# PART 339—ACQUISITION OF INFORMATION TECHNOLOGY

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

Source: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

Subpart 339.1—General

339.101 Policy

Subpart 339.2—Electronic and Information Technology

339.203 Applicability.

339.203-70 Contract clauses for electronic and information technology (EIT) acquisitions.

339.204 Exceptions.

339.204-1 Approval of exceptions.

339.205 Section 508 accessibility standards for contracts.

**Parent topic:** SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

## Subpart 339.1—General

### 339.101 Policy

In addition to the regulatory guidance in Federal Acquisition Regulation part 39, contracting officers shall collaborate with the requiring activity to ensure information technology (IT) acquisitions for supplies, services, and systems meet the requirements established by the Department of Health and Human Services (HHS).

## Subpart 339.2—Electronic and Information Technology

### 339.203 Applicability.

(a) Electronic and information technology (EIT) supplies and services must comply with Section 508 of the Rehabilitation Act (the Act) of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, and the Architectural and Transportation Barriers Compliance Board (Access Board) Electronic and Information Accessibility Standards (36 CFR part 1194). Requiring activities must consult with their Section 508 Official or designee to determine if the contractor should be responsible for compliance with EIT accessibility standards which apply to Web site content and communications material.

(1) When conducting a procurement and employing the best value continuum, the solicitation shall include a separate technical evaluation factor developed by the contracting officer, requiring activity, and the Operating Division (OPDIV) Section 508 Official or designee.

(2) At a minimum, solicitations for supplies and services shall require the submission of a Section 508 Product Assessment Template (See *http://www.hhs.gov/web/508* for the template). Solicitations for services shall include any other pertinent information that the contracting officer deems necessary to evaluate the offeror's ability to meet the applicable Section 508 accessibility standards.

(3) The HHS Operating Division or Staff Division (OPDIV or STAFFDIV) Section 508 Official or designee is responsible for providing technical assistance in development of Section 508 evaluation factors.

(4) Before conducting negotiations or making an award, the contracting officer shall provide a summary of the Source Selection Evaluation Team's (SSET) assessment of offeror responses to the solicitation's Section 508 evaluation factor. This summary shall be submitted for review by the Section 508 Official or designee. The Section 508 Official or designee shall indicate approval or disapproval of the SSET assessment. The contracting officer shall coordinate the resolution of any issues raised by the Section 508 Official or designee with the chair of the SSET or requiring activity representative, as appropriate. The acquisition process shall not proceed until the Section 508 Official or designee approves the SSET assessment. The contracting officer shall include the assessment in the official contract file. See 339.204-1 regarding processing exception determination requests.

(b) When acquiring commercial items, if no commercially available supplies or services meet all of the applicable Section 508 accessibility standards, OPDIVs or STAFFDIVs shall, under the direction and approval of the Section 508 Official or designee, acquire the supplies and services that best meet the applicable Section 508 accessibility standards. Process exception determinations for EIT supplies and services not meeting applicable Section 508 accessibility standards in accordance with 339.204-1.

## 339.203-70 Contract clauses for electronic and information technology (EIT) acquisitions.

(a) The contracting officer shall insert the provision at 352.239-73, Electronic and Information Technology Accessibility Notice, in all solicitations.

(b) The contracting officer shall insert the clause at 352.239-74, Electronic and Information Technology Accessibility, in all contracts and orders.

## 339.204 Exceptions.

## 339.204-1 Approval of exceptions.

(a) Procedures to document exception and determination requests are set by the OPDIV Section 508 Official.

(b) In the development of an acquisition plan (AP) or other acquisition request document, the

contracting officer shall ensure that all Section 508 exception determination requests for applicable EIT requirements are:

(1) Documented and certified in accordance with the requirements of the HHS Section 508 policy;

(2) Signed by the requestor in the requiring activity;

(3) Certified and approved by the OPDIV Section 508 Official or designee; and

(4) Included in the AP or other acquisition request document provided by the requiring activity to the contracting office.

(c) For instances with an existing technical evaluation and no organization's proposed supplies or services meet all of the Section 508 accessibility standards; in order to proceed with the acquisition, the requiring activity shall provide an exception determination request along with the technical evaluation team's assessment of the Section 508 evaluation factor to the designated Section 508 Official or designee for review and approval or disapproval. The contracting officer shall include the Section 508 Official's or designee's approval or disapproval of the exception determination request in the official contract file and reference it, as appropriate, in all source selection documents. For further information, see HHS Section 508 Policy on *http://www.hhs.gov/web/508*.

## 339.205 Section 508 accessibility standards for contracts.

(a) Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794(d)), as amended by the Workforce Investment Act of 1998 (Section 508), specifies the applicable accessibility standards for all new solicitations and new or existing contracts or orders, regardless of EIT dollar amount.

(b) The requiring activity shall consult with the OPDIV or STAFFDIV Section 508 Official or designee, as necessary, to determine the applicability of Section 508, identify applicable Section 508 accessibility standards, and resolve any related issues before forwarding a request to the contracting or procurement office for the acquisition of EIT supplies and services—including Web site content and communications material for which the contractor must meet EIT accessibility standards.

(c) Based on those discussions, the requiring activity shall provide a statement in the AP (or other acquisition request document) for Section 508 applicability. See 307.105. If Section 508 applies to an acquisition, include the provision at 352.239-73, Electronic and Information Technology and Accessibility Notice, language in a separate, clearly designated, section of the statement of work or performance work statement, along with any additional information applicable to the acquisition's Section 508 accessibility standards (e.g., the list of applicable accessibility standards of the Access Board EIT Accessibility Standards (36 CFR part 1194)). If an AP does not address Section 508 applicability and it appears an acquisition involves Section 508, or if the discussion of Section 508 applicability to the acquisition is inadequate or incomplete, the contracting officer shall request the requiring activity modify the AP accordingly.

(d) Items provided incidental to contract administration are not subject to this section.

(e) The OPDIV Section 508 Official or designee may, at his or her discretion, require review and approval of solicitations and contracts for EIT supplies and services.