

Inspector General

United States
Department of Defense



Contract Procedures for Educational Support Services
Acquired by the National Defense University

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Acronyms and Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
NDU	National Defense University
OPM	Office of Personnel Management
OSD	Office of the Secretary of Defense
SOW	Statement of Work
U.S.C.	United States Code



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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June 13, 2008

MEMORANDUM FOR THE HONORABLE BYRON J. DORGAN, UNITED STATES
SENATE
UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE ARMY FOR ACQUISITION,
LOGISTICS, AND TECHNOLOGY
PRESIDENT, NATIONAL DEFENSE UNIVERSITY

SUBJECT: Contract Procedures for Educational Support Services Acquired by the National
Defense University (Report No. D-2008-100)

We are providing this report for your information and use. We performed the audit in response to a congressional request. We considered comments from the National Defense University when preparing the final report.

Comments on the final report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201) or Mrs. Priscilla H. Nelms at (303) 676-7393 (DSN 926-7393). The team members are listed inside the back cover.

A handwritten signature in black ink, reading "Richard B. Jolliffe", is positioned above the typed name.

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management

June 13, 2008



Results in Brief: Contract Procedures for Educational Support Services Acquired by the National Defense University

What We Did

At the request of Senator Byron L. Dorgan, we reviewed the National Defense University's current contracting procedures for educational support services, including contract W9137B-06-P-0107 awarded to Mr. Douglas Feith, and other contracts awarded to Office of the Secretary of Defense political appointees.

What We Found

The National Defense University should improve its procedures for awarding educational support service contracts, based on the contracts reviewed. Contract specifications may have been tailored so narrowly that, in some cases, competition was limited.

- Mr. Feith's contract did not have adequate market research and contained specifications that were written too narrowly to ensure full and open competition.
- Other solicitations for these services frequently resulted in the receipt of only one bid from the recommended source.

The use of simplified acquisition procedures was incorrect for some contracts.

- Some services were procured as commercial items without meeting the required definition in Federal Acquisition Regulation Part 2.101.
- Some procurement values were above the simplified acquisition threshold required in Federal Acquisition Regulation Part 13.
- Some solicitations were advertised for insufficient periods of time.

Additionally, contracting officials awarded contracts to contractors from unsolicited proposals without meeting the justification

requirements of Federal Acquisition Regulation Part 6.303-1 and Section 8038 of Public Law 101-511.

What We Recommend

The President of the National Defense University should:

- Evaluate current procedures and controls to ensure statements of work are properly justified and identify the qualifications and skills needed without unnecessarily limiting competition as required by Federal Acquisition Regulation Part 7.102.
- Ensure the proper type of solicitation is used when obtaining educational support services including the justification and use of sole-source procurement when appropriate in accordance with Federal Acquisition Regulation Part 6.302-1.

Client Comments and Our Response

The President of the National Defense University concurred with both recommendations. We consider the concurrences responsive to our recommendations. Please see the recommendations table on the back of this page.



National Defense University

Recommendations Table

Client	Recommendations Requiring Comment	No Additional Comments Required
President of National Defense University		1.a. and 1.b.

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Introduction

Objective

Our audit objective was to determine whether the current National Defense University (NDU) contracting procedures for educational support services are in accordance with the Federal Acquisition Regulation (FAR) and DoD guidance, and specifically for contract W9137B-06-P-0107.

See Appendix A for a discussion of the scope and methodology.

Background

NDU is the Center for Joint Professional Military Education and operates under the direction of the Chairman of the Joint Chiefs of Staff. The NDU mission is to prepare military and civilian leaders to address national and international security challenges through multidisciplinary educational programs, research, professional exchanges, and outreach.

The United States Army Contracting Agency authorized NDU to have its own Contracting Directorate for acquisitions. According to a Contracting Directorate official, NDU awarded 556 educational support contracts totaling more than \$92 million from January 2000 through December 2006.

On March 7, 2007, Senator Byron L. Dorgan requested that the DoD Office of Inspector General:

- investigate the events surrounding the award of NDU contract W9137B-06-P-0107 to Mr. Douglas Feith,
- review the contracting procedures currently used by NDU, and
- identify other Office of the Secretary of Defense (OSD) political appointees who have been awarded NDU educational support services contracts since January 2000.

Review of Internal Controls

We identified material internal control weaknesses for NDU as defined by DoD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures,” January 4, 2006. The weaknesses are related to procurement procedures of the 47 contracts reviewed. Although NDU had internal control procedures in place, we identified weaknesses resulting in inadequate procedures for full and open competition, inappropriate use of simplified acquisition procedures, and insufficient response time for solicitations. Implementing Recommendations 1.a. and 1.b. will improve controls over NDU’s procurement of educational support services. A copy of the final report will be provided to the senior Army official responsible for internal controls in the Department of the Army.

Contracting Procedures for Educational Support Services Acquired by the National Defense University

NDU procedures for the solicitation and award of educational support services contracts need to be improved to be in accordance with the United States Code (U.S.C.), FAR, Defense Federal Acquisition Regulation Supplement (DFARS), and other guidance, based on the contracts we reviewed.

- Statements of Work (SOW) may have been written too narrowly to result in full and open competition.
- The use of simplified acquisition procedures was inappropriate for some contracts.
- Solicitations were advertised for insufficient periods of time.
- In two cases, contracting officials awarded contracts to contractors from unsolicited proposals without meeting the justification requirements of FAR Part 6.303-1, “Requirements” and Section 8038 of Public Law 101-511, “DoD Appropriations Act, 2008.”

These issues can potentially result in a lack of fair and open competition for educational support services contracts and in higher costs for contractor services.

National Defense University Contracting Criteria

See Appendix B for a list of applicable laws and regulations for NDU contracting procedures.

Statements of Work

NDU awarded an educational support service contract to Mr. Douglas Feith that contained specifications that were too narrowly tailored to result in full and open competition. Other competitively solicited educational support services contracts were frequently awarded based on receiving just one bid from the only recommended source.

