

39.205 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 *shall* 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 result in a fundamental alteration in 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 *shall* 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 *shall* 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 shall* 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. This documentation *shall* be maintained in the contract file.

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

(2) *Fundamental alteration.* A determination of fundamental alteration *shall* address the extent to which compliance with the applicable ICT accessibility standards would result in a fundamental alteration in the nature of the ICT.

(3) *Nonavailability of conforming commercial products and commercial services.* A determination of *commercial products* and *commercial services* nonavailability *shall* 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.

Parent topic: [Subpart 39.2 - Information and Communication Technology](#)