

## APD ALERT



## SECTION 508

### POLICY

Electronic and Information Technology (EIT) products and services developed, procured, and maintained by the agency shall be compliant with Section 508, of the rehabilitation Act of 1973, unless the products or services meet an applicable exception (Section 4).

REE program and procurement personnel shall ensure that acquired EIT products and services provide employees with disabilities access to and use of information or data that is comparable to the access and use of information or data by employees without disabilities, unless the product or service meets an exception.

REE Requiring Program Officials must develop and provide documentation to the contracting activity supporting undue burden, unavailability, Federal Acquisition Regulation applicability, 508 compliance, and EIT standard determinations.

### DEFINITIONS

**Accessibility** – an EIT system or service can be used in a variety of ways without reliance on a single sense or ability.

**Alternative Means** – after determining that a proposed EIT product or service will impose an undue burden to the agency, the agency has a responsibility to provide the information and data to individuals with disabilities by an alternative means of access; alternative means of access focuses on the provision of the information and data in an accessible manner – as opposed to the accessibility of the product or service itself.

**Assistive Technology** – any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities; adaptive equipment that people with disabilities commonly use for information and communication access.

**Comparable Access** – unless an exception applies, an agency’s obligation to provide comparable access under Section 508 is satisfied by acquiring EIT that meets the applicable technical provisions either directly or through equivalent facilitation. Comparable access is not required if it would impose an undue burden on the agency.

**Delivery/Task Orders** – individual orders made under Indefinite Delivery Indefinite Quantity (IDIQ) contracts (i.e., Federal Supply Schedules (FSS), Governmentwide Agency Contracts (GWAC) for services or supplies.)

**Electronic and Information Technology (EIT)** – as defined at FAR 2.101, has the same meaning as “information technology” except EIT also includes any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information. In addition to Information Technology (IT), EIT includes:

Telecommunication products, such as:

- Telephones,
- Information kiosks
- Transaction machines,
- Worldwide Web sites
- Multimedia (including videotapes), and
- Office equipment, such as copiers and fax machines

**EIT Products** – examples of EIT products include computers and peripherals, telephones, fax machines, copiers, and other commonly used office electronic and communication services.

**EIT Services** – examples of EIT services are “Seat Management” and “Help Desk” support contracts.

**Equivalent Facilitation** – designs or technologies that do not meet the applicable technical provisions in Section 508 but provide substantially equivalent or greater access to and use of a product for people with disabilities.

**Help Desk Services (EIT services)** – agencies acquiring Help Desk Services must ensure that providers are capable of accommodating the communications needs of persons with disabilities.

**Requiring Program Official** – an official in the program office or organization that is funding and acquiring the EIT. (This is usually the fundholder.)

**Seat Management Contract (EIT Services)** – under Seat Management arrangements, contractors provide the software, hardware, and technical support services necessary to support full service desktop computing resources to the agency for a given period of time. Although the agency does not acquire the title to the hardware and software, the agency

needs to comply with Section 508 in acquiring desktop computing resources.

**Unavailability** – refers to circumstances where no commercial items are available that meet the applicable EIT technical standards (directly or through equivalent facilitation) in time to satisfy the agency’s delivery requirements.

**Undue Burden** – an undue burden is a significant difficulty or expense to an agency. To determine if an EIT product or service imposes an undue burden, an agency must consider all resources available to its programs or component for which the supply or service is being acquired.

## **BACKGROUND**

Section 508 of the Rehabilitation Act Amendments of 1998, prohibits Federal agencies, with only limited exceptions, from developing, purchasing, using, or maintaining EIT products or services that are inaccessible to individuals with disabilities. The purpose of the Amendment to the Rehabilitation Act of 1973 is to ensure access for persons with disabilities to EIT. Compliant EIT will accommodate the use of assistive technology.

Through Section 508, the Federal Government intends to use its leverage as the world’s largest consumer of EIT to push EIT industries to design products that are accessible to individuals with disabilities. Specifically, Section 508 is intended to increase the disabled sector’s productivity and remove barriers in employment and advancement within the Federal workforce and in the private sector.

## **ENFORCEMENT**

On December 21, 2000, the final rule for Section 508 was issued in the Federal Register (36 CFR Part 1194). On April 25, 2001, the Federal Acquisition Regulation (FAR) Council issued its final rule for incorporating Section 508 requirements and accessibility standards in the FAR. As a result of this rule, beginning **June 25, 2001**, Federal agencies which are non-compliant with its standards may be subject to administrative complaints and lawsuits.

It is the shared responsibility of the Requiring Program Official and Contracting Officer (CO) to ensure that the acquisition of EIT meets applicable technical provisions of the accessibility standards.

