



***ELECTRONIC INFORMATION  
TECHNOLOGY ACCESSIBILITY (EITA)***

***QUESTIONS & ANSWERS***

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**1 Who and what agency is responsible and held accountable for making final decisions and answering questions about accessibility compliance?**

Answer: Ultimately, the agency itself is responsible and accountable.

Pursuant to 62 O.S. §34.28, the Information Services Division of the Office of State Finance shall work in conjunction with the Department of Central Services to assure state compliance regarding accessibility of information technology for individuals with disabilities; provide in partnership with Oklahoma Able Tech, the state assistive technology program located at Oklahoma State University, training and technical assistance for state agencies to assure procurement of information technology that meets adopted accessibility standards; work with and seek advice from the Electronic and Information Technology Accessibility Advisory Council, created in Section 34.30 of this title in developing accessibility standards and complaint procedures as required in this section; and, require state agencies to submit evidence of assurance of compliance with state standards on accessibility of information technology for individuals with disabilities developed in accordance with this section. For executive branch state agencies that are required to submit an annual operating plan pursuant to Section 34.16 of this title evidence of compliance shall be included in that report.

In March 2009, DCS revised the IT Access Clause to clarify who is liable for products as it relates to accessibility compliance, as follows:

**For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization.** The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the Contractor from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

**For Information Technology or Communications Products, Systems or Applications requiring development and/or customization.** The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance will be necessary on the Contractor's part. Such requirements will be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the Contractor, from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the Contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

**2 Does a COTS product have to meet all the accessibility standards before it can be legally procured?**

Answer: See #8.

**3 How does accessibility fit into the procurement term: "best value"?**

Answer: Accessibility is a component of "best value." Accessibility is to be considered with the general, technical and functional requirements of the procurement specifications. When these requirements are evaluated, an agency is able to establish the "best value."

**4** *What is the process for scoring a voluntary product accessibility template (VPAT) for compliance during the evaluation process; understanding that the agency will not have the commercial off-the-shelf (COTS) product available to them?*

Answer part 1: The Information Technology Industry Council ([www.itic.org](http://www.itic.org)) created the VPAT® which is currently used to describe Section 508 compliance and is considered the industry standard. Because Oklahoma's standards are based closely on 508, but modified in some cases, the Oklahoma Department of Central services developed VPATs to mirror Oklahoma EITA standards.

The purpose of the Voluntary Product Accessibility Template®, is to assist Federal and state contracting officials and other buyers in making preliminary assessments regarding the availability of commercial "Electronic and Information Technology" products and services with features that support accessibility. It is assumed and recommended that offerers will provide additional contact information to facilitate more detailed inquiries.

Options for obtaining a VPAT: review vendor Web site; check the Even Grounds Directory of VPATs at <http://www.evengrounds.com/resources/vpat-directory>; request a VPAT from the company; or Google VPAT for the company and/or the product.

Answer part 2: VPATs were not developed with point scoring functionality; however, an agency may create a scoring process when comparing the accessibility features of products. Not all accessibility standards are created equal. If the agency develops a scoring process, the agency should set up a point system prior to the review of products and determine which accessibility standards will be most critical to meet.

The accessibility standards that are the most critical should be weighted with a higher point value. The remaining standards should be considered equally with a lower point value, unless they are not applicable to the proposed system. The accessibility standards that are not applicable should be scored as no points.

For example, if a product does not meet accessibility standard L of the Software section of the accessibility standards, the application would not be accessible for someone who doesn't use a mouse. This standard should be considered as a critical standard as it would prevent keyboard access of an application. Standard R "identify the primary natural language of the document" doesn't have as significant an impact on the success of assistive technology use with a software solution as standard L. In this example, standard R should be evaluated as a less critical standard and is assigned a lower point value in the scoring process than standards such as accessibility standard L.

Finally, the procurement process must consider accessibility among the general, technical and functional requirements of the procurement specifications (OK Administrative code 580:15-6-21).

**5** *What percentage of weight is given to the accessibility section of the evaluation tool as it relates to cost and functionality?*

Answer: The evaluation process must consider accessibility among the general, technical and functional requirements of the procurement specifications (OK Administrative code 580:15-6-21).