Award of Mr. Douglas Feith’s Contract

NDU awarded contract W9137B-06-P-0107 to Mr. Feith on July 12, 2006. The purpose of the contract was to present lectures, produce a report, and provide consultation and mentoring to NDU staff and students. NDU received only Mr. Feith’s proposal for the solicitation and determined that he met all of the specifications required.

The initial contract award was \$37,375 for the period from July 14 through September 15, 2006. The contract also contained three option periods with an estimated total value of \$464,399. On August 16, 2006, Mr. Feith submitted an invoice to NDU for \$6,066 for services from July 14 through August 13, 2006.

In July 2006, NDU changed presidents. In an e-mail, the incoming president stated that she was concerned with the contract and whether Mr. Feith was in the position to perform several of the required contract deliverables. NDU officials consulted with DoD, NDU legal staff, and contracting officials.

NDU officials then contacted Mr. Feith. They agreed to cancel the contract. On August 25, 2006, NDU and Mr. Feith canceled the contract by a mutual agreement, reflecting no fault by either party, and no cost to the Government. As part of the cancellation agreement, Mr. Feith withdrew his request for payment of the initial charges of \$6,066.

We reviewed the events and procedures surrounding the award of Mr. Feith's contract and compared it with the U.S.C., FAR, DFARS, and other applicable guidance to identify deviations from these requirements. We also gathered written and testimonial evidence on the administration, solicitation, and award process for the contract.

Several factors led us to the conclusion that market research was inadequate and the solicitation was too restrictive to promote full and open competition.

- On August 8, 2005, the Secretary of Defense made detailed statements regarding Mr. Feith's background and qualifications during Mr. Feith's farewell ceremony.
- The background and qualifications cited in the farewell ceremony closely mirror the detailed requirements cited in NDU's SOW for the solicitation.
- NDU's contracting office notified Mr. Feith that the solicitation had been issued. He was the only contractor who received the notification.
- Mr. Feith's statement of qualifications for the solicitation indicated that he fully met all of the detailed requirements cited in the SOW.
- Mr. Feith was the only person who responded to the solicitation.

NDU officials provided conflicting statements regarding who determined the requirements listed in the SOW for this contract. Some officials attributed the SOW development to the former NDU President, while the former president said that other NDU officials assisted him in developing the SOW.

See Appendix C for a comparison of the statements made in the various documents.

FAR Part 7.102 (a) (2), "Policy," states:

Agencies shall perform acquisition planning and conduct market research (see Part 10) for all acquisitions in order to promote and provide for--

[Sentence omitted]

Full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)).

Based on a comparison of the statements made by the Secretary of Defense, the SOW, and the proposal submitted by Mr. Feith—and considering that no other offers were received—the solicitation was tailored so narrowly that only Mr. Feith was likely to respond. It also makes it more likely that other responders could not meet all of the detailed requirements to the same extent as Mr. Feith, even though the solicitation stated that all specifications did not have to be met. The solicitation also stated, “Experience is more important than [sic] cost.” Again, this gave an advantage to someone who had actually performed all of the functions as had Mr. Feith. If NDU needed Mr. Feith’s specific expertise, they should have justified a sole-source contract under FAR Part 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.”

Other Educational Support Services Contracts

When formulating specifications for educational support services, NDU officials may have tailored the SOWs so narrowly that competition was limited.

We obtained a list of 556 contracts valued at more than \$92 million that were identified by NDU as educational support services contracts awarded from January 2000 through December 2006. Of the 556 contracts, we judgmentally selected and analyzed 47 contracts, including Mr. Feith’s. Of the 47 contracts, 35 were advertised competitively and 12 were awarded noncompetitively. For the 35 contracts that were advertised on a competitive basis, we found the following:

- 25 of the 35 (71.4 percent) contracts were awarded based on the receipt of a single bid,
- 29 of the 35 (82.9 percent) contract solicitations contained a single recommended source, and
- all but one of the contracts containing a single recommended source were awarded to the recommended source.

NDU officials attributed the lack of bids to the specialized nature of the work done at the university.

Although we are not projecting these results to the universe of educational support services contracts awarded by NDU during the selected period, the results raised concerns because so many of the sample contracts displayed these characteristics. The lack of bids from other than the recommended source was a strong indication that there was inadequate market research, and there was only one person or organization that could fulfill the requirements specified.

See Appendix D for a list of the 47 contracts we reviewed.

Simplified Acquisition Procedures

The use of simplified acquisition procedures was inappropriate for some educational support contracts. NDU incorrectly procured educational support services as commercial items and advertised solicitations for insufficient periods of time.

The standards for classifying a procurement as a simplified procurement are contained in FAR Part 13, "Simplified Acquisition Procedures." The FAR encourages the use of simplified acquisition procedures as long as the requirements for these solicitations are met. NDU did not meet the requirements of FAR Part 2, "Definitions of Words and Terms"; Part 5, "Publicizing Contract Actions"; or Part 13, "Simplified Acquisition Procedures," when procuring educational support services.

A contracting officer stated that all of the NDU educational support services contracts are considered commercial items because education/academia is universal and not limited to the Government. NDU classified all 47 contracts reviewed as the procurement of commercial items. Many of these contracts do not meet the definition of commercial items as specified in the FAR. These services are not readily available on the commercial market, nor are they catalog items. And, in cases such as Mr. Feith's, these were uniquely military-related educational services. A commercial item involving services is defined by FAR Part 2.101(b) as follows:

"Commercial Item" means-- ... (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services— (i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and (ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Twenty-three of the 47 contracts were over the simplified acquisition threshold of \$100,000. These contracts ranged in value from \$101,000.00 to \$1,069,799.88. NDU inappropriately used the following FAR citation as justification for the purchase of educational support services over the \$100,000 simplified acquisition threshold.