## **EXCEPTIONS**

There are a few exceptions to the accessibility standards, agencies are not required to acquire Section 508 compliant EIT if the following conditions are met:

1. Micro-purchase (purchases \$2,500 or less) made prior to April 1, 2005, (FAR 39.204 (a));

2. A national security system (FAR 39.204(b)); As defined by FAR 39.002 a national security system means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—
  - a. Involves intelligence activities;
  - b. Involves cryptologic activities related to national security;
  - c. Involves command and control of military forces;
  - d. Involves equipment that is an integral part of a weapon or weapons system;
  - e. Is critical to the direct fulfillment of military or intelligence missions. This does not include a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

3. Acquired by a contractor incidental to a contract (FAR 39.204(c));

Section 508 standards only apply to EIT products and services specified as deliverables under a contract between a Federal agency and private vendor. Section 508 does not apply to a contractor's own internal workplace EIT. Therefore, the contractor's internal workplace EIT is considered incidental to the Federal contract. Provided below is an example:

**Example:** A firm that produces a report for a Federal agency under a contract would not have to procure accessible computers and word processing software even if they were used exclusively for the contract. However, compliance would be required if such EIT products were to become the property of the Federal agency as contract deliverables or if the Federal agency purchased the equipment used by the contractor as part of the project.

4. Located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment (FAR 39.204(d));

The "back office" exception applies only to EIT which is located in physical spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment. If any services other than maintenance, repair, or occasional monitoring are performed in the physical space, then the back office exception does not apply.

5. Would impose an undue burden on the agency (FAR 39.204(e)).

Agencies do not have to acquire EIT that meets the applicable technical provisions if doing so would impose an undue burden on the agency (FAR 39.202, 39.204(e)(1)). Undue burden is a longstanding concept in disability rights law. **An undue burden determination must be applied on a case-by-case basis.** Undue burden cannot be established simply by demonstrating that between products that could meet the agency's need, the price of products that meet the applicable accessibility standards is higher than those that do not. Such an analysis is insufficient since it fails to consider all resources available to the program component.

The FAR also requires that determinations of undue burden be made by Requiring Program Officials and not Contracting Officer's (CO's). The Requiring Program Official must document in writing the basis for an undue burden decision and provide a copy to the CO for inclusion in the contracting file. See FAR 39.204(e). The documentation must clearly explain why meeting the applicable technical provision imposes an undue burden. The law and regulations do not specify the exact content or format of documentation to support an undue burden determination. However, USDA has provided a uniform format of the information to be included in an "undue burden" determination in AGAR Advisory No. 49. This advisory can be found at: <http://www.dm.usda.gov/procurement/policy/advisories.html>.

Undue burden does not void the requirement for an agency to provide access. If the requiring program office determines an EIT product creates an undue burden, the program office must identify, document and make readily available the best alternative means to provide the information and data to disabled individuals by an alternative means of access. See the following example:

Example: If any agency wishes to purchase a computer program that generates maps denoting regional demographics, but determines that it would constitute an undue burden to purchase an accessible version of such a program, the agency would be required to make the information provided by the program available by alternative means to users with disabilities. Thus, in the example provided above, alternative means of access for an individual who is blind might mean providing a hard copy description of the information in Braille or providing an assistant to help guide the user through the information.

Alternative means may include, but is not limited to: voice, fax, relay service, Text Telephone (TTY), qualified sign language interpreters, Internet posting, captioning, text-to-speech synthesis, readers personal assistants, or audio descriptions.

**UNAVAILABILITY**

Unavailability is another type of exception to the accessibility standards. If products are available that meet some, but not all, applicable provisions, agencies cannot claim a product as a whole is unavailable just because it does not meet all of the applicable technical provisions. *In addition, it is anticipated that as manufacturer offerings of products that meet the applicable accessibility standards increase over time, incidents of unavailability will decrease.* The FAR requires that determinations of unavailability be made by Requiring Program Officials and not CO’s. The Requiring Program Official must document unavailability in writing and provide a copy to the contracting activity for inclusion in the contract file. See FAR 39.203(c). The format for documenting unavailability determinations is provided in AGAR Advisory No. 49, available at: <http://www.dm.usda.gov/procurement/policy/advisories.html>.

**RESPONSIBILITIES OF CONTRACTING OFFICER’S AND REQUIRING PROGRAM OFFICIALS**

CO and Requiring Program Official Responsibilities

The following chart provides a brief summary of CO’s and Requiring Program Officials responsibilities under Section 508.

Type of purchase	Compliance Date Purchase/ Contract	Requirements
Micro-purchases	April 1, 2005	Program Officials responsible for processing micro-purchases must verify (e.g., contractor clarification, fax, Web site info) and document the file that the product or service meets accessibility standards. Reference AGAR Advisory No. 49, available at: <a href="http://www.dm.usda.gov/procurement/policy/advisories.html">http://www.dm.usda.gov/procurement/policy/advisories.html</a>
Contracts	June 25, 2001	Requiring Program Officials must ensure that requirements include applicable accessibility standards in specifications/ statements of work, document findings of market research, EIT compliance, undue burden determinations and/or unavailability determinations as applicable. Reference

		AGAR Advisory No. 49. CO's must incorporate the accessibility compliance provision/clause in solicitations/contracts as provided in Section 6b.
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Contracts/Solicitations

Section 508 applies to contracts, task orders, delivery orders, and call orders awarded after June 25, 2001. However, the FAR Council has not provided standard language which can be included in Government solicitations/contracts to instruct potential bidders to comply with Section 508 standards. Therefore, in lieu of the FAR Council developing and issuing such provisions or clauses, REE agencies shall use the following provision/clause in solicitations and contracts (task orders, delivery orders, BPA calls, etc.) issued after June 25, 2001.

