

Customer Responsibilities For Electronic and Information Technology Accessibility Standards (36 Code of Federal Regulations (CFR) Part 1194)

When Federal departments or agencies develop, procure, maintain, or use Electronic and Information Technology (EIT), Section 508 of the Rehabilitation Act of 1973 is applicable. It requires that Federal agencies ensure that their EIT allows Federal employees with disabilities to have access to and use of information and data that are comparable to the access and use by Federal employees without disabilities. Section 508 similarly requires that members of the public with disabilities, who are seeking information or services from a Federal agency, have access to and use of information and data that are comparable to that provided to members of the public without disabilities.

Comparable access is not required if it would impose an undue burden on the agency. An *undue burden* here means a significant difficulty or expense. Agencies are required by statute to document the basis for an undue burden. Requiring officials should be aware that when there is an undue burden, the statute requires an alternative means of access to be provided to individuals with disabilities.

When defining requirements, the customer should determine whether or not Section 508 of the Rehabilitation Act of 1973 must be implemented.

GUIDANCE AND SAMPLE STATEMENTS FOR SECTION 508 COMPLIANCE

SECTION 508 COMPLIANCE

On April 25, 2001, the final rule for implementing Section 508 in the FAR was published. This regulation took effect on June 25, 2001, and for indefinite quantity contracts, it is applicable to delivery orders or task orders issued on or after this date. (See <https://www.acquisition.gov/far/97-27n/html/FARtoHTML.htm>).

Section 508 requires the FAR to incorporate accessibility standards developed by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board"). These regulations, known as the Electronic and Information Technology Accessibility Standards (36 Code of Federal Regulations (CFR) part 1194) are available at [The Section 508 Standards Page](http://www.access-board.gov/508.htm) or with discussion and alternate formats at <http://www.access-board.gov/508.htm>.

Besides incorporating the Access Board's EIT Accessibility Standards, the revisions to Part 39 of the FAR, in compliance with Section 508, include the following:

- The discussion of the term: "electronic and information technology" created by the statute
- A new Subpart 39.2 on Electronic and Information Technology

Acquisition of EIT supplies and services must comply with the applicable EIT Accessibility Standards unless an exception in FAR 39.204 applies. (See <https://www.acquisition.gov/far/97-27n/html/FARtoHTML.htm>). COs that award indefinite-quantity contracts must indicate to requiring and ordering activities which supplies and services their contractors indicate as compliant, and show where full details of compliance can be found.

Indefinite-quantity contracts may include noncompliant items, provided that any task or delivery order issued for noncompliant EIT meets an applicable exception or commercial non-availability consideration. Accordingly, requiring activities must ensure compliance with the EIT Accessibility Standards (at 36 CFR part 1194) or that an exception applies at time of issuance of task or delivery orders.

The rule recognizes that initially many products will not meet all the technical standards in 36 CFR part 1194. Nevertheless, agencies may need to acquire these products. Therefore:

1. When acquiring commercial items, an agency must comply with those accessibility standards that can be met with supplies and services that are available in the commercial marketplace in time to meet the agency's delivery requirements.
2. The requiring official must document in writing the non-availability, including a description of market research performed and the individual standards that cannot be met. The official must provide this documentation to the CO for inclusion in the contract file.
3. Partially conforming products must be considered. The most conforming one among them that satisfies the minimal government non-Sec. 508 specifications must be selected.

Small businesses will have to analyze whether the EIT they plan to sell to the Federal Government complies with the standards. Since the statute imposes private enforcement, whereby individuals with disabilities can file civil rights lawsuits, the Government has little flexibility for providing alternatives to this regulation. To meet the requirements of the law, small businesses are *not* exempt from any part of the rule. However, subcontractors are NOT subject to Sec. 508 except where they provide a product that will reach the Government or public for use.

The following sections contain sample text that addresses Section 508 of the Rehabilitation Act and can be included, if applicable, by the customer in a statement of work (see D.2 Agency Sample), or by the contractor in a proposal response (see D.3 Contractor Sample).

AGENCY SAMPLE

Federal Government agency procurements must comply with Section 508 of the Rehabilitation Act of 1973. Refer to Section 1.11 for background information. A contracting agency may, if applicable, use the following sample statements in the Statement of Work to meet the requirements of Section 508 (Electronic and Information Technology Accessibility for Persons with Disabilities).

Section 508 Compliance Instructions

Section 508 of the Rehabilitation Act of 1973 requires that Federal agencies' electronic and information technology (EIT) is accessible to people with disabilities. The Federal Acquisition Regulations (FAR) Final Rule for Section 508 (EIT Accessibility) can be found at www.section508.gov and at the Access Board's Web site at <http://www.access-board.gov/508.htm>.

Unless it is an "undue burden" or compliant products or services do not exist, the products must conform to Section 508. The contractor should state that they will comply with the requirements of Section 508 or cite a justifiable reason for an exception. If any additional costs for compliance are anticipated, these should be identified. Also, if significant difficulty or expense is involved, a commercial non-availability is declared.

The contractor must ensure that all EIT products that are less than fully compliant are offered pursuant to extensive market research which ensures that they are the most compliant products and services available. For every EIT product that does not comply with 36 CFR Part 1194, the contractor shall on 30 days notice, make every effort to replace or upgrade it with a compliant equivalent product or service, if commercially available and cost neutral.

For existing systems, the contractor may not be able to identify all costs for compliance if the contractor did not develop that system, but should state that any development performed during the course of this DO will be compliant. If significant

difficulty or expense is involved, a commercial non-availability is declared. Within 30 days of task award, the contractor should provide a plan for compliance for the system as a whole, including any costs associated with compliance.

Standards

The contractor shall comply with all required Federal or agency standards as specified in the individual DO.

The Federal Electronic and Information Technology Accessibility Standards (36 CFR 1194) are incorporated into and made a part of this contract. These standards are found in their entirety at [The Section 508 Standards Page](#). A printed copy of the standards will be supplied upon request. The contractor must comply with the above referenced standards in performing this contract.

CONTRACTOR SAMPLE

The following is a sample 508 compliance statement that a contractor may include, if applicable, in response in a proposal.

(a) The contractor represents by signing this offer that the supplies and services offered in response to this solicitation, except for those identified in paragraph (b), comply fully with the Electronic and Information Technology Accessibility Standards at 36 CFR 1194. (See [The Section 508 Standards Page](#)). Each supply or service that will not be totally compliant at time of delivery or is only partially compliant is listed in paragraph (b).

(b) All noncompliant and partially compliant supplies or services are listed below. In addition, for each supply or service that is not in full compliance, or is partially compliant, a detailed discussion of which standards are satisfied and which standards are not satisfied by the offered supply or service is included. Also, any qualification or conditions that might affect compliance with Section 508 of the proposed supplies or services are described. The list will be kept current during the period of performance.