

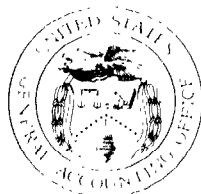
GAO

Report to the Honorable  
Byron L. Dorgan  
House of Representatives

February 1992

# DEFENSE ACQUISITION

## More Data Needed on Individuals Convicted of Procurement-Related Crimes



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**National Security and  
International Affairs Division**

B-231325

February 20, 1992

The Honorable Byron L. Dorgan  
House of Representatives

Dear Mr. Dorgan:

In response to your request, we reviewed the sources of information that could be used to implement the Dorgan amendment. The Dorgan amendment, Public Law 99-145, as amended (10 U.S.C. 2408), prohibits defense-related employment of individuals convicted of a felony arising out of a defense contract for at least 5 years after conviction. The Department of Justice, the Department of Defense (DOD), and the General Services Administration (GSA) each have a role in dealing with individuals that commit fraud or other felonies on defense contracts. Justice and DOD investigate those individuals. Justice prosecutes them, DOD can debar them from receiving defense contracts, and GSA maintains and distributes a list of debarred individuals. As you requested, we (1) determined whether Justice and DOD coordinated and collaborated in the investigation and prosecution of those individuals, (2) compared and tested the GSA federal-wide list of debarred individuals to the list of individuals debarred by DOD, and (3) compared the GSA list to a list of individuals convicted of defense procurement-related felonies.

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**Results in Brief**

The Department of Justice and DOD coordinate and collaborate in the investigation and prosecution of felony crimes arising from defense contracts. The names of individuals convicted of defense procurement-related crime are provided to DOD by DOD investigators who work with the Department of Justice. DOD's debarring officials, on a case-by-case basis, debar the convicted individuals from defense contracting.

DOD's debarring officials provide the names of debarred individuals to GSA, and GSA places them on a list of persons excluded from all federal procurement. We found this list, which is available to the public in printed and electronic form, to be accurate.

However, the GSA list does not include those individuals convicted of a defense procurement-related felony but, for some reason, not debarred by DOD. This is not a shortcoming of the GSA list because it was never intended to be the data source on individuals prohibited from defense procurement-related employment. This information gap renders the GSA list of limited usefulness to contractors and the government as a means of

preventing felons from being employed in defense-related work. Neither Justice nor DOD publish an official list of convicted felons that fills this gap.

## Background

Under 10 U.S.C. 2408, individuals convicted of defense procurement-related felonies are prohibited from

- working in a management or supervisory capacity on a defense contract,
- serving on a defense contractor's board of directors,
- serving as a defense contractor's consultant, or
- being involved with a defense contract in anyway that is prohibited by the Secretary of Defense.

Individuals convicted of a defense procurement-related felony shall be prohibited from these activities for 5 or more years after the date of conviction. A shorter period may be set by the Secretary of Defense if the Secretary determines it to be in the interest of national security. A defense contractor convicted of knowingly employing such an individual is subject to a criminal penalty of not more than \$500,000.

GSA is responsible for publishing the lists of individuals debarred by DOD and other federal agencies and making this information available to federal agencies, contractors, and the public. GSA's monthly publication alphabetically lists the name, address, and the date debarment ends for individuals excluded from all federal procurement programs, defense related or not.

## Coordination Among Federal Agencies

In a 1984 Memorandum of Understanding, DOD and Justice agreed to coordinate the investigation and prosecution of defense procurement-related crime. The memorandum establishes policy for the Departments to consult, coordinate, and collaborate in cases of mutual responsibilities and interests. DOD Directive 5525.7, dated January 22, 1985, promulgates the policies and procedures with which DOD agencies must comply in coordinating with Justice and other DOD agencies in investigating procurement-related crime. DOD Directive 7050.5, dated June 7, 1989, requires DOD agencies to coordinate with Justice on criminal, civil, administrative, and contractual remedies resulting from these investigations.

A Justice official told us that investigations of defense procurement-related crimes normally include investigators from one of the DOD investigating units. Several DOD agencies have officials that take suspension and debarment action against individuals that are indicted or convicted of

felony charges resulting from these investigations. The DOD agencies told us that their investigating units designate an investigator or attorney as the liaison with the suspension and debarment officials. This liaison informs the debarment officials on the results of the investigations and prosecutions. The debarment officials act on these results and notify GSA when an individual is debarred.

GSA publishes the data received from DOD agencies in the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs. The publication is available electronically 24 hours a day, 7 days a week, and in a monthly paperback edition. We used this data source in the two tests we conducted.

