

Part 39 - Acquisition of Information and Communication Technology

[39.001 Applicability.](#)

[Subpart 39.1 - Presolicitation](#)

[39.101 Management of risk.](#)

[39.102 Modular contracting.](#)

[39.103 Information technology services.](#)

[39.104 ICT accessibility standards.](#)

[39.104-1 Scope.](#)

[39.104-2 Policy.](#)

[39.104-3 Applicability.](#)

[39.104-4 Exceptions.](#)

[39.104-5 Exemptions.](#)

[Subpart 39.2 - Evaluation and Award](#)

[39.201 Scope of subpart.](#)

[Subpart 39.3 Postaward](#)

[39.301 ICT accessibility standards for task orders or delivery orders.](#)

39.001 Applicability.

(a) (1) This part applies to acquiring information and communication technology (ICT), and supplies and services that use ICT.

(2) This part emphasizes strategies that promote faster acquisition and secure deployment of technology that is new or emerging.

(b) This part does not apply to acquiring information technology for national security systems; as defined in 40 U.S.C. 11103

Subpart 39.1 - Presolicitation

39.101 Management of risk.

- (a) Before entering into an information technology contract, agencies should analyze risks, benefits, and costs. Reasonable risk taking is appropriate as long as risks are controlled and mitigated.
- (b) Both contracting and program office officials are responsible for assessing, monitoring and controlling risk throughout the acquisition process.

39.102 Modular contracting.

- (a) Agencies should use modular contracting (i.e., use one or more contracts to acquire information technology systems in successive, interoperable increments) to acquire major systems of information technology, to the maximum extent possible (see 41 U.S.C. 2308). Agencies may also use modular contracting to acquire non-major systems of information technology.
- (b) When acquiring an information technology system (i.e., either a major system or non-major system), it may be divided into several smaller increments (see 41 U.S.C. 2308(c)) that—
 - (1) Are easier to manage individually than would be possible in one comprehensive acquisition;
 - (2) Address complex information technology objectives incrementally to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;
 - (3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions; and
 - (4) Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments.
- (c) To promote compatibility, each increment should comply with common or commercially acceptable information technology standards when available and appropriate, and be compatible with other (including earlier and later) increments.
- (d) When using modular contracting, agencies should, to the maximum extent possible—

(1) Award a contract for an increment within 180 days after the date on which the solicitation is issued. If an award cannot be made within 180 days, agencies should consider cancelling the solicitation in accordance with 14.209 or 15.206(e).

(2) Schedule deliveries under the contract to occur within 18 months after the solicitation was issued.

39.103 Information technology services.

When acquiring information technology services, solicitations should not describe any minimum experience or educational requirements for proposed contractor personnel, unless the contracting officer determines that the needs of the agency—

(a) Cannot be met without that requirement; or

(b) Require using other than a performance-based acquisition (see subpart 37.6).

39.104 ICT accessibility standards.

39.104-1 Scope.

(a) This section implements section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and the Architectural and Transportation Barriers Compliance Board's (U.S. Access Board) ICT accessibility standards at 36 CFR 1194.1.

(b) For further information on section 508 visit <http://www.section508.gov>.

39.104-2 Policy.

When acquiring ICT, agencies must ensure that—

(a) Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities; and

(b) Members of the public with disabilities seeking information or services from an agency have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

39.104-3 Applicability.

(a) *General*. Unless an exception at 39.104-4 or an exemption at 39.104-5 applies, acquisitions for ICT supplies and services must meet the applicable ICT accessibility standards at 36 CFR 1194.1.

(b) *Commercial products and commercial services*. When acquiring commercial products and commercial services, an agency must comply with those ICT accessibility standards that can be met with supplies or services that are available in the commercial marketplace and that best address the agency's needs, but see 39.104-5(a)(3).

(c) *Legacy ICT*. Any component or portion of existing ICT (*i.e.*, ICT that was procured, maintained, or used on or before January 18, 2018) is not required to comply with the current ICT accessibility standards if it—

(1) Complies with an earlier standard issued according to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), which is set forth in Appendix D to 36 CFR 1194.1); and

(2) Has not been altered (*i.e.*, a change that affects interoperability, the user interface, or access to information or data) after January 18, 2018.

