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**Procuring Electronic and Information Technology (E&IT) in
Conformance with Section 508 of the Rehabilitation Act of 1973 as
Amended**

Table of Contents

Procuring Electronic and Information Technology (E&IT) in Conformance with Section 508 of the Rehabilitation Act of 1973 as Amended..... 1

- I. Purpose..... 2
- II. Policy..... 2
- III. Authority 2
- IV. Applicability 2
- V. Definitions 3
- VI. Responsibilities 4
- VII. The Acquisition Process..... 5
- VIII. Exception Determination 10
- IX. References..... 11

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Supersedes OCIO: 3-105 Procuring Electronic and Information Technology in Conformance with Section 508 of the Rehabilitation Act of 1973, 09/28/2010. Recertified on 12/06/2016. Added the Federal Source Code

I. Purpose

The purpose of this directive is to establish U.S. Department of Education (ED) documentation requirements necessary to demonstrate compliance with the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (hereafter "Section 508"). The resulting documentation is to be used to demonstrate the availability, or lack thereof, of products and services that meet the applicable technical, business, and accessibility requirements of a procurement action.

II. Policy

It is the policy of ED to develop, procure, maintain, and use Electronic and Information Technology (E&IT) in accordance with the Accessibility Standards set forth by Section 508 of the Rehabilitation Act of 1973, as amended.

III. Authority

- A. 48 CFR Parts 2, 7, 10, 11, 12, and 39.
- B. Section 508 of the Rehabilitation Act of 1973, as Amended 29 U.S.C. Section 794(d).
- C. 36 CFR Section 1194.
- D. Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software (OMB M-16-21)

IV. Applicability

This directive applies to all employees when procuring E&IT products or services made on or after June 25, 2001.

Section 508 affects what agencies acquire (i.e., the requirements development process), and it requires Federal departments and agencies that develop, procure, maintain, or use electronic and information technology to ensure that Federal employees and members of the public with disabilities have access to and use of information and data, comparable to that of the employees and members of the public without disabilities. Notwithstanding this requirement, the implementing regulations provide certain exceptions.

In general, Section 508 does not apply to:

- A. Any E&IT procured before June 25, 2001;

- B. Within scope modifications to existing E&IT systems procured before June 25, 2001 (legacy systems);
- C. Procurements where Section 508 compliant E&IT is unavailable, and;
- D. Procurements where the cost of acquiring Section 508 compliant E&IT would constitute an “undue burden” to ED.

V. Definitions

- A. Contracting Officer (48 CFR Part 2) – A person with the authority to enter into, administer, or terminate contracts and make related determinations and findings.
- B. Electronic and Information Technology (E&IT) (48 CFR Part 2) – Has the same meaning as “information technology” except E&IT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term E&IT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).
- C. Equivalent Facilitation (36 CFR Section 1194.5) – The use of designs or technologies as alternatives to those explicitly prescribed by Accessibility Standards provided that they result in substantially equivalent or greater access to, and use of, a product for individuals with disabilities.

Compliance with the following functional performance criteria is the test for equivalent facilitation:

1. At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.
2. At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.
3. At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

4. Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.
 5. At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.
 6. At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.
- D. Information Technology (48 CFR Part 2) – Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.
- E. Market Research (48 CFR Part 2) – Means collecting and analyzing information about capabilities within the market to satisfy agency needs.
- F. Requiring Official – Individual in the Principal Office having responsibility for the procurement in question. The Principal Office and program management will make assignment as need dictates.
- G. Undue Burden (36 CFR Section 1194.4) – A significant difficulty or expense, as defined by disability case law.

VI. Responsibilities

- A. The Requiring Official is responsible for ensuring that market research is performed and the findings are documented, including information on the accessibility of the E&IT products or services being considered for procurement. The documentation should address the findings relative to the conformance or nonconformance of the E&IT products or services with the Access Board's Federal E&IT Accessibility Standards. This documentation is required by the FAR and is important for recording the degree of conformance, the validation of exceptions or the existence of an equivalent facilitation solution to the Federal E&IT Accessibility Standards. Research documentation must be submitted to the Contracting Officer for inclusion in the contract file and will be required as part of the documentation packages

- for the various review activities in the acquisition and implementation life cycle.
- B. The Contracting Officer will ensure the Requiring Official provides market research and supporting documentation for inclusion in the contract file. Contracting Officers that award indefinite-quantity contracts must indicate to requiring officials 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).
 - C. The OCIO Assistive Technology Team is readily available throughout the procurement process and will, upon request, provide the Requiring Official consultation regarding E&IT accessibility and assistive technology accommodation.

VII. The Acquisition Process

The OCIO Assistive Technology Team is available to provide validation of vendor claims and documentation, pre and post-acquisition accessibility testing, and other Section 508 related assistance throughout this process.

