

existing information technology is Year 2000 compliant.

[62 FR 274, Jan. 2, 1997]

### 39.107 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.239-1, Privacy or Security Safeguards, in solicitations and contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.

[61 FR 41470, Aug. 8, 1996. Redesignated at 62 FR 274, Jan. 2, 1997]

## Subpart 39.2—Electronic and Information Technology

SOURCE: 66 FR 20897, Apr. 25, 2001, unless otherwise noted.

### 39.201 Scope of subpart.

(a) This subpart implements section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (36 CFR part 1194).

(b) Further information on section 508 is available via the Internet at <http://www.section508.gov>.

(c) When acquiring EIT, agencies must ensure that—

(1) 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

(2) 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.

### 39.202 Definition.

*Undue burden*, as used in this subpart, means a significant difficulty or expense.

### 39.203 Applicability.

(a) Unless an exception at 39.204 applies, acquisitions of EIT supplies and services must meet the applicable accessibility standards at 36 CFR part 1194.

(b)(1) Exception determinations are required prior to contract award, except for indefinite-quantity contracts (see paragraph (b)(2) of this section).

(2) Exception determinations are not required prior to award of indefinite-quantity contracts, except for requirements that are to be satisfied by initial award. Contracting offices that award indefinite-quantity contracts must indicate to requiring and ordering activities which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (e.g., vendor's or other exact website location).

(3) Requiring and ordering activities must ensure supplies or services meet the applicable accessibility standards at 36 CFR part 1194, unless an exception applies, at the time of issuance of task or delivery orders. Accordingly, indefinite-quantity contracts may include noncompliant items; however, any task or delivery order issued for noncompliant items must meet an applicable exception.

(c)(1) When acquiring commercial items, an agency must comply with those accessibility standards that can be met with supplies or services that are available in the commercial marketplace in time to meet the agency's delivery requirements.

(2) The requiring official must document in writing the nonavailability, including a description of market research performed and which standards cannot be met, and provide documentation to the contracting officer for inclusion in the contract file.

### 39.204 Exceptions.

The requirements in 39.203 do not apply to EIT that—

(a) Is purchased in accordance with Subpart 13.2 (micro-purchases) prior to April 1, 2005. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to

**Pt. 41**

comply with the applicable accessibility standards to the maximum extent practicable;

(b) Is for a national security system;

(c) Is acquired by a contractor incidental to a contract;

(d) Is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; or

(e) Would impose an undue burden on the agency.

(1) *Basis.* In determining whether compliance with all or part of the applicable accessibility standards in 36 CFR part 1194 would be an undue burden, an agency must consider—

(i) The difficulty or expense of compliance; and

(ii) Agency resources available to its program or component for which the supply or service is being acquired.

(2) *Documentation.* (i) The requiring official must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.

(ii) When acquiring commercial items, an undue burden determination is not required to address individual standards that cannot be met with supplies or service available in the commercial marketplace in time to meet the agency delivery requirements (see 39.203(c)(2) regarding documentation of nonavailability).

[66 FR 20897, Apr. 25, 2001, as amended at 67 FR 80322, Dec. 31, 2002; 69 FR 59703, Oct. 5, 2004]

**PART 40 [RESERVED]**

**PART 41—ACQUISITION OF UTILITY SERVICES**

**Subpart 41.1—General**

Sec.

41.100 Scope of part.

41.101 Definitions.

41.102 Applicability.

41.103 Statutory and delegated authority.

**Subpart 41.2—Acquiring Utility Services**

41.201 Policy.

41.202 Procedures.

41.203 GSA assistance.

41.204 GSA areawide contracts.

41.205 Separate contracts.

**48 CFR Ch. 1 (10–1–06 Edition)**

41.206 Interagency agreements.

**Subpart 41.3—Requests for Assistance**

41.301 Requirements.

**Subpart 41.4—Administration**

41.401 Monthly and annual review.

41.402 Rate changes and regulatory intervention.

**Subpart 41.5—Solicitation Provision and Contract Clauses**

41.501 Solicitation provision and contract clauses.

**Subpart 41.6—Forms**

41.601 Utility services forms.

**Subpart 41.7—Formats**

41.701 Formats for utility service specifications.

41.702 Formats for annual utility service review.

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

SOURCE: 59 FR 67018, Dec. 28, 1994, unless otherwise noted.

**Subpart 41.1—General**

**41.100 Scope of part.**

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See 41.102(b) for services that are excluded from this part.)

**41.101 Definitions.**

As used in this part,

*Areawide contract* means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an “Authorization” form for requesting service, connection, disconnection, or change in service.

*Authorization* means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

*Connection charge* means all non-recurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which