(d) *Alterations of legacy ICT*. When altering any component or portion of existing ICT, after January 18, 2018, the component or portion must be modified to conform to the current ICT accessibility standards in 36 CFR 1194.1.

39.104-4 Exceptions.

(a) The requirements in 39.104-2 do not apply to acquisitions for—

(1) *National security systems*. ICT operated by agencies as part of a national security system, as defined by 40 U.S.C. 11103(a);

(2) *Incidental contract items*. ICT acquired by a contractor incidental to a contract, *i.e.*, for in-house use by the contractor to perform the contract; or

(3) *Maintenance or monitoring spaces*. The portions of ICT that are operable parts (*i.e.*, hardware-based user controls for activating, deactivating, or adjusting ICT) or status indicators, and that are located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.

(b) The contracting officer must receive, as a part of the requirements documentation, written confirmation from the requiring activity that an exception, in accordance with

paragraph (a)(1), (2), or (3) of this section, applies to the ICT supply or service (see 7.105(b)(5)(iv)). This documentation must be maintained in the contract file.

39.104-5 Exemptions.

(a) Allowable exemptions. An agency may grant an exemption for the following:

(1) *Undue burden.* When an agency determines the acquisition of ICT conforming with all the applicable ICT accessibility standards would impose an undue burden on the agency, compliance with the ICT accessibility standards is only required to the extent that it would not impose an undue burden. In determining whether conformance to one or more ICT accessibility standards would impose an undue burden, an agency must consider the extent to which conformance would impose significant difficulty or expense considering the agency resources available to the program or component for which the ICT supply or service is being procured.

(2) *Fundamental alteration.* When an agency determines that acquisition of ICT that conforms with all applicable ICT accessibility standards would result in a fundamental alteration in the nature of the ICT, such acquisition is required to conform only to the extent that conformance will not fundamentally alter the nature of the ICT.

(3) *Nonavailability of conforming commercial products and commercial services.* Where there are no commercial products and commercial services that fully conform to the ICT accessibility standards, the agency must procure the supplies or service available in the commercial marketplace that best meets the ICT accessibility standards consistent with the agency's needs.

(b) *Alternative means of access.* An agency must provide individuals with disabilities access to and use of information and data by an alternative means to meet the identified needs when an exemption in paragraphs (a)(1), (2), or (3) of this section applies.

(c) *Documentation.* When an exemption applies, the contracting officer must obtain, as part of the requirements documentation, a written determination from the requiring activity explaining the basis for the exemption in paragraphs (a)(1), (2) or (3) of this section. Maintain this documentation in the contract file.

(1) *Undue burden.* A determination of undue burden must address why and to what extent compliance with applicable ICT accessibility standards constitutes an undue burden.

(2) *Fundamental alteration.* A determination of fundamental alteration must address the extent to which compliance with the applicable ICT accessibility standards would fundamentally alter the nature of the ICT.

(3) *Nonavailability of conforming commercial products and commercial services.* A determination of commercial products and commercial services nonavailability must include—

- (i) A description of the market research performed;
- (ii) A listing of the requirements that cannot be met; and
- (iii) The rationale for determining that the ICT to be procured best meets the ICT accessibility standards in 36 CFR 1194.1, consistent with the agency's needs.

Subpart 39.2 - Evaluation and Award

39.201 ICT accessibility standards for indefinite-quantity contracts.

- (a) Confirming an exception (see 39.104-4) or determining an exemption (see 39.104-5) is not required before awarding of an indefinite-quantity contract, except for requirements that the initial award is to satisfy.
- (b) The contract must identify which supplies and services the contractor indicates as compliant and show where to find full details of compliance (e.g., a contractor may provide a link to a vendor's website identifying supplies or services that are fully compliant with ICT accessibility standards).

Subpart 39.3 - Postaward

39.301 ICT accessibility standards for task orders or delivery orders.

When issuing a task order or delivery order under an indefinite-quantity contract, the requiring activity and ordering activity must ensure compliance with the ICT accessibility standards. For a noncompliant ICT item, the requiring activity must document an exception (see 39.104-5) or exemption (see 39.104-5).

Part 52 - Solicitation Provisions and Contract Clauses

[52.239 \[Reserved\]](#)

[52.239-1 \[Reserved\]](#)

52.239 [Reserved]

52.239-1 [Reserved]