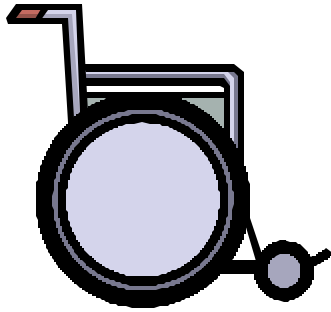


PPD ALERT



Section 508 – Guidance for Requiring Program Officials and Contracting Offices

Section 508 of the Rehabilitation Act of 1973 requires when Federal agencies develop, procure, maintain, or use Electronic and Information Technology (EIT), they shall ensure that the required EIT products allow employees with disabilities to have access to and use information or data that is comparable to the access and use of information or data by employees without disabilities, unless an undue burden would be imposed on the agency. Examples of EIT equipment are computers and peripherals, copiers, fax machines, telephones, etc.

The final Federal Acquisition Regulation (FAR) rule involving Section 508 was published in the Federal Register on April 25, 2001. All Federal agencies must be compliant with this rule (also referred to as accessibility standards) beginning **June 25, 2001**. Failure to comply will subject agencies to administrative complaints and lawsuits. The rule is not retroactive and only applies to purchases made on or after **June 25, 2001**.

Section 508 will significantly impact the following:

- Micro-Purchases
- Contracts (fixed price, cost, time & materials, labor hours, etc.)
- IDIQ Contracts (Federal Supply Schedule, Government-wide Agency Contracts, etc.)
- Solicitations

Requiring Program Officials are responsible for the following actions under Section 508:

| Type of Purchase/Contract | Compliance Date | Requirements |
|--|------------------------|---|
| Micropurchases (less than \$2,500) | January 1, 2003 | Micropurchases are exempt from meeting Section 508 accessibility standards until 2003. Requiring program officials, however, are encouraged to comply with these standards immediately. <u>Program officials must provide to the Contracting Officer (CO) written verification (contractor certification, fax, website info.) that product or service, meet accessibility standards.</u> |
| Contracts | June 25, 2001 | Section 508 Accessibility standards will apply to contracts, other than IDIQ awarded, on or after June 25, 2001. <u>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 or unavailability determinations as applicable. COs must incorporate accessibility compliance clauses in contracts as provided in PPD ALERT No. : 2001-14 and AGAR Advisory No. 34.</u> |
| IDIQ Contracts, Task Orders, Delivery Orders, Call Orders, etc. | June 25, 2001 | Section 508 compliant language must be placed in all IDIQ contracts and orders issued against IDIQ contracts (i.e., task orders, delivery orders) on or after June 25, 2001. <u>Requiring Program Officials must ensure that task/delivery order requirements include applicable accessibility standards in specifications/statements of work, document findings of market research, EIT compliance, undue burden determinations or unavailability determinations as applicable. COs must incorporate accessibility compliance clauses in contracts as provided in PPD ALERT No. : 2001-14 and AGAR Advisory No. 34..</u> |
| Solicitations | June 25, 2001 | REE contracting activities shall place the "Section 508 Accessibility Compliance and Compliance Details" Clauses in all solicitations , task, delivery, or call orders issued on or after June 25, 2001. <u>No action is required of Requiring Program Official. COs must incorporate accessibility compliance clauses in all solicitations as provided in PPD ALERT No. : 2001-14.</u> |

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:

- a. micro-purchases made prior to **January 1, 2003**, (FAR 39.204(a));
- b. a national security system (FAR 39.204(b) and 36 CFR 1194.3(a));
- c. acquired by a contractor incidental to a contract (FAR 39.204(c) and 36 CFR 1194.3(b));
- d. located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment (FAR 39.204(d) and 36 CFR 1194.3(f)); and
- e. would impose an undue burden on the agency (FAR 39.204(e) and 36 CFR 1194.2).

Micro-purchase

This exception is for a one-time purchase that totals \$2,500 or less, made on the open market as opposed to under an existing contract. A software that costs \$1,800 is not a micro-purchase if it is part of a \$3,000 purchase. Government-wide commercial purchase cards meet the exception if they are used to conduct an open-market purchase of \$2,500 or less and the action occurs prior to January 1, 2003. Although compliance is not required until January 1, 2003, all REE cardholders are encouraged to comply immediately.

