

Guidance on Electronic and Information Technology (EIT) Accessibility - Section 508



References:

FAR 2.101	Definitions.
FAR 7.103	Agency-head responsibilities.
FAR 10.001	Policy.
FAR 11.002	Policy.
FAR 39.000	Scope of part.
FAR 39.2	Electronic and Information Technology.
FAR 39.201	Scope of subpart.
FAR 39.202	Definition.
FAR 39.203	Applicability.
FAR 39.204	Exceptions.
36 CFR 1194	Electronic and Information Technology Accessibility Standards.

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What is the Purpose of this Chapter?

The purpose of this chapter is to provide guidance to Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracting and program personnel regarding the following:

- Incorporating EIT standards in the acquisition process;
- How the EIT standards are to be applied; and
- Information and guidance on implementing policies and procedures for acquiring EIT.

What is the Background?

The Workforce Investment Act of 1998, Pub. L. 105-220, was enacted on August 7, 1998. Subsection 408(b) of the Workforce Investment Act of 1998 amended Section 508 of the Rehabilitation Act of 1973. The amendment strengthened the provisions covering access to information in the Federal sector.

Section 508 requires Departments and Agencies to:

- Procure, develop, maintain, or use Electronic and Information Technology (EIT), to ensure that disabled Federal employees have access to and use of information and data comparable to that of other Federal employees.
- Ensure that persons with disabilities who seek information or services from a Department or Agency have access to and use of information and data that is comparable to that provided to persons without disabilities.

In both instances cited, access is a statutory requirement unless an “undue burden” would be imposed on a Department or Agency. If an “undue burden” is established, the law requires that an alternative means of access be provided to individual(s) with disabilities.

Additionally, Section 508 requires the Architectural and Transportation Barriers Compliance Board (also referred to as the “Access Board”) to publish standards setting forth a definition for EIT and technical and functional performance criteria necessary for such technology to comply with Section 508. The final standards were published on December 21, 2000, and became effective on February 20, 2001. The enforcement provisions of Section 508 took effect on June 21, 2001.

The law establishes an administrative process under which individuals with disabilities can file a complaint alleging that a Federal agency has not conformed to the standards. It provides injunctive relief and attorney’s fees to the prevailing party, but does not include compensatory or punitive damages. Individuals may also file a civil action against an agency, if warranted.

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I. What is Electronic and Information Technology?

Electronic and Information Technology (EIT), as defined in FAR 2.101, is information technology and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information. The term includes:

- ✓ telecommunications products (such as telephones);
- ✓ information kiosks and transaction machines;
- ✓ World Wide Web sites;
- ✓ multimedia; and
- ✓ office equipment (such as copiers and fax machines).

The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, **are not** EIT.

II. How are the Accessibility Standards Applied?

The standards define the types of technology covered and set forth provisions that establish a minimum level of accessibility. The following is a summary of the accessibility standards that are codified at 36 CFR 1194:

- ✓ **Subpart A – General.** This subpart outlines the purpose, scope, and coverage of the regulation containing the accessibility compliance standards; prescribes exceptions to the standards; defines terms related to the standards; and prescribes that the standards do not prevent the use of designs or technologies as alternatives to those prescribed in the regulation provided they result in substantially equivalent or greater access to and use of a product for persons with disabilities.
- ✓ **Subpart B – Technical Standards.** This subpart prescribes the technical standards for:
 - Software applications and operating systems;
 - Web-based intranet and internet information and applications;
 - Telecommunications products;

- Video and multimedia products;
 - Self contained, closed products; and
 - Desktop and portable computers.
- ✓ **Subpart C – Functional Performance Criteria.** The functional performance requirements prescribed in this subpart are intended for overall product evaluation and for technologies or components for which there is no specific requirement under the technical standards in subpart B. These criteria are designed to ensure that the individual accessible components work together to create an accessible product. They cover operation, including input and control functions, operation of mechanical mechanisms, and access to visual and audible information. These provisions are structured to allow people with sensory or physical disabilities to locate, identify, and operate input, control and mechanical functions and to access the information provided, including text, static or dynamic images, icons, labels, sounds or incidental operating cues. For example, one provision requires that at least one mode allow operation by people with low vision (visual acuity between 20/70 and 20/200) without relying on audio input since many people with low vision may also have a hearing loss.
- ✓ **Subpart D – Information, Documentation, and Support.** The standards also address access to all information, documentation, and support provided to end users (e.g., Federal employees) of covered technologies. This includes user guides, installation guides for end-user installable devices, and customer support and technical support communications. Such information must be available in alternate formats upon request at no additional charge. Alternate formats or methods of communication, can include braille, cassette recordings, large print, electronic text, Internet postings, TTY access, and captioning and audio description for video materials.