**Section 508 Clause - Contractor Compliance**

*All EIT procured through this contract must meet the applicable accessibility standards at 36 CFR 1194, unless an agency exception to this requirement exists. (36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973, as amended, and is viewable at <http://www.access-board.gov/508.htm>).*

*The following standards have been determined to be applicable to this contract:*

\_\_\_\_\_ *1194.21 Software applications and operating systems*

\_\_\_\_\_ *1194.22 Web-based intranet and internet information and applications.*

\_\_\_\_\_ *1194.23 Telecommunications products.*

\_\_\_\_\_ *1194.24 Video and multimedia products.*

\_\_\_\_\_ *1194.25 Self contained, closed products.*

\_\_\_\_\_ *1194.26 Desktop and portable computers.*

*“The standards do not require the installation of specific accessibility-related software or the attachment of an assistive technology device, but merely require that the EIT be compatible with such software and devices so that it can be made accessible if so required by the agency in the future.”*

In addition, contracting activities that award IDIQ contracts must indicate to ordering offices which supplies and services the contractor indicates as compliant and show where the full details of compliance can be found (e.g., vendor’s website or other exact webpage location.) To collect this information from the vendor, REE contracting activities shall include the following provision in solicitations:

## **Section 508 Provision - Compliance Details**

*“The contractor shall indicate, for each line item in the schedule, whether each product or service is compliant or noncompliant with the accessibility standards at 36 CFR 1194. Further, the proposal must indicate where full details of compliance can be found (e.g., vendor’s website or other exact location.”)*

### **FEDERAL ACQUISITION REGULATION REQUIREMENTS**

All REE CO’s shall comply with the following FAR regulations and guidance based upon Section 508:

Part 2 Definition of Words and Terms 2.101 Definitions. Electronic and Information Technology

Part 7 Acquisition Planning 6.103 Agency Head Responsibilities

Part 10 Market Research 10.001 Policy

Part 11 Describing Agency Needs 11.002

Part 12 Acquisition of Commercial Items

12.202 Market research and description of agency need

Part 39 Acquisition of Information Technology

39.000 Scope of Part

39.2 – Electronic and Information Technology

39.201 Scope of subpart

39.202 Definition

39.203 Applicability

39.204 Exceptions

### **REQUIRING PROGRAM OFFICIALS**

This policy provides requirements and procedures for all REE Requiring Program Officials to observe when submitting EIT equipment purchase requests (requisitions) to their cognizant contracting activity. The procedures can be found in Section 10 of this policy. Also see Section 5, Exceptions, for additional guidance.

### **EQUIVALENT FACILITATION**

The standards in Section 508 are not intended to prevent the use of designs or technologies as alternatives to those prescribed in the provision provided they result in

substantially equivalent or greater access to and use of a product for people with disabilities.

## **PROCEDURES FOR ACQUISITION OF EIT REQUIREMENTS**

### **Requiring Program Official Procedures**

Requiring Program Officials are responsible for ensuring that procurement requests (requisitions) observe the following requirements:

1. Identify what Section 508 standards apply to the requirement.
2. The market research conducted to identify what commercial items, if any meet these standards.
3. Review “Sample Checklist of Standards” to determine if proposed EIT products and services meet applicable standards (AGAR Advisory No. 49).
4. The requiring office’s cognizant OCIO’s input to verify that proposed EIT products meet accessibility standards. Verification shall be documented in or attached to the requisition. Verification may also include written contractor certification, contractor website data, facsimile, etc.
5. The technical specifications or statement of work (SOW) with input from the cognizant OCIO to meet applicable accessibility standards and submit with the requisition to the cognizant contracting activity;
6. Provide documentation to support the following determinations and compliance with standards:
  - Undue burden
  - Unavailability
  - Requirements are 508 compliant
  - Sample checklist of standards
  - FAR 39.203 does not apply to requirement

See AGAR Advisory No. 49 for appropriate format of each determination.

### **CO’s Responsibilities**

CO’s have the following responsibilities to ensure compliance with Section 508 accessibility standards:

Verify that required documentation is provided with each requisition;  
Allow contractors flexibility and discretion in meeting accessibility standards to take advantage of innovativeness and/or changes in technology.

### **RESOURCES**

Section 508.gov – <http://www.section508.gov/>

Section 508, Federal Register – <http://www.section508.gov/docs/final99607a.doc>

USDA – TARGET Center – <http://www.dm.usda.gov/oo/target/>

Department of Justice – <http://www.usdoj.gov/crt/508/508home.html>

AGAR Advisory No. 49 – <http://www.usda.gov/procurement/policy/advisories.html>

### **APD POINT OF CONTACT**

If you have any questions regarding the Acquisition of EIT Products and Services, please contact the Acquisition Programs and Oversight Branch (APOB), on 301-504-1725, or via e-mail at [APOB@ars.usda.gov](mailto:APOB@ars.usda.gov).

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