## Test of the Agencies' Coordination Concerning the Ill Wind Convictions

We tested the Justice/DOD investigation-coordination and the accuracy of the GSA debarment list by obtaining (1) Justice's list of individuals convicted as a result of the widely-known "Ill Wind" investigation involving Navy contracts, (2) DOD's list of individuals convicted as a result of this investigation, (3) DOD's list of individuals debarred by DOD as a result of "Ill Wind" convictions, and (4) GSA's list of individuals debarred from federal procurement programs.

We compared these lists and found that the names of those convicted and debarred were appropriately contained on the respective lists. For example, as of November 1990, 35 individuals had been successfully prosecuted by Justice and listed by the Navy as convicted. Our review of Navy records showed that 34 of the 35 individuals were debarred. A Navy official said that the other individual was not debarred because he was convicted of a felony not related to defense procurement.

To complete our test, we reviewed GSA's November 1990 publication, Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs, to determine if the Navy had provided GSA the names of the 34 debarred individuals. Of the 34 names, 3 were not listed in the GSA paperback. A Navy official stated that one of the three had been proposed for debarment in October 1990 and that his name should appear in the December 1990 list. We checked the electronic edition of the lists on December 12, 1990, and this name was included.

The second of the three individuals had been debarred for a year and the year had passed; therefore, the individual's name did not belong on the GSA

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list. The third individual's debarment was pending and therefore did not belong on GSA's list.

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## Accuracy Test of GSA's List

Our second test involved 446 individuals convicted of defense procurement-related felonies during fiscal years 1988 and 1989. This list of individuals was developed specifically for our test by the DOD Inspector General's office. It did not exist prior to our requesting DOD to provide the information. We scientifically selected 30 names from this list and checked them against GSA's list. Our sample provides a 95-percent confidence level in the test results.

As of April 1991, 8 of the 30 names were not listed in GSA's electronic or paperback editions. In each case there was an appropriate explanation. We found that two individuals had completed their debarment periods. DOD stated that the other six individuals had been convicted of defense procurement-related crimes but they were not contractors or working for contractors; therefore, DOD decided not to debar them.

While the GSA list was accurate, the absence of these six names limits the usefulness of the GSA list as a source of data on individuals convicted of defense procurement-related felonies. This limitation exists because the GSA list was established for the purpose of publishing suspension and debarment data, rather than names of convicted felons.

Neither Justice nor DOD publish an official list of all individuals prohibited by 10 U.S.C. 2408 from being employed in defense procurement-related work. We believe such a list should be available to federal agencies and contractors.

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## Recommendation

We recommend that the Attorney General of the United States or the Secretary of Defense generate and publish a monthly list of all individuals convicted of defense procurement-related felonies and make this list available to federal agencies and contractors involved in federal procurement programs and activities.

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## Agency Comments and Our Evaluation

The Department of Justice and DOD provided written comments on a draft of this report. (See apps. I and II.) The Department of Justice agrees that defense contractors must have up-to-date criminal background information in making employment decisions. However, Justice contends that it has neither the funding nor the mandate to produce the needed data and that it should not divert its limited resources to implement a system to be used by defense contractors for complying with 10 U.S.C. 2408. Justice also contends that there are specific actions that contractors can take, such as obtaining pre-hiring certifications and fingerprint checks on persons seeking employment.

DOD does not agree that it needs to establish a separate list of individuals prohibited from defense procurement-related employment. It is DOD's position that defense contractors have the responsibility not to employ individuals convicted of fraud or other felonies arising from defense contracts. According to DOD, defense contractors should be able to screen out convicted felons through normal personnel prehire review practices.

DOD states that the cost of establishing and maintaining a list of prohibited individuals would far exceed any potential benefit to the government. Also, DOD contends that requiring the government to create and maintain a list of prohibited individuals would shift to the government the burden of responsibilities clearly placed on contractors by the statute.

The court system is the authoritative source of information on all felony convictions. This information is routinely used by Justice and DOD. While we recognize that the statute, as it is currently written, does not mandate that either DOD or Justice compile the information needed to comply with the provisions of 10 U.S.C. 2408, both agencies have the information within their control that could be used for the effective implementation of the statute. It seems reasonable that the government provide contractors an official source of information to carry out their responsibility under the statute.