FAR Subpart 13.5, "Test Program for Certain Commercial Items":

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5.5 million (\$11 million for acquisitions as described in 13.500(e)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition

procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

Sufficiency of Solicitation Time

According to FAR Part 5.203, all contracts over the simplified acquisition threshold must be solicited for at least 30 days. Seventeen contracts were above the simplified threshold but were solicited for less than 30 days.

FAR Part 5.203, “Publicizing and Response Time”: Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows: ... (c) Except for the acquisition of commercial items (see 5.203(b)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold.

Soliciting for less than the 30-day requirement reduces the opportunity for full and open competition.

Unsolicited Proposals

There was no written justification in the contract files to support the sole-source award of two contracts when unsolicited proposals were submitted. These were the only unsolicited proposals in the sample of 47 educational support service contracts selected for review. According to FAR Part 6.303-1, these types of awards must be justified based on the specific circumstances specified in FAR Part 6.302.

FAR Part 6.303-1, “Requirements”: (a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer--(1) Justifies, if required in 6.302, the use of such actions in writing; (2) Certifies the accuracy and completeness of the justification; and (3) Obtains the approval required by 6.304.”

FAR Part 6.303-2, “Content”: (a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information: ... (6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2, and if not, which exception under 5.202 applies. (7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable. (8) A description of the market research conducted (see Part 10) and the results or a statement of the reason

market research was not conducted. (9) Any other facts supporting the use of other than full and open competition”

Neither contract W9137B-05-P-0083,¹ valued at \$169,999.92, nor W9137B-05-P-0091,² valued at \$75,000.00, contained the required justification documentation, nor did they meet the circumstances defined by FAR Part 6.302 as permitting other than full and open competition.

Office of the Secretary of Defense Political Appointees

Based on a comparison of Office of Personnel Management records and contracts awarded by NDU from January 2000 through December 2006, we identified three contracts that NDU awarded to one OSD political appointee—a former Assistant Secretary of Defense for International Security Affairs. The purpose of the three contracts was to identify key mission areas for the use of information technology and to develop operating approaches to maximize the use of information technology capabilities. The total value of the three contracts was \$522,000.

The first two contracts were advertised on a competitive basis. However, as with the other educational support services solicitations we reviewed, there was only one recommended source, the only bid received was from the recommended source, and the award was made to the recommended source. NDU awarded the third contract on a sole-source basis because only one bid was received for the first two solicitations.

Conclusion

Based on the contracts reviewed, we concluded that NDU’s contracting procedures for educational support services need to be improved.

- Evidence indicated that the SOWs used in the awards of educational support services contracts may have been written too narrowly to result in full and open competition. If these detailed specifications were justified to meet NDU’s specialized missions, NDU should have properly supported the use of these specifications and the need for unique or sole-source contracts.

¹ The purpose of the contract was: A study of military innovation post-Goldwater Nichols and the acquisition reforms of the late Reagan administration years. The study involved whether or not jointness and acquisition authority centralization hurts, helps, or is irrelevant to military innovation. Year one was to create stand-alone historical narratives of what happened. Year two was to conclude an evaluation of the impacts of jointness and other reforms to date, as well as the implications of proposed future organizational reforms on the innovation process. The final product will be a book manuscript that combines all the work from both years.

² The purpose of the contract was: The case of swine flu proposal seeks support for the final phase of a long-term research project. The proposal already conducted 40 lengthy, semi-structured, personal interviews with the scientific decision makers responsible for the swine flu policy in the U.S., Britain, and Canada. An extensive review of the scientific literature on the influenza is near completion. The proposal was to complete the analysis of the three-country case study, and report the findings in a book-length monograph, which will be submitted to an appropriate publisher.

- The award of contract W9137B-06-P-0107 to Mr. Feith was a questionable use of a competitive solicitation. However, the incoming President of NDU took quick and appropriate action to cancel the contract by mutual consent resulting in no cost to the Government.
- NDU inappropriately used simplified acquisition procedures to purchase services that do not qualify for this method because of the nature of the services purchased and the estimated value of the contracts. Contracts were also not advertised for sufficient periods of time.
- In addition, NDU awarded two contracts on the basis of unsolicited proposals without adequately justifying the lack of competitive acquisition methods.

Recommendations, Client Comments, and Our Response

1. We recommend that the President of the National Defense University:

- Evaluate current procedures to ensure that appropriate market research is applied and statements of work in contract solicitations are properly justified, and to identify the qualifications and skills needed by the National Defense University without unnecessarily limiting competition according to Federal Acquisition Regulation Part 7.102, “Policy.”**

Client Comments. The President of the National Defense University concurred and stated that on April 15, 2008, the National Defense University Contracting Directorate informed all requiring activities to follow FAR Part 11 when describing needs within a statement of work. In addition, NDU conducted internal training for contracting and administrative officials to identify and address overly restrictive requirements.

Audit Response. Client comments are responsive to the intent of the recommendation.

- Ensure the proper type of solicitation is used when obtaining educational support services including when appropriate, the justification and use of sole-source procurement in accordance with Federal Acquisition Regulation Part 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.”**

Client Comments. The President of the National Defense University concurred and added that FAR Part 6.302-1 will be used when applicable. Additionally, on April 15, 2008, NDU provided a refresher training course to requiring activities.

Audit Response. Client comments are responsive to the intent of the recommendation.

Appendix A. Scope and Methodology

We conducted this performance audit from April 2007 through March 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Although NDU awards different types of contracts in order to fulfill its mission, we focused our efforts on educational support services contracts because that was the type of contract awarded to Mr. Feith. We

- Obtained from an NDU contracting official a list of 556 educational support services contracts valued more than \$92 million that were awarded from January 2000 through December 2006;
- Reviewed the events surrounding the award of Mr. Feith's contract (W9137B-06-P-0107); compared it with the U.S.C., FAR, DFARS, and other guidance to identify deviations; interviewed appropriate personnel; and reviewed pertinent documentation supporting the award of the contract;
- Identified 46 additional contracts that contained specifications similar to Mr. Feith's contract and evaluated the 46 contract files against the U.S.C., FAR, DFARS, and other guidance to identify deviations from required policies and procedures;
- Obtained from OPM a list of OSD political appointees that were in place October 1, 2000, through June 15, 2007, and compared the list with the 556 educational support contracts provided by NDU; and
- Identified three contracts that NDU awarded to a former OSD political appointee, and compared the contracts against the U.S.C., FAR, DFARS, and other guidance to identify deviations from required policies and procedures.