Consistent with Section 508, exceptions to the standards include systems that are used for military command, weaponry, intelligence, and cryptologic activities (not routine business and administrative systems used for other defense related purposes or by defense agencies or personnel). The standards also except “back office” equipment that is used only by service personnel for maintenance, repair, or similar purposes.

The standards only cover technology that is procured by Federal departments and agencies under contract with a private entity, and apply only to those products directly relevant to the contract and its deliverables. One of the exceptions provides that the standards *do not* apply to technology that is incidental to a Federal contract. Consequently, EIT products or services that are not specified as a deliverable under a contract with DOE are not subject to the compliance standards. For example, a firm that produces a report as a deliverable under the terms of a Federal prime contract would not have to procure accessible computers and software to develop the report even if they were used exclusively for that contract.

III. What are the Procedures for Acquiring Section 508 Compliant Goods and Services?

A. When does Section 508 Apply?

- Section 508 applies to all Federal prime contracts for EIT that are awarded on or after June 25, 2001.
- Section 508 also applies to task and delivery orders for EIT that are issued on or after June 25, 2001 under indefinite-quantity contracts; including, Federal Supply Schedules (FSS), Multiple Award Contracts (MAC), Government Wide Agency Contracts (GWAC), and other interagency acquisitions.
 - ✓ Prior to the issuance of a task or delivery order for EIT on or after June 25, 2001 under an indefinite-quantity contract that was awarded *prior to* June 25, 2001, Contracting Officers and the cognizant program official(s) must determine whether such EIT is Section 508 compliant.
 - It may be possible to facilitate compliance of noncompliant EIT that is currently available under such contracts via customary technical refreshment and/or technical obsolescence clauses, as applicable.
 - Indefinite-quantity contracts may include noncompliant items provided that any task or delivery order issued for noncompliant EIT meets an applicable exception (see Section IV).
 - ✓ The Contracting Officer must ensure that when acquiring EIT products or services from an FSS, GWAC, or MAC the Requiring Official and ordering activity have documented that the acquisition complies with the applicable accessibility (see FAR 39.203(b)(3)).
 - ✓ When acquiring EIT products or services in the form of an Other Interagency Acquisition, i.e., interagency agreement, the Contracting Officer must ensure that the Requiring Official and ordering activity have documented compliance with the applicable accessibility standards for the products or services being procured.
- Section 508 compliance is not required for task and delivery orders for EIT that are issued after June 25, 2001, under definite quantity or requirements contracts that were awarded *prior to* June 25, 2001.
- Contracting offices that award indefinite-quantity contracts for EIT products or services which are made available for intra or inter-agency use must indicate to ordering offices which supplies or services that are available under the contract are

compliant, and show where full details of compliance can be validated.

- ❑ The requirements of Section 508 **do not** apply to a contractor's acquisition of EIT (see FAR 39.204 and Section G.4 of the Frequently Asked Questions (<http://www.section508.gov/docs/508QandA.html>)) for use during the performance of an awarded contract. Section 508 compliance is required for acquisitions of EIT that is acquired by Federal departments and agencies for use by Federal government employees and the general public.
- ✓ Reference is made to the memorandum issued by the Acting Director, Office of Management and Administration, dated February 28, 2001, Subject: "Guidance on Management and Operating Contractor Purchasing." This memorandum re-emphasizes the Department's policy which prohibits the acquisition of goods and services by the Department's management and operating (M&O) contractors for the sole support of Department's Headquarters or its field offices. However, in certain limited circumstances, M&O contractors may purchase for mixed M&O/DOE site activities, when it is not practicable to segregate DOE requirements from those of the M&O contractor. In such instances, Requiring Officials should consult with local counsel and the Office of Procurement and Assistance Policy concerning the potential applicability of Section 508 to such acquisitions.

B. What are the Procedures for Requirements Development?

- ❑ Requiring Officials, with assistance from the Contracting Officer, should determine whether an identified need can be filled with a product or service that is fully or partially compliant with the Access Board's standards or whether an exception applies.

Refer to the Attachment of this document for a "Decision Tree" providing a visual perspective of the events that take place during the acquisition of EIT products and/or services.