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## Scope and Methodology

We held discussions with officials from Justice and GSA in Washington, D.C., and DOD in Arlington, Virginia, and obtained data from these officials that we used in our comparative analyses. We queried GSA's electronic data base on debarred individuals several times and reviewed copies of GSA's printed edition of the debarment data base covering several previous years.

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We performed our review from September 1990 to January 1992 in accordance with generally accepted government auditing standards.

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Unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days after its issue date. At that time, we will send copies to the Chairmen, House and Senate Committees on Armed Services and on Appropriations, Senate Committee on Governmental Affairs, and the House Committee on Government Operations; the Secretary of Defense; the Attorney General of the United States; and the Administrator, GSA. Copies will also be made available to other interested parties upon request.

Please contact me at (202) 275-8400 if you or your staff have any questions concerning this report. Information for this report was developed by John A. Rinko, Assistant Director, and Robert W. Fain, Evaluator-in-Charge.

Sincerely yours,



Paul F. Math  
Director, Research, Development, Acquisition,  
and Procurement Issues



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# Comments From the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

DEC 30 1997

Mr. Frank C. Conahan  
Assistant Comptroller General  
United States General Accounting Office  
National Security and International  
Affairs Division  
Washington, D.C. 20548

Dear Mr. Conahan:

Pursuant to the requirements of 31 U.S.C. § 720, this letter constitutes the Department of Justice's comments on the recommendations contained in the General Accounting Office (GAO) report entitled "Preventing Felons from Working on Defense Contracts."

The report discusses the goals of the Dorgan amendment, and the efforts of the Departments of Justice and Defense in disseminating information regarding individuals who have been convicted of fraud or other felony offense in connection with a defense contract. The report found that our prosecutors work closely with Defense Department investigators to ensure that agency debarment officials have timely information to initiate debarment actions. Additionally, the report found that agency debarments are being reported to the General Services Administration (GSA) and that the names of those debarred are being published in GSA's Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs (commonly known as the Debarment List). The report concludes, however, that the Debarment List should be expanded to include needed data on employee convictions, and recommends that either Justice or the Department of Defense should maintain and produce the data for inclusion in GSA's Debarment List.

While we agree that defense contractors must have up-to-date criminal background information to decide how and whether to employ potential applicants, Justice has neither the funding nor the mandate -- in view of budget constraints -- to contract for the programming and administrative support to produce the needed data. Adding this reporting requirement to Justice's mission will be costly, and will divert resources presently dedicated to the prosecution of cases in the defense procurement fraud area. At least at present, based on the limited observations made by GAO,


Appendix I  
Comments From the Department of Justice

- 2 -

we do not believe that diversion of limited resources is warranted to implement a system to help defense contractors in verifying and matching the names of job applicants with those who are known felons. While we recognize that corporate compliance with the Dorgan amendment can be enhanced by having the Department of Justice act as a clearinghouse for these matters on a regular basis, there are concrete actions that contractors can take, such as obtaining pre-hiring certifications and fingerprint checks from all new hires.

We appreciate the opportunity to comment on the report. Should you have any questions concerning our comments, please feel free to contact me.

Sincerely,



Harry H. Flickinger  
Assistant Attorney General for  
Administration

# Comments From the Department of Defense



**INSPECTOR GENERAL**  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-2884

JAN 9 1992

Mr. Frank C. Conahan  
Assistant Comptroller General  
National Security and International  
Affairs Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office draft report--"DEFENSE ACQUISITION: Preventing Felons From Working on Defense Contracts," dated November 6, 1991 (GAO Code 396933/OSD Case 8877). The Department partially agrees with the report findings, but does not agree with the recommendation.

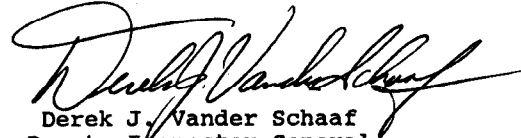
The Department does not agree that there is a need to establish a separate list of individuals prohibited from employment after being convicted of fraud and other felonies arising from Defense contracts. It is the DoD position that it is a contractor responsibility not to hire felons to work on Defense contracts. While the list might be of assistance to contractors, the same result can be attained through normal personnel pre-hire review practices. In addition, the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs, combined with the provisions of the Defense Federal Acquisition Regulation Supplement implementing 10 U.S.C. 2408, are sufficient. Further, the administrative burden and cost of establishing and maintaining such a list would exceed any potential benefit the Government would derive from creating such a list.