We attempted to obtain e-mail traffic between NDU officials and Mr. Feith that may have been related to the award of the contract. We also obtained records from Mr. Feith's NDU computer through DoD Office of the Inspector General's Office of Intelligence to determine whether there was correspondence related to the award of the contract. We did not identify any correspondence directly related to the award of contract W9137B-06-P-0107.

Based on our audit work, we developed a detailed memorandum describing NDU's contracting procedures for educational support services contracts. NDU contracting officials reviewed the memorandum and agreed with its contents.

Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

Use of Technical Assistance

We did not use technical assistance to perform this audit.

Prior Coverage

No prior coverage has been conducted on this subject during the last 5 years.

Appendix B. Laws and Regulations

United States Code

Section 1595, title 10, U.S.C., “Civilian faculty members at certain Department of Defense schools: employment and compensation,” January 3, 2005:

Authority of Secretary.--The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

Public Law

Public Law 101-511, Section 8038, “Department of Defense Appropriations Act, 2008,” October 3, 2007:

SEC. 8038. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines--

- (1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;
- (2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or
- (3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support: *Provided*, That this limitation shall not apply to contracts in an amount of less than \$25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

Federal Acquisition Regulation

FAR Part 2, “Definitions of Words and Terms,” December 24, 2007:

FAR Subpart 2.101(b), “Definitions”:

“Commercial item” means --

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—

- (i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

FAR Part 4, "Administrative Matters," November 22, 2006:

FAR Subpart 4.803, "Contents of Contract Files":

The following are examples of the records normally contained, if applicable, in contract files:

(a) *Contracting office contract file.*

[Not all items are included]

- (1) Purchase request, acquisition planning information, and other presolicitation documents.
- (2) Justifications and approvals, determinations and findings, and associated documents.
- (5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.
- (6) Set-aside decision.
- (7) Government estimate of contract price.
- (8) A copy of the solicitation and all amendments thereto.
- (9) Security requirements and evidence of required clearances.
- (10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are --
- (11) Contractor's representations and certifications (see 4.1201(c)).
- (13) Source selection documentation.
- (15) Small Business Administration Certificate of Competency.
- (19) Cost or price analysis.
- (22) Justification for type of contract.
- (24) Required approvals of award and evidence of legal review.
- (25) Notice of award.
- (26) The original of--
 - (i) The signed contract or award,
 - (ii) All contract modifications, and
 - (iii) Documents supporting modifications executed by the contracting office.
- (30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.
- (32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.
- (33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.
- (37) Contract completion documents.
- (38) Documentation regarding termination actions for which the contracting office is responsible.
- (40) Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract.
- (41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.

FAR Part 5, “Publicizing Contract Actions,” September 28, 2006:

FAR Subpart 5.203, “Publicizing and Response Time”:

Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows:

(a) . . . The notice must be published at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may --

(1) Establish a shorter period for issuance of the solicitation....

FAR Part 6, “Competition Requirements,” September 28, 2006:

A. FAR Subpart 6.203, “Set-Asides for Small Business Concerns”:

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

B. FAR Subpart 6.302, “Circumstances Permitting Other Than Full and Open Competition”:

The following statutory authorities, (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

C. FAR Subpart 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements”:

a) Authority.

[Section (1) omitted]

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that --

(A) Demonstrates a unique and innovative concept (see definition at 2.101), or, demonstrates a unique capability of the source to provide the particular research services proposed; . . .

D. FAR Subpart 6.303-1 “Requirements”:

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer --

(1) Justifies, if required in 6.302, the use of such actions in writing;

- (2) Certifies the accuracy and completeness of the justification; and
- (3) Obtains the approval required by 6.304.

E. FAR Subpart 6.303-2 “Content”:

- (a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:
 - (1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition.”
 - (2) Nature and/or description of the action being approved.
 - (3) A description of the supplies or services required to meet the agency’s needs (including the estimated value).
 - (4) An identification of the statutory authority permitting other than full and open competition.
 - (5) A demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.
 - (6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.
 - (7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.
 - (8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.
 - (9) Any other facts supporting the use of other than full and open competition, such as:
 - (i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.
 - (ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.
 - (iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.
 - (10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.
 - (11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.
 - (12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer’s knowledge and belief.

FAR Part 7, “Acquisition Planning,” November 8, 2007:

FAR Subpart 7.102, “Policy”:

(a) Agencies shall perform acquisition planning and conduct market research (see Part 10) for all acquisitions in order to promote and provide for--

[Section (1) omitted]

(2) Full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)).

FAR Part 10, Market Research,” February 12, 2007:

FAR Subpart 10.001, “Policy”:

(a) Agencies must –

[Section (1) omitted]

(2) Conduct market research appropriate to the circumstances

--

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

[Sections (iv) and (v) omitted]

(3) Use the results of market research to --

(i) Determine if sources capable of satisfying the agency’s requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency’s needs are not available, nondevelopmental items are available that ...

FAR Part 11, “Describing Agency Needs,” April 22, 2008:

FAR Subpart 11.104, “User of Brand Name or Equal Purchase Descriptions”:

(a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.

(b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

FAR Part 13, “Simplified Acquisition Procedures,” March 22, 2007:

A. FAR Subpart 13.003, “Policy”:

(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases

at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using –
[Sections (a)(1, 2, and 3) omitted]

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in 13.201(g)(1)) and not exceeding \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101) is reserved exclusively for small business concerns and shall be set aside (see 19.000 and subpart 19.5). See 19.000(b) and 19.502-2 for exceptions.