- A. First, the Requiring Official reads and becomes familiar with the Section 508 Accessibility Standards and the Federal Acquisition Regulation and determines which technical standards apply. The Section 508 E&IT Accessibility Standards defines six categories for the technical requirements and are shown below.
 - 1. 36 CFR Section 1194.21 Software applications and operating systems.
 - 2. 1194.22 Web-based Intranet and Internet information and applications.
 - 3. 1194.23 Telecommunications products.
 - 4. 1194.24 Video and multimedia products.
 - 5. 1194.25 Self-contained, closed products.
 - 6. 1194.26 Desktop and portable computers.

The Section 508 Technical Standards are included in this document in References, IX (E).

- B. Second, the Requiring Official performs market research to determine the availability of products and services that meet the applicable technical

standards. The General Services Administration (GSA) has developed an on-line tool ([the Buy Accessible Wizard](http://www.buyaccessible.gov)) to help users determine and document Section 508 requirements that apply to a particular E&IT acquisition:
<http://www.buyaccessible.gov>.

In determining availability, the Requiring Official should consider, among other things, information on vendor websites and GSA's Section 508 website <http://www.section508.gov>. The Section 508 website contains links to those vendor sites that have registered and have accessibility information available on their respective sites. Most often a completed Voluntary Product Accessibility Template (VPAT) is available for printing or downloading. The VPAT is a standard format developed by the Information Technology Industry Council (ITI) in cooperation with GSA and the Section 508 Steering committee for vendors to document how they respond to the federal accessibility standard. In the absence of a VPAT, the Requiring Official should request what other documentation the vendor has available to assist with the accessibility determination. The Requiring Official may also consider vendor plans or commitments to modify its product to be compliant and whether the vendor is likely to have a compliant product in time to meet Principal Office's delivery requirements.

- C. Third, the Requiring Official identifies the technical standards, if any, which do not apply due to an exception, such as non-availability or undue burden.
- D. Fourth, the Requiring Official develops technical specifications and minimum requirements considering the results of market research and agency needs. It is most important that the requirement (the real need and not brand name) is stated, versus picking items out of the catalogue, because one will need to address how the accessibility need can be met in some alternative fashion. This can only be done when the actual quantified performance requirement is stated.

The following three steps summarize this phase of the acquisition process:

1. Determine Business Functional Requirements.
2. Determine Technical Requirements.
3. Determine Accessibility Requirements:

Please reference Department of Education Requirements for Accessible Electronic and Information Technology Design: or, the Section 508 Accessibility Standards: (Also listed in References, IX (E) in this document.)

The Requiring Official is responsible for written justification for an exception under Section 508 (see Section VIII, below). Such written justification is submitted to the Contracting Officer for inclusion in the procurement or contract file.

E. Finally, determine as soon as possible whether a custom solution will be developed or if a commercial off-the-shelf (COTS) solution will be utilized.

1. Custom Development Process:

- a. Develop a Statement of Work or include the following in the in-house development and design documents.
 - 1) Business functional requirements and accessibility requirements as the basic development requirements.
 - 2) Accessibility testing, network certification, and network integration requirements. The OCIO Assistive Technology Team will provide design consulting and accessibility testing assistance.
 - 3) Requirement that the respondent identify how they will meet the accessibility requirement.
 - 4) Requirement that the respondent provide all documentation in an accessible electronic format.
 - 5) Requirement that any software acquired by the respondent as part of the system solution meets the applicable Section 508 requirements. The applicable technical requirement(s) must be identified in the response. (36 CFR Section 1194.21 Software applications and operating systems; Web-based intranet and Internet information and applications; Telecommunications products; 1194.24 Video and multimedia products; 1194.25 Self-contained, closed products; or 1194.26 Desktop and portable computers.)
 - 6) Ensure appropriate contract administration and use of best practices to secure the full scope of the Government's rights, including sharing and using the code with other Federal agencies.
 - 7) Consider the value of publishing custom code as OSS and negotiate data rights reflective of its value-consideration.

- 8) Maintain a code inventory that lists all new code that is custom-developed for the Federal Government
- 9) Make custom-developed code available for Government-wide reuse and make their code inventories discoverable at <https://www.code.gov> pursuant to the limited exceptions outlined in OMB Memorandum M-16-21, August 2016.

b. Skip to Section VII. F. 3, For Both Options.

2. Commercial Off-The-Shelf (COTS) process:

- a Identify potential sources to meet the business need. (Document)
- b Narrow selection to 2 – 3 best before addressing how to meet Section 508 compliance. (The agency must comply, not the vendor.)

For each potential product:

- 1) Obtain a copy of the completed VPAT from the developer of the COTS product. Include the VPAT in the market research and contract/procurement file.
- 2) Obtain an evaluation copy or ask the developer to bring a copy of the E&IT to the OCIO Assistive Technology Team for pre-acquisition accessibility and usability testing. This provides research documentation and can smooth network certification and integration process. Always invite the sponsoring PO and developer to attend the test session.
- 3) Obtain Assistive Technology Team Accessibility Review (AR) report.

