

(iii) Describe how the contractor's performance will be measured against the award-fee evaluation criteria;

(iv) Utilize the adjectival rating and associated description as well as the award-fee pool earned percentages shown below in Table 16-1. Contracting

officers may supplement the adjectival rating description. The method used to determine the adjectival rating must be documented in the award-fee plan;

TABLE 16-1

Award-Fee Adjectival Rating	Award-Fee Pool Available To Be Earned	Description
Excellent .....	91%—100% .....	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Very Good .....	76%—90% .....	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Good .....	51%—75% .....	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Satisfactory .....	No Greater Than 50% .....	Contractor has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Unsatisfactory .....	0% .....	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.

(v) Prohibit earning any award fee when a contractor's overall cost, schedule, and technical performance is below satisfactory;

(vi) Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (e.g. six months, nine months, twelve months, or at specific milestones); and

(vii) Define the total award-fee pool amount and how this amount is allocated across each evaluation period.

(4) *Rollover of unearned award fee.* The use of rollover of unearned award fee is prohibited.

(5) *Limitations.* No award-fee contract shall be awarded unless—

(i) All of the limitations in 16.301-3, that are applicable to cost-reimbursement contracts only, are complied with;

(ii) An award-fee plan is completed in accordance with the requirements in 16.401(e)(3); and

(iii) A determination and finding is completed in accordance with 16.401(d) addressing all of the suitability items in 16.401(e)(1).

(f) *Incentive- and Award-Fee Data Collection and Analysis.* Each agency shall collect relevant data on award fee and incentive fees paid to contractors and include performance measures to evaluate such data on a regular basis to determine effectiveness of award and incentive fees as a tool for improving contractor performance and achieving

desired program outcomes. This information should be considered as part of the acquisition planning process (see 7.105) in determining the appropriate type of contract to be utilized for future acquisitions.

(g) *Incentive- and Award-Fee Best Practices.* Each agency head shall provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

**16.402-1 [Amended]**

■ 4. Amend section 16.402-1 by removing from paragraph (b) “16.405-2” and adding “16.401(e)” in its place.

■ 5. Revise section 16.404 to read as follows:

**16.404 Fixed-price contracts with award fees.**

Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts shall establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to that fixed price. See 16.401(e) for the requirements relative to utilizing this contract type.

■ 6. Revise section 16.405-2 to read as follows:

**16.405-2 Cost-plus-award-fee contracts.**

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (1) a base amount fixed at inception of the contract, if applicable and at the discretion of the contracting officer, and (2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in the areas of cost, schedule, and technical performance. See 16.401(e) for the requirements relative to utilizing this contract type.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 18**

[FAC 2005-37; FAR Case 2009-003; Item VII; Docket 2009-0037; Sequence 1]

RIN 9000-AL37

**Federal Acquisition Regulation; FAR Case 2009-003, National Response Framework**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to reflect reissuance of the Federal Emergency Management Agency's (FEMA) National Response Plan (NRP). On January 22, 2008, FEMA reissued the NRP as the National Response Framework (NRF). In addition, the term "Incident of National Significance" was eliminated. These changes became effective on March 22, 2008.

**DATES:** *Effective Date:* November 13, 2009

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Ed Loeb, Director, Contract Policy Division at (202) 501-0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-37, FAR case 2009-003.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On January 22, 2008, FEMA, a component of the Department of Homeland Security, reissued the National Response Plan (NRP) as the National Response Framework (NRF). With the reissuance, the term "Incidents of National Significance" was eliminated. These changes became effective on March 22, 2008. Both the NRP and the term "Incidents of National Significance" are now obsolete.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities and other interested parties concerning the affected FAR part 18 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-37, FAR case 2009-003), in all correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

**List of Subjects in 48 CFR Part 18**

Government procurement.

Dated: October 5, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 18 as set forth below:

**PART 18—EMERGENCY ACQUISITIONS**

■ 1. The authority citation for 48 CFR part 18 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 18.001 by revising paragraph (c) to read as follows:

**18.001 Definition.**

\* \* \* \* \*

(c) When the President issues an emergency declaration, or a major disaster declaration.

■ 3. Amend section 18.203 by revising the section heading to read as follows:

**18.203 Emergency declaration or major disaster declaration.**

\* \* \* \* \*

■ 4. Amend section 18.204 by revising paragraph (a) to read as follows:

**18.204 Resources.**

(a) *National Response Framework.* The National Response Framework (NRF) is a guide to how the Nation conducts all-hazards response. This key document establishes a comprehensive, national, all-hazards approach to domestic incident response. The Framework identifies the key response principles, roles and structures that organize national response. It describes how communities, States, the Federal Government, the private-sector, and nongovernmental partners apply these principles for a coordinated, effective national response. It also describes special circumstances where the Federal Government exercises a larger role, including incidents where Federal interests are involved and catastrophic incidents where a State would require significant support. The NRF is available at <http://www.fema.gov/emergency/nrf/>.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 5 and 52**

[FAC 2005-37; Item VIII; Docket 2009-0009; Sequence 5]

**Federal Acquisition Regulation; Technical Amendments**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

**DATES:** *Effective Date:* October 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-37, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

**List of Subjects in 48 CFR Parts 5 and 52**

Government procurement.

Dated: October 5, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 5—PUBLICIZING CONTRACT ACTIONS**

**5.102 [Amended]**

■ 2. Amend section 5.102 by removing from paragraph (a)(5)(ii) "GPE;" and adding "GPE; or" in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Amend section 52.213-4 by revising the date of the clause; and removing from paragraph (a)(1)(v) "(Feb 2006)" and adding "(June 2008)" in its place.