B. FAR Subpart 13.5, “Test Program for Certain Commercial Items”:

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5.5 million (\$11 million for acquisitions as described in 13.500(e)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

FAR Part 37, “Service Contracting,” May 19, 2006:

A. FAR Subpart 37.103, “Contracting Officer Responsibility”:

(a) The contracting officer is responsible for ensuring that a proposed contract for services is proper. For this purpose the contracting officer shall --

(1) Determine whether the proposed service is for a personal or nonpersonal services contract using the definitions in 2.101 and 37.101 and the guidelines in 37.104;

[Section (2) omitted]

(3) Document the file (except as provided in paragraph (b) of this section) with --

(i) The opinion of legal counsel, if any,

(ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in 37.104(b), . . .

Defense Federal Acquisition Regulation Supplement

DFARS Subpart 206.3, “Other Than Full and Open Competition,” December 15, 2004:

DFARS Subpart 206.302-1, “Only one responsible source and no other supplies or services will satisfy agency requirements”:

(a) *Authority.*

(2)(i) Section 8059 of Pub. L. 101-511 and similar sections in subsequent defense appropriations acts, prohibit departments and agencies from entering into contracts for studies, analyses, or

consulting services (see FAR Subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(1) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(i) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(ii) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(iii) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

The Chairman of the Joint Chiefs of Staff Instructions

Chairman of the Joint Chiefs of Staff Instructions 1800.01C, Enclosure B, “Policies for Intermediate and Senior-Level Colleges,” December 22, 2005:

b. Faculty. Faculty members will be of the highest caliber, combining the requisite functional or operational expertise with teaching ability and appropriate academic credentials.

Appendix C. Comparison of Statements

Secretary of Defense's Farewell Speech for Mr. Feith		NDU Statement of Work	Mr. Feith's Proposal
1.	What he [Mr. Feith] and his team have accomplished....	Recently (within past 4 years) have served as a senior policy maker or consultant to such policy makers	From July 16, 2001 to August 8, 2005 - that is, within the last four years - served as Under Secretary of Defense for Policy.
1a.	A plan to revamp America's Global Defense Posture - move troops, move families, move contractors, and facilities from where they were at the end of World War II to the end of the Cold War to where they're needed and useable today;	The revamping of America's Global Defense Posture	Was responsible for advising the Secretary of Defense ("SD")* on the strategic considerations for realigning our Global Defense Posture and developing options regarding facilities, activities, relationships and legal arrangements. Worked with the Secretary on evaluating the options and, together with my State Department colleagues, personally conducted consultations and negotiations with our foreign partners.
1b.	A NATO Response Force , which has long been needed, to counter threats and to deal with crises , and hopeful deter, and dissuade and help in addition to move our Alliance into the future;	NATO Response Force to counter threats and to deal with crises	Worked with SD to develop the concept. Supervised the work of Assistant Secretary of Defense for International Security Policy who conducted negotiations at NATO headquarters to create the Force.
1c.	Important new security relationships in Central Asia and South Asia ;	Security relationships in Central Asia and South Asia	Co-chaired with my Indian counterpart the U.S.-India Defense Policy Group, which met at least annually. Co-chaired with my Pakistani counterpart the U.S.-Pakistan Defense Consultative Group, which met at least annually. Was responsible for advising the SD on U.S. defense relations with all the states of Central Asia and South Asia. Advised the SD on the development of U.S. strategy in Afghanistan for ousting the Taliban, destroying Al Qaida in Afghanistan and conducting stabilization and reconstruction.

* Secretary of Defense is abbreviated as SD for the rest of this table.

Secretary of Defense's Farewell Speech for Mr. Feith		NDU Statement of Work	Mr. Feith's Proposal
1d.	Helping to fashion a new National Security Defense Strategy that helps guide our Department in planning assumptions for the war on terrorism as well as our other responsibilities.	National Security Strategy, National Defense Strategy and strategy for the GWOT	Was responsible for the Defense Department's input into the National Security Strategy. Helped draft the National Defense Strategy; was responsible for coordinating the draft throughout the Defense Department and revising it per SD's direction. Was principal author of the briefings that became the foundation for the National Military Strategic Plan for the War on Terrorism. Was responsible for the Defense Department's contributions to the 2005 White House strategic review of GWOT strategy.
1e.	The training and equipping of foreign forces ;	Training and Equipping of foreign forces	Helped create the Defense Department programs for training and equipping various foreign forces, including in Afghanistan, Colombia, Georgia, Iraq, Pakistan, Philippines and Yemen. Was responsible for the Defense Department's input into the foreign and security assistance allocation work of the State Department.
1f.	The Global Peace Operations Initiative , just to name two or three examples of things that are being done.	The Global Peace Operations Initiative	Helped create the Global Peace Operations Initiative and obtain interagency approval for the President's launching of the initiative.
2.		Contractor must be an adept lecturer and mentor and nationally recognized expert, capable of addressing an array of national security and international issues relevant to our student bodies, faculties and staff	Over the last thirty years, I have lectured on national security affairs, diplomatic history and international law at academic institutions, think tanks and civic organizations including Harvard University, the U.S. Naval Academy, Johns Hopkins School for Advanced international Studies, Georgetown University, the Heritage Foundation, the Center for Strategic and International Studies, the American Enterprise Institute, the Council on Foreign Relations, the World Affairs Council of San Francisco and the Middle East Forum. I have provided academic and professional advice to faculty members and students. At present, I am a Distinguished Visiting Fellow at the Hoover Institution at Stanford University and I co-chair a task force on strategies for combating terrorism at the Kennedy School of Government at Harvard University. I have accepted a professorship at Georgetown University and will begin teaching there in the fall of 2006. As for Nationally Recognized expertise, I have published many articles in newspapers and journals and written chapters for several books on national security affairs, diplomatic history and international law. I am frequently invited to comment on national security and international issues by U.S. and foreign television, radio and print journalists.

