

## EIT Commercial Non-Availability Certification

*To be completed by the Requiring Official (Purchase Requestor) for purchase requests involving Electronic & Information Technology (EIT).*

**The following quote from FAR subpart 2.101 defines items that are commercial:**

"Commercial item" means--

(a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

(1) Has been sold, leased, or licensed to the general public; or

(2) Has been offered for sale, lease, or license to the general public;

(b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(c) Any item that would satisfy a criterion expressed in paragraphs (a) or (b) of this definition, but for--

(1) Modifications of a type customarily available in the commercial marketplace; or

(2) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;

(e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services--

(1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(g) Any item, combination of items, or service referred to in paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(h) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.”  
(end of definition)

**Answer the questions below in detail and as fully as possible. Refer to the " Section 508 Definitions & Technical Standards" available at [http://www.section508.gov/final\\_text.html](http://www.section508.gov/final_text.html) before completing. Follow directions as stated.**

1. What were your findings regarding the non-availability of compliant commercial items? What applicable technical standards of Section 508 (reference "Section 508 Definitions & Technical Standards" at [http://www.section508.gov/final\\_text.html](http://www.section508.gov/final_text.html)) will not be met by each product to be acquired?

2. What was the methodology or process by which you ascertained the non-availability of compliant commercial items?

3. What sources did you use to investigate the availability of compliant commercial items ? (e.g., other federal agencies; contacts with industry trade associations; accessible product organizations such as IRS Information Resources Accessibility Program (IRAP) and GSA's Center for IT Accommodation; GSA's FSS; IRS' Disabled Employees Support Acquisitions Contract (DESAC II) contract); Internet market research; industry consultation; Request-for-Information (RFI) in Federal Business Opportunities (FedBizOpps, or FBO)

4. When is the expected availability date of a compliant product, and with whom was this information verified/received (provide contact information)?

**NOTE:** Even if not fully compliant, you are required to acquire the commercial product that provides the greatest degree of compliance while satisfying other functional requirements. (36 CFR subpart 1194.2 (b))

**I, the purchase requestor, understand that statute imposes private enforcement, where individuals with disabilities can file civil rights lawsuits against the Department of Transportation or applicable Operating Administration in federal district court when EIT procured after June 21, 2001 does not meet Access Board standards. I have determined and hereby certify that the commercial deliverables I require to have procured are not currently available in a compliant version in the commercial marketplace, nor expected to become available in a compliant version in time to satisfy agency delivery requirements. Evaluation criteria have been developed to ensure that deliverables procured provide the greatest degree of compliance while satisfying other functional requirements. Those evaluation criteria are included in this procurement request package.**

_____	_____	_____	_____
Signature	Printed Name	Date	Phone Number

**Immediate Supervisor or Manager of the Certifier's Office:**

I hereby concur with and support this Determination & Certification.

_____	_____	_____	_____
Signature	Printed Name	Date	Phone Number

**Applicable Operating Administration Chief Information Officer:**

I hereby concur with and support this Determination & Certification.

_____	_____	_____	_____
Signature	Printed Name	Date	Phone Number

**Attach this document to the "Section 508 Determination and Certification for EIT Purchase Requests" form, and affix both to your procurement request.**