Include in the market research and contract/procurement file.

c. Next step is VII. F. 3, For Both Options.

3. For Both Options:

- a. Prepare a product comparison addressing all the requirements and select the most accessible product that meets the business needs. Include in the market research and contract/procurement file. A requirements or product matrix works well. Determine from the

product comparison if one of the allowable exceptions apply. Note the determination in the market research and contract/procurement file documentation.

- b. Review all the research and documentation with Contracting Officer.
- c. If it requires ED Enterprise Architectural Review Board (EARB) and/or Change Advisory Board (CAB) approval, then present to EARB and CAB, if appropriate.
- d. Continue the life cycle process.
- e. Submit this information along with the purchase request, including any exception documentation, as appropriate, to the Contracting Officer. These requirements should be included along with the functional requirements necessary to meet the procurement objective. These requirements would be included in the Statement of Work (SOW) for task orders and contracts.
- f. Finally, the Contracting Officer drafts and issues a solicitation to receive offers from interested sources or consider placing an order under a delivery order or task order contract. Proposal evaluation may yield additional information that could require reconsideration of the need for an exception (either retracting or invoking an exception, such as non-availability).
- g. Market research, accessibility (Section 508 conformance), exception determination (see section VIII, below), and selection documentation collected during this process will be the justification for meeting the Section 508 compliance obligations for the purchase. This documentation will form the basis of ED's rationale should the acquisition be challenged by an internal grievance or a civil court action. A suggested set of market research and selection justification documentation includes:
 - 1) The applicable Accessibility Standards;
 - 2) The completed VPAT, if available;
 - 3) Reports or research findings resulting from the use of the GSA Buy Accessible Wizard: <http://app.buyaccessible.gov/baw/>;

- 4) The OCIO Assistive Technology Team pre-procurement Accessibility Review report(s);
- 5) Exception justification, if applicable;
- 6) Selection and evaluation documentation, such as a requirements comparison matrix; and
- 7) Any other vendor/developer supplied documents pertaining to the accessibility of their product(s).

VIII. Exception Determination

- A. Where an “undue burden” exception is claimed, the request must contain specific financial information to justify the procurement. Essentially, the test for undue burden requires the claimant to demonstrate that there is a “significant difficulty or expense” associated with meeting the Section 508 Accessibility Standards. In making this determination, *all agency resources* must be considered (36 C.F.R. 1194.4 and 48 C.F.R. 39.204). The FAR regulations set forth the procedures that must be followed in order to support a determination of undue burden. Additionally, the FAR regulations require that the requiring official for each E&IT system considered where the “undue burden” exception is claimed perform a separate undue burden determination. Please note, if an agency determines that an undue burden applies, the agency is still required to provide information and data to individuals with disabilities via an alternative means of access.
- B. If an exception is requested based upon the non-availability of compliant E&IT, the Requiring Official is responsible for providing a written explanation detailing his or her efforts to acquire compliant E&IT (48 C.F.R. 39.203 (c) (2)). The written documentation for proving non-availability should provide sufficient detail showing that adequate market research has been conducted, as stated in the FAR, prior to determining that compliant E&IT is not available. In addition to describing the market research performed, the applicable technical provisions that cannot be met with products or services available from the marketplace must be specifically identified (48 C.F.R. 39.203(c)). An exception based upon non-availability may be justified if the Requiring Official is unable to find a commercial item that meets both the Section 508 Accessibility Standards and cannot be furnished in time to satisfy the delivery requirements of the Principal Office (48 CFR 39.203, 204).
- C. If products are available that meet some, but not all, applicable standards, a Requiring Official cannot consider the product as a whole to be “non-available”. Agency acquisitions must comply with applicable technical provisions that can be met with supplies or services available in the

commercial marketplace in time to meet the delivery requirements of the Principal Office.

- D. Unless an exception applies, the Contracting Officer may only make an award to an offeror that meets or will meet all the accessibility standards stated in the solicitation in time to meet the delivery requirements of the Principal Office. If none of the offerors meets or will meet all the accessibility standards stated in the solicitation in time to meet the delivery requirements of the Principal Office, the requiring official must determine if an exception applies. If no exception applies, the contracting offer may not make an award. The Contracting Officer may reopen negotiations, modify the solicitation, or cancel the solicitation and re-compete.
- E. Documentation of any exception, equivalent facilitation, or non-availability must be acceptable to the Contracting Officer, and become part of the contract file.
- F. Exceptions are identified at 48 CFR 39.204.

IX. References

- A. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (d):
- B. The [Federal Acquisition Regulations](#):
- C. GSA Buy Accessible Wizard:
- D. The [Voluntary Product Accessibility Template](#) (VPAT) developed by the Information Technology Industry Council (ITI):
- E. The Electronic and Information Technology Accessibility Standards (Section 508 36 CFR Section 1194):
- F. Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software (OMB M-16-21)