Secretary of Defense's Farewell Speech for Mr. Feith		NDU Statement of Work	Mr. Feith's Proposal
3.		Contractor must have extensive background in National Security Defense Intelligence and Interagency processes that produces insights into the interagency policy making process.	During the Reagan administration, I developed extensive background in national security, defense, intelligence and interagency processes. I participated in interagency policy making on national security, defense and intelligence matters as a White House staffer and later as a Defense Department official. In 1981-2, I served as a Middle East specialist on the National Security Council staff. My responsibilities included Persian Gulf, Arab-Israeli and North African affairs and energy security policy. I then transferred to the Defense Department, where I served as Special Counsel to the Assistant Secretary of Defense for International Security Policy and worked on many matters, including U.S. relations with Turkey and Greece and U.S. public diplomacy policy in the Cold War. Secretary of Defense Caspar Weinberger appointed me Deputy Assistant Secretary of Defense for Negotiations Policy in 1984 and my responsibilities included multilateral arms control, U.S.-Soviet affairs and U.N. affairs. During the George W. Bush administration, I increased my experience and background in national security, defense, intelligence and interagency processes as the Under Secretary of Defense for Policy. I was responsible for the Defense Department's relations with all foreign countries and international organizations and with the other departments and agencies of the U.S. government with regard to national security policy. I represented the Defense Department on the Deputies Committee, the government's highest interagency forum for national security, defense and intelligence matters short of the cabinet level.
4.		Contractor must have published works on the U.S. national security policy.	A sample listing of my published works on U.S. national security policy is attached. (Mr. Feith listed 25 of his published works)
5.		Experience to meet and perform the government's statement of work (Experience is more important than cost).	As I believe my resume and the foregoing review of the Evaluation Criteria and my qualifications shows, I have the experience to meet and perform the government's statement of work.
6.		Past performance	Having never been party to a government contract of this kind, I have no past performance to evaluate.
7.		Cost	The total cost of this cost for the Base Year and the three Option Years is \$501,774.00.

Secretary of Defense's Farewell Speech for Mr. Feith		NDU Statement of Work	Mr. Feith's Proposal
8.		Resumes will be required with contractor's cost proposal.	See my resume, attached.

Appendix D. List of Contracts Reviewed

	Contract Number	Award Date	Estimated Contract Value	Purpose of Contract
1	DADW49-02-P-0131	8/29/2002	\$134,350	The contractor will provide strategic policy forum gaming design, development, and program support analyst.
2	DABJ29-03-P-0203	9/16/2003	\$124,990	The contractor will provide chemical, biological, radiological, and nuclear weapons counter proliferation expertise.
3	DABJ29-03-P-0209	9/16/2003	\$180,000	The contractor will provide several lectures, team-teach an elective on civil-military relations, provide advice and counsel, and provide student mentoring.
4	W9137B-04-P-0002	10/3/2003	\$ 30,000	The contractor will facilitate, manage, and enhance participant discussions focused on Congress and the U.S. political process.
5	W9137B-04-P-0003	10/3/2003	\$ 30,000	The contractor will prepare curriculum packages to address topic, identify speakers and coordinate discussions, provide advice, counsel, and mentor.
6	W9137B-04-P-0031	1/5/2004	\$108,750	The contractor will provide perspective, insights, and expertise of a senior diplomat to the conceptualization, development, execution; and evaluation of Africa Center seminars, symposia, workshops, stakeholder, support, outreach, research, and other programs.
7	W9137B-04-P-0046	2/2/2004	\$ 85,000	The contractor will begin developing requirements for Joint and Service Information Technology Transformation issue, develop a strategic action plan that integrates all components, and conduct information technology study.
8	W9137B-04-P-0050	2/9/2004	\$ 93,750	The contractor will provide the School of National Security Executive Education with 15 separate courses for two semesters.
9	W9137B-04-P-0093	5/14/2004	\$445,237	The contractor will prepare and facilitate a 5-day graduate business school executive education.

	Contract Number	Award Date	Estimated Contract Value	Purpose of Contract
10	W9137B-04-P-0112	6/15/2004	\$ 31,200	The contractor will provide a seminar for the contrast between Corporate America and the military.
11	W9137B-04-P-0180	9/8/2004	\$ 95,000	The contractor will identify and develop policy recommendations for the use of information technology, building on the Center for Technology and National Security Policy FY 2004 study.
12	W9137B-04-P-0182	9/10/2004	\$101,000	The contractor will prepare and deliver weekly lectures and seminar instruction in American Generalship and Admiralship for national and military strategy.
13	W9137B-04-P-0193	9/21/2004	\$120,000	The contractor will provide lectures, team-teach, and provide advice and counsel.
14	W9137B-04-P-0195	9/24/2004	\$ 60,000	The contractor will prepare curriculum packages; facilitate, manage, and enhance participant discussions; identify speakers and coordinate discussions of issues; provide advice, counsel, and act as a mentor.
15	W9137B-05-P-0010	11/12/2004	\$ 9,999	The contractor will assist in preparation of curriculum packages; facilitate, manage, and enhance participant discussion; provide advice, counsel, and act as a mentor to Naval War College faculty.
16	W9137B-05-P-0014	12/7/2004	\$ 50,000	The contractor will identify, gather and assess, and research the advanced technology offers that significantly impacted the Army's past and current fighting forces.
17	W9137B-05-P-0034	1/11/2005	\$ 85,000	The contractor will provide chemical, biological, radiological, and nuclear weapons expertise on combating weapons of mass destruction.
18	W9137B-05-P-0041	1/12/2005	\$471,675	The contractor will provide a program of instruction to include automated methods, program management, instructional services, administrative services, subject matter expertise, and technical services.

