 2014), <http://bsun.md/2msXzcr>.

<sup>125</sup> *Id.*

<sup>126</sup> MOSH fatality investigation documents for MOSH Case No. W6686-001-15 (on file with author).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Obituary, Geiple Funeral Home (on file with author).

<sup>133</sup> *Id.*

<sup>134</sup> MOSH fatality investigation documents for MOSH Case No. W6686-001-15 (on file with author).

workers below the wall resulting in injuries up to and including death.”<sup>135</sup> The closeness of the jersey walls to the excavations site was a choice, as the site superintendent told MOSH investigators the jersey walls were used “as an edge marker and decided that it was a good method to use for this job.”<sup>136</sup>

Initially, MOSH cited Corman Construction for three serious violations and \$11,900 in penalties.<sup>137</sup> Corman’s attorney contested the violations, sending a “notice of contest and informal conference request” to MOSH on June 12, 2015 – six days after the issuance of the original citations.<sup>138</sup> The letter stated: “In contesting these citations, we contest the alleged fact of violation, their classification, and the proposed penalty and abatement dates.”<sup>139</sup>

After informal settlements, Corman’s violations related to the fatality were reduced from three serious violations to just one serious and one other-than-serious violation for which it paid a \$5,540 penalty.<sup>140</sup>

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<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Inspection Details*, Corman Construction Inc., OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Jan. 16, 2015), <http://bit.ly/2mqbSxY>.

<sup>138</sup> MOSH fatality investigation documents for MOSH Case No. W6686-001-15 (on file with author).

<sup>139</sup> *Id.*

<sup>140</sup> *Inspection Details*, Corman Construction Inc., OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Open Date: Jan. 16, 2015), <http://bit.ly/2mqbSxY>.

## Conclusion

If our analysis found that just a small percentage of DGS vendors that were awarded construction contracts worth \$100,000 or more in the past five years have received OSHA violations in the past decade, the argument for Maryland to take steps to ensure greater adherence to safety practices by its contractors would be diminished.

But we did not find a small percentage. We found that close to half – 46 percent – of contractors in our dataset have received OSHA violations over the past decade, 35 percent have received serious violations, and three have had fatalities occur on projects they manage.

The fact that 35 percent of vendors have serious violations, indicating OSHA found a worksite in which “there is a substantial probability that death or serious physical harm could result from a condition which exists,”<sup>141</sup> makes a very compelling case for action. Requiring vendors to disclose safety indicator data and to have a safety plan as conditions of receiving hundreds of thousands of dollars in taxpayer-funded contracts is more than reasonable.

OSHA’s role is crucial, but its financial penalties are hardly a deterrent. The two fatalities on Maryland State Highway Administration (SHA) funded projects, for example, only resulted in penalties of \$3,825 and \$5,540. In total, vendors found to have violations in this analysis have paid \$370,297 in penalties.

Compare that to \$146 million awarded by DGS to the 73 vendors, and it is clear Maryland has leverage with its government contracts that OSHA lacks with its citation power.

The recommendations of the workgroup convened by Department of Labor, Licensing & Regulation (DLLR) in 2014 are not radical; they are commonsense steps to ensure safe worksites throughout Maryland. In fact, the bill currently under consideration, House Bill 1510,<sup>142</sup> accounts for the workgroup’s concerns, incorporates its recommendations, and is the product of compromise.

House Bill 1510 would encourage prospective bidders to focus on health and safety. Along with requiring a vendor disclosure of safety indicator data, it requires vendors have a safety and health plan when bidding on a “public work contract,”<sup>143</sup> and includes protections for employees who file a “good faith complaint related to a violation.”<sup>144</sup>

While the disclosure of OSHA violations is not explicitly called for in House Bill 1510, it is likely that such disclosures, or disclosures similar in nature, would occur. Current policies that were reviewed

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<sup>141</sup> OSHA Instruction, *Field Operations Manual (FOM)*, Page 69, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Effective Date: Aug. 2, 2016), <http://bit.ly/2lLu1m0>.

<sup>142</sup> Procurement – Public Work Contracts – Contractor Occupational Safety and Health Requirements, HB 1510, Maryland House of Delegates (Feb. 10, 2017), <http://bit.ly/2mTYLmL>.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

by the DLLR workgroup, like the North Carolina Department of Transportation’s “safety index rating form,” for example, included the disclosure of OSHA violations.<sup>145</sup>

When it comes to OSHA violations, the overarching theme is simple: Maryland should be aware of with whom it’s doing business.

Knowledge is power. Government contracts are leverage. Maryland should increase its knowledge and use its power to leverage employers with poor safety performance into adopting better practices. By doing so, it will ensure workers in Maryland are afforded the safe workplaces they deserve.

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<sup>145</sup> See, MARYLAND DEPARTMENT OF LABOR, LICENSING AND REGULATION, REPORT FROM THE WORKGROUP TO STUDY OCCUPATIONAL SAFETY AND HEALTH PREQUALIFICATION REQUIREMENTS ON PUBLIC WORKS PROJECTS, Appendix D, 14 - 17, (2014), <http://bit.ly/2mDZ2cr>.