In addition, the GAO creates the impression that the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs was created and is maintained for the principal purpose of providing up-dated information on individuals debarred as a result of being convicted of a procurement related felony. That is not correct. The list was established and is maintained for the purpose of providing a centralized repository of contractors suspended or debarred, in accordance with the procedures established in the Federal Acquisition

Regulation. The inclusion of persons convicted as a result of a procurement related felony stems from the action of suspension and debarment officials, not the provisions of 10 U.S.C. 2408.

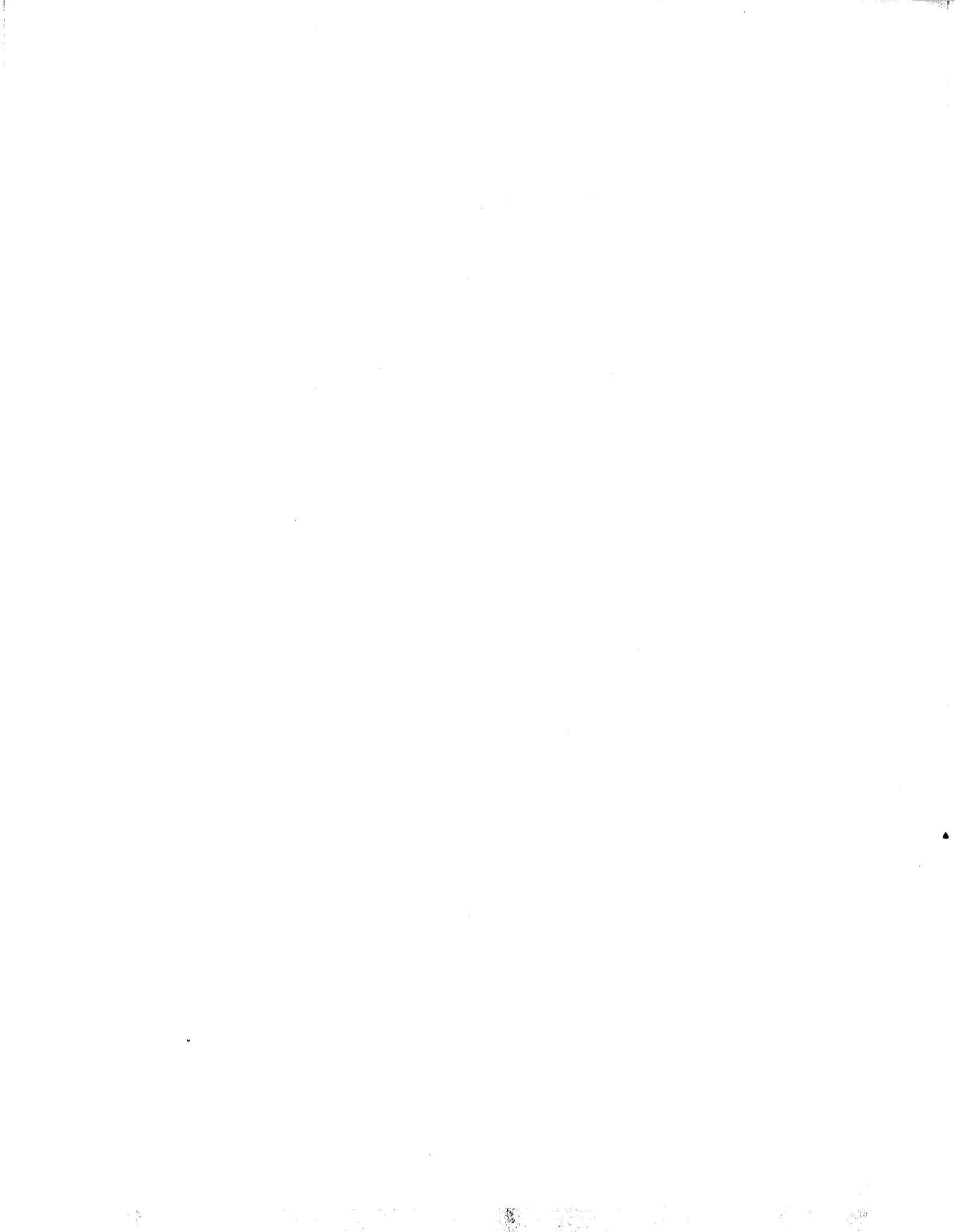
The detailed DoD comments on the draft report findings and the recommendation are provided in the enclosure. The Department appreciates the opportunity to comment on the draft report.

Sincerely,



Derek J. Vander Schaaf  
Deputy Inspector General

Enclosure



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