	Contract Number	Award Date	Estimated Contract Value	Purpose of Contract
19	W9137B-05-P-0073	3/23/2005	\$373,320	The contractor will serve as the course director and be responsible for the preparation, implementation, and updating of the Next Generation of African Military Leaders Program.
20	W9137B-05-P-0083	6/16/2005	\$399,999	The contractor will provide a collaborative study of military innovation post-Goldwater Nichols and the acquisition reforms of the late Reagan Administration years.
21	W9137B-05-P-0091	5/17/2005	\$ 75,000	The contractor will support the final phase of a long-term research project. The contractor will also complete an analysis of the three-country case study, and report the findings in a book-length monograph.
22	W9137B-05-P-0104	6/3/2005	\$ 14,025	The contractor will provide technical expertise to facilitate at least one and up to six strategic tabletop exercises for the Secretary of Defense Strategic Policy Forum.
23	W9137B-05-P-0111	6/13/2005	\$399,356	The contractor will provide substantive expertise for the National Flagship Language Initiative Political Program.
24	W9137B-05-P-0130	7/21/2005	\$ 15,000	The contractor will co-author a book on improving information networks, attend meetings, conduct interviews, gather research, and author a specific chapter on relevant technology.
25	W9137B-05-P-0193	9/16/2005	\$342,000	The contractor will continue the Center for Technology and National Security Policy study on information technology in support of stabilization and reconstruction. The contractor will also analyze the use of information technology, information operations, and intelligence in support of DoD missions.
26	W9137B-05-P-0195	6/16/2005	\$100,000	The contractor will prepare and deliver weekly lectures and seminar instruction, research and write a book, prepare lesson plans, and prepare research projects.
27	W9137B-06-P-0052	4/7/2006	\$220,200	The contractor will research and analyze China's current biotechnology.

	Contract Number	Award Date	Estimated Contract Value	Purpose of Contract
28	W9137B-06-P-0070	5/10/2006	\$ 22,800	The contractor will review and assess the current deficiencies of United Nations peacekeeping operations, develop a proposal, and prepare a final report of the assessment and recommendations.
29	W9137B-06-P-0081	5/31/2006	\$150,480	The contractor will provide software to support and run the building direct digital control systems. Provide on-site training, ensure loop control systems are analyzed frequently, and repair and replace failed or worn system components.
30	W9137B-06-P-0083	6/1/2006	\$ 172,500	The contractor will provide an individual with the prerequisite event planning expertise in support of the tasks related to the Executive Strategic Gaming Initiative to assist in invitation of Members of Congress and the Executive Branch to participate in strategic-level games/exercises and interactions.
31	W9137B-06-P-0086	6/2/2006	\$ 37,200	The contractor will provide subject matter and analytical expertise to the Weapons of Mass Destruction Center.
32	W9137B-06-P-0089	6/9/2006	\$ 96,000	The contractor will provide policy and programmatic support to the project team, and assist in the planning and execution of all aspects of the Space Power Theory Project.
33	W9137B-06-P-0091	6/9/2006	\$ 116,744	The contractor will provide strategic policy forum facilitation support and short-term, quick-response, technical assistance/facilitation.
34	W9137B-06-P-0094	6/23/2006	\$ 324,000	The contractor will develop curriculum materials for the short courses taught, offer a full semester seminar on the transformation of interagency operations, research and author one article, and speak to interested groups on interagency transformation in the form of seminars and conferences.
35	W9137B-06-P-0107	7/12/2006	\$ 501,774	The contractor will provide several lectures, conduct a study, and produce a report.
36	W9137B-06-P-0117	7/28/2006	\$ 110,988	The contractor will develop and execute a classroom exercise to allow course participants to gain

	Contract Number	Award Date	Estimated Contract Value	Purpose of Contract
				understanding of network centric operational concepts.
37	W9137B-06-P-0138	8/24/2006	\$ 35,000	The contractor will provide an in-depth analysis, writing, research, and publishing on important policy, planning, programming, and technology issues facing the DoD, the U.S. Government, and the North Atlantic Alliance.
38	W9137B-06-P-0140	9/5/2006	\$1,069,800	The contractor will teach professors and staff to perform duties in the areas of financial management, administration, logistical support, protocol, personnel, contracting, information systems, educational technology programs, operations-type duties, and academic research.
39	W9137B-06-P-0143	8/31/2006	\$ 10,000	The contractor will provide students with an understanding and appreciation of the joint multi-service environment.
40	W9137B-06-P-0153	9/15/2006	\$ 41,900	The contractor will provide an analysis of chemical-biological defense testing and evaluation procedures of the DoD organization engaged in the development of equipment and materials.
41	W9137B-06-P-0155	9/14/2006	\$ 66,088	The contractor will provide a consultant for Theater Warfare Strategic Issues curriculum development.
42	W9137B-06-P-0159	9/21/2006	\$125,000	The contractor will participate in the field of cyberspace and cyberpower for cultivation for the workshops, and write draft chapters for a book on cyberspace and cyberpower.
43	W9137B-06-P-0163	9/19/2006	\$139,920	The contractor will provide an expert consultant for national security policy executive level gaming.
44	W9137B-06-P-0164	9/20/2006	\$ 45,000	The contractor will produce a 50–60 page study on the role of the U.S. Congress during major conflicts in U.S. history.
45	W9137B-06-P-0165	9/23/2006	\$111,500	The contractor will provide research, writing, and consultation on Army Strategies and Techniques program.
46	W9137B-06-P-0179	9/26/2006	\$ 5,280	The contractor will purchase a private island in Second Life 3-D collaborative virtual environment.

	Contract Number	Award Date	Estimated Contract Value	Purpose of Contract
47	W9137B-06-P-0180	9/27/2006	\$ 21,600	The contractor will create case studies that will support the education of engineers, information technology professionals, and the improvement of the cyber security of the Control System, supervisory control, and data acquisition systems.