National Security System

As defined by FAR 39.002 a national security system means:

... any telecommunication or information system operated by the United States Government, the function, operation, or use of which--

- (1) Involves intelligence activities;
- (2) Involves cryptologic activities related to national security;
- (3) Involves command and control of military forces;
- (4) Involves equipment that is an integral part of a weapon or weapons system; or
- (5) 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.

Incidental to a Contract

Section 508 standards only apply to EIT products and services being procured by a Federal agency by contract with private vendors. However, these standards only apply to products and services specified as deliverables under the contract. 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:

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.

Back Office

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 other services are performed in the physical space, then the "back office" exception doesn't apply.

Undue Burden

Agencies do not have to acquire EIT that meets the applicable technical provisions if doing so would impose an undue burden on the agency. Undue burden is a longstanding concept in disability rights law. In the context of Section 508, it means that an acquisition imposes a significant difficulty or expense, taking into account all agency resources available to the program or component for which the EIT is being procured. See FAR 39.202, 39.204(e)(1) and 36 CFR 1194.4. **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 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 Officers (COs). The requiring 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.

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:

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. *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 itself.* 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, TTY, qualified sign language interpreters, Internet posting, captioning, text-to-speech synthesis, readers, personal assistants, or audio descriptions.

Unavailability

Unavailability was not mentioned above, but it is another type of exception to the accessibility standards. Unavailability refers to circumstances where no commercial items are available that meet the applicable EIT accessibility standards (directly or through equivalent facilitation) in time to satisfy the agency's delivery requirements. Equivalent facilitation means that agencies may accept EIT offered by vendors which use designs or technologies that do not meet the applicable technical provisions as provided in the Section 508 accessibility standards, but provide substantially equivalent or greater access to and use of a product for people with disabilities. If products are available that meet some, but not all, applicable provisions, agencies cannot claim a product as a whole as 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 COs. The requiring 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) and 36 CFR 1194.2(b).

Requiring Program Official Responsibilities and Procedures

Requiring Program Officials are responsible for ensuring that procurement requests, AD-700 or equivalent address the following requirements:

1. Identify what Section 508 standards apply to the requirement;
2. The market research conducted to identify what commercial items or services, if any meet these standards;
3. The requiring office's cognizant Computer Specialist's input to verify that proposed EIT products or services meet accessibility standards. Verification shall be documented on the AD-700. contract. Verification may include written contractor certification, contractor website data, facsimile data, etc.;
4. The technical specifications or Statement of Work (SOW) with input from the cognizant Computer Specialist to meet applicable accessibility standards; and

5. Documentation to support the following:
- Undue burden determination;
 - Unavailability determination;
 - Federal Acquisition Regulation (FAR) does not apply;
 - Determination that requirements are 508 compliant; and
 - Sample checklist of standards.

When a requiring program official determines that EIT requirement is compliant with Section 508 or meets one of the exceptions indicated in this policy, he/she shall prepare and submit to the CO with the AD-700 and an appropriate determination statement. Applicable statement formats can be found at the USDA procurement homepage (AGAR Advisory No. 34) at: <http://www.usda.gov/procurement/policy/advisories.html>

CO Responsibilities

COs have the following responsibilities to ensure compliance with Section 508 accessibility standards:

- Verify that required documentation is provided with AD-700; and
- Include appropriate contractor compliance clauses in solicitations, contracts, delivery orders, task orders, etc.

Section 508 Web Resources

Additional Resources for Information on Section 508 are as follows:

GSA, Section 508 - <http://www.section508.gov/>

Department of Education - <http://ocfo.ed.gov/coninfo/clibrary/software.htm>

USDA- TARGET Center - <http://www.usda.gov:80/oo/target.htm>

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

PPD ALERTS NOS. 3, 9, and 12 - <http://www.afm.ars.usda.gov/divisions/ppd/alerts-ppd.htm>

Contact: For additional questions regarding the information provided in this document, please contact your cognizant contracting activity.