- ✓ If the product or service is fully compliant and can be acquired from the commercial marketplace in time to meet delivery requirements, the Requiring Official must document the compliance with the standards and make the purchase, unless an undue burden exist (see FAR 39.204(e)(1)).
- ✓ If only a partially compliant product(s) or service(s) can be acquired from the commercial marketplace in time to meet delivery requirements, the Requiring Official must document partial compliance, identify those standards which are not available (see FAR 39.203(c)(2)), and make the purchase, unless an undue burden exists (see FAR 39.204(e)(1)).
- If products or services are available that meet some but not all applicable standards, a product as a whole cannot be claimed as not available. If products or services are

commercially available that meet some but not all of the standards, the Contracting Officer must procure the product that best meets the standards. For example, Contractor A offers a technically equivalent product to that of Contractor B, Contractor A's product is partially compliant with the standards where Contractor B's product is non-compliant. The product offered by Contractor A must be procured, unless an undue burden would result, all factors considered.

- ✓ If no compliant products or services can be acquired in the commercial marketplace in time to meet delivery requirements, the Requiring Official must document the actions taken to conclude that the nonavailability of a compliant product or service exists. The documentation must include a description of market research performed and which standards cannot be met and proceed with purchasing products or services that meet the Government's needs (see FAR 11.002(f)).
- Determinations of "undue burden" are not required to address individual standards (in whole or in part) that cannot be met with products or services that are available in the commercial marketplace in time to meet agency delivery requirements.
- ✓ Compliance with the Access Board's standards is required when requirements documents (specifications or statements of work) are developed pursuant to FAR 10.001(a)(3)(vii) and 11.002 for a product or service that does not meet an exception (see FAR 39.204).

C. How Can Compliant Products and Services be Found?

- ☐ A product's compliance with the Access Board's standards may be determined through market research (see FAR Part 10). Provided below are some techniques to use in order to determine compliant products and services:
 - ✓ Inspect the General Services Administration's (GSA) Section 508 website <http://www.section508.gov>, click on the "Buy Accessible" link. This website should be the doorway to market research and the link should be considered a beginning to determining a products' or services' compliance. The site will continuously be populated with data concerning EIT product and service compliance, periodic checks are recommended;
 - ✓ Check the GSA FSS website <http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelId=-13263> The FSS website provides assistance in determining which complaint products or services are available off of the FSS. Click on "GSA Advantage;"
 - ✓ Consult EIT vendor/manufacture websites. The websites of vendors and manufacturers may provide the most up to date and comprehensive information related to product or service compliance. Verify and document

all information collected;

- ✓ Contact vendors or manufacturers directly for EIT product compliance information. Literature provided by the vendor/manufacturer is a great resource in assessing a products' or services' compliance. Any documentation received should be included as part of the contract file;
- ✓ Issue a request for information through the Federal Business Opportunities website www.fedbizopps.gov. Information on compliant EIT products and services and alternatives may be obtained through this source. Verify and document all information received;
- ✓ The DOE CIO's office can provide assistance in helping to ascertain a products' and services' compliance with Section 508. Contact DOE's Section 508 Coordinator (202) 586-1342; and
- ✓ Contact the awarding office for product or service compliance information. In the case of MACs, GWACs, and other interagency contracts, the awarding office can provide product or service compliance information that may be used in documenting the contract file.

IV. What are the Exceptions to Compliance with the Electronic and Information Technology Standards?

Acquisition of EIT supplies and services must meet the applicable accessibility standards at 36 CFR part 1194, unless one of the following exceptions applies (see FAR 39.204):

- National Security** - This exception covers equipment that is an integral part of a weapon or weapons system, or systems which are critical to the direct fulfillment of military or intelligence missions.
- Goods or Services Acquired by a Contractor** - Acquisition of items purchased that are incidental to a contract and used by the contractor in its normal course of operation, are exempt.
 - ✓ Generally, Section 508 does not apply to a contractor's internal workplace. If the contractor's EIT is not used or accessed by Federal employees or members of the public, it is not subject to the standards. It should be noted, for purposes of Section 508, contractor employees operating in their professional capacity are not considered members of the public.
- Back Office** - EIT that is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment.
- Undue Burden** - The term "undue burden" is derived from disability law and it is consistent with language used in the Americans with Disabilities Act (ADA) and other

civil rights legislation. The term has been defined as “*significant difficulty or expense.*”

- ✓ Requesting Officials should consult with local EEO counsel, or the Office of General Counsel for General Law (GC-80), regarding determinations/documentation requirements of “undue burden” related to EIT Accessibility.
- ✓ When an undue burden is determined, an alternative means of access must be provided to individuals with disabilities, if available. The Contracting Officer must obtain an alternative product or service, if available, as identified by the Requiring Official.

Note: Exception determinations are required for indefinite-quantity contracts that include non-compliant products or services only when the requirements are satisfied at the time of award, as previously stated. Indefinite-quantity contracts may include non-compliant items, provided that the task and delivery orders issued for such items meet an applicable exception.

See the next page for a Decision Tree tool for use with electronic information technology acquisitions.

Section 508 Decision Tree for EIT Acquisition