Appendix E. Congressional Request

<p>BYRON L. DORGAN POSTAL EMPLOYEES TELETYPE UNIT, 1000 14TH STREET WASHINGTON, DC 20005 (202) 692-1111 (202) 692-1111</p> <p>COMMUNICATIONS OFFICE ADDRESS: 1000 14TH STREET SUITE 1000 WASHINGTON, DC 20005</p> <p>UNITED STATES SENATE WASHINGTON, DC 20510-3105</p> <p>March 7, 2007</p>	<p>United States Senate</p> <p>WASHINGTON, DC 20510-3105</p> <p>March 7, 2007</p>	<p>SENATE OFFICE 1000 14TH STREET SUITE 1000 WASHINGTON, DC 20005 (202) 692-1111 (202) 692-1111</p> <p>SENATE OFFICE 1000 14TH STREET SUITE 1000 WASHINGTON, DC 20005 (202) 692-1111 (202) 692-1111</p> <p>SENATE OFFICE 1000 14TH STREET SUITE 1000 WASHINGTON, DC 20005 (202) 692-1111 (202) 692-1111</p> <p>SENATE OFFICE 1000 14TH STREET SUITE 1000 WASHINGTON, DC 20005 (202) 692-1111 (202) 692-1111</p>
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The Honorable Thomas F. Gimble
Acting Inspector General
Department of Defense Inspector General
400 Army Navy Drive (Suite 1000)
Arlington, VA 22202-4704

Dear Mr. Gimble,

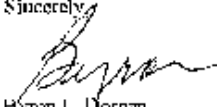
I would like to call your attention to an article that appeared recently in the New York Times. It relates the story of the contract awarded to Douglas Feith in June 2006 by the National Defense University (NDU). The contract was cancelled in August 2006 after questions were raised about it by a reporter from the New York Times.

While the Times article raises some issues, I have uncovered additional information that I believe would indicate that Feith's contract was an improperly awarded "sweatheart deal." The most troubling is that at the ceremony in Mr. Feith's honor held at the Pentagon on August 8, 2005, then Secretary of Defense Rumsfeld used very specific words to describe Mr. Feith's achievements. Those words appeared almost verbatim almost a year later in the solicitation issued by NDU for the position for which Mr. Feith was ultimately awarded the contract.

This would indicate that there was some level of collaboration between NDU contracting officials and Mr. Feith on the solicitation itself.

I am requesting that you conduct an investigation of the events surrounding the award of this contract in particular, and the contracting procedures currently in use in general at NDU. I would also like to know if other key officials who have held political appointments in the Office of the Secretary of Defense have been awarded contracts by NDU since January 2000.

I look forward to hearing from you on this issue as soon as possible.

Sincerely,

Byron L. Dorgan
United States Senate

Enclosures

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The National Defense University Comments

Final Report
Reference



DEPARTMENT OF DEFENSE
NATIONAL DEFENSE UNIVERSITY
WASHINGTON DC 20319-5066
28 April 2008

REPLY TO
ATTENTION OF:

OFFICE OF THE PRESIDENT

Deputy Assistant Inspector General, Acquisition and Contract Management
ATTN: Mr. Bruce A. Burton
400 Army Navy Drive
Arlington, VA 22202-4704

Dear Mr. Burton,

This is the National Defense University (NDU) response to the DOD IG draft report D2007-D000CG-0172.000 Contract Procedures for Educational Support Services at the National Defense University. Please find our comments and responses to recommendations in the following paragraphs.

Comment 1a: This comment clarifies an important fact in the sequence of events found at pages 3 and 4 of the Draft Report addressing NDU's decision to enter into an agreement for mutual cancellation of the Feith contract. That decision was not based on guidance received from DoD as stated. Rather, the decision was based on NDU's own internal deliberations and simultaneous discussions with the contractor. Recommend all references to DoD "guidance" be removed. Specifically, at the top of page 4: "NDU officials consulted with DoD, NDU legal and contracting officials for guidance. Delete "for guidance". Next sentence at page 4 delete: "Based on the guidance received".

Comment 1b: Material Internal Controls : Implementing the recommendations outlined below will improve controls over NDU's procurement of education support services. NDU will include the findings of this report and corrective action taken as material weaknesses discovered and corrected in our 2008 Management Control Plan.

RECOMMENDATION 1a: Evaluate current procedures to ensure that appropriate market research is applied and statements of work in contract solicitations are properly justified, and to identify the qualifications and skills needed by the National Defense University without unnecessarily limiting competition according to Federal Acquisition Regulation (FAR) Part 7.102, "Policy."

NDU RESPONSE: Agree with findings and recommendations.

Action taken/planned: NDU Contracting Directorate provided instruction during April's Program Budget Advisory Council (PBAC) to inform all requiring activities at the University that they need to describe their needs in salient characteristic per FAR part 11. Conducted

Revised

internal training for all assigned Contract Officers and Administrators to recognize and address overly restrictive requirements.

Completion dates of action taken/planned: 15 April 2008

RECOMMENDATION 1b: Ensure the proper type of solicitation is used when obtaining educational support services including the justification and use of sole-source procurement when appropriate in accordance with Federal Acquisition Regulation Part 6.302-1, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements."

NDU RESPONSE: Agree with findings and recommendations.

Action taken/planned: When FAR part 6.302-1 is applicable we will request the appropriate justifications and approvals to execute without providing for full and open competition.
Refresher training was provided to requiring activities during PBAC on 15 Apr 2008.

Completion dates of action taken/planned: 15 April 2008

We appreciate the opportunity to provide comments on the draft report. My point of contact for this issue is Mr. Frederick Steward who is available at (202) 685-3789; email: stewardf@ndu.edu.

Sincerely,



F. C. Wilson
Lieutenant General, U.S. Marine Corps
President

Team Members

The Department of Defense Office of the Deputy Inspector General for Auditing, Acquisition and Contract Management prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

Richard B. Jolliffe

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Inspector General Department of Defense