The agency may choose to set up a point system prior to the review of products and determine which standards will be most critical to meet (if it is a custom product the applicable standards should be met). The standards that are the most critical should be required in order for the proposal to be considered (in other words – mandatory). The remaining standards should be considered equally in value in the point system, unless they are not applicable to the proposed system. The accessibility standards on the VPAT that are not applicable should be scored as no points. For example, if a product does not meet standard L of the Software standards, the application would not be accessible for someone who doesn't use a mouse. This proposal would be disqualified as this should be considered a critical standard. Standard R "identify the primary natural language of the document" doesn't have as significant an impact on the success of assistive technology use of the product as standard L. In this example, standard R should be evaluated as a less critical standard and is assigned a point value. Finally, the procurement process must consider accessibility equally among the general, technical and functional requirements of the procurement specifications (OK Administrative code 580:15-6-21).

The overall weight of the accessibility portion of the evaluation process should be assigned based on the public-facing nature of the evaluated solution. For public-facing solutions, the recommendation is for the weighted percentage to be higher as it relates to scoring accessibility. However, the owner and technical resources should decide the appropriate weight for the accessibility portion.

**6** *Are there any criteria that should be used when evaluating a VPAT? If so, what are they?*

Answer: The agency would identify knowledgeable staff to assist in determining if the vendor has responded appropriately for each applicable accessibility standard. In other words, an experienced staff person should identify if a company understands each of the standards and evaluated its product appropriately and thoroughly.

The agency should consider the following:

- Is the vendor completing the correct VPAT? Note: OSF recommends attaching the correct VPAT(s) to the RFP. This should reduce potential confusion about which VPAT(s) to complete as a part of the proposal.
- Did the vendor address each accessibility standard with an adequate and thorough response
- Evaluate the response to the applicable critical accessibility standards and score using the developed scoring process.
- Evaluate the response to the remaining applicable accessibility standards and score using the developed scoring process. The remaining accessibility standards should be weighted lower than the critical standards (for COTS product).

The VPAT contains instructions and explains the language to describe when the product fully meets or supports the standard, does not fully meet the intent but provides some level of access, equivalent facilitation, fully meets or supports the standard when combined with compatible assistive technology (AT), does not support or meet the standard, or not applicable. The VPAT has subsections containing the categories of standards such as “Web-based Internet information and applications.” Each VPAT for the standard category contains the standard, then a row for comments of “supporting features” and then a row for “remarks and explanations.”

**7** *In a typical evaluation tool, how should the accessibility standards be structured within the tool template?*

Answer: If an agency has an evaluation tool, accessibility must be one of the criteria in the selection process in addition to the general, technical and functional requirements of the procurement specifications (OK Administrative code 580:15-6-21).

The agency should set up a point system prior to the review of products and determine which accessibility standards will be most critical to meet.

The accessibility standards that are the most critical should be weighted with a higher point value. The remaining standards should be considered equally with a lower point value, unless they are not applicable to the proposed system. The accessibility standards that are not applicable should be scored as no points. With custom products or with products that can be altered to fit the agencies needs, all applicable standards should be met.

For example, if a product does not meet accessibility standard L of the Software section of the accessibility standards, the application would not be accessible for someone who doesn't use a mouse. This standard should be considered as a critical standard as it would prevent keyboard access of an application. Standard R “identify the primary natural language of the document” doesn't have as significant an impact on the success of assistive technology use with a software solution as standard L. In this example, standard R should be evaluated as a less critical standard and is assigned a lower point value in the scoring process than standards such as accessibility standard L.

Finally, the procurement process must consider accessibility among the general, technical and functional requirements of the procurement specifications (OK Administrative code 580:15-6-21).

**8** *What options does an agency have if, when evaluating COTS products, none of them are 100 % compliant?*

Answer: It is important to define a COTS product as truly commercial, off-the-shelf, out of the box without flexibility or the option of customizing. If the product is truly COTS, the agency must procure the product that best meets the general, technical and functional requirements as defined by the agency, in addition to the product that best meets accessibility standards.

Not all accessibility standards are created equal. If the agency develops a scoring process, the agency should set up a point system prior to the review of products and determine which accessibility standards will be most critical to meet.

The accessibility standards that are the most critical should be weighted with a higher point value. The remaining standards should be considered equally with a lower point value, unless they are not applicable to the proposed system. The accessibility standards that are not applicable should be scored as no points.

For example, if a product does not meet accessibility standard L of the Software section of the accessibility standards, the application would not be accessible for someone who doesn't use a mouse. This standard should be considered as a critical standard as it would prevent keyboard access of an application. Standard R "identify the primary natural language of the document" doesn't have as significant an impact on the success of assistive technology use with a software solution as standard L. In this example, standard R should be evaluated as a less critical standard and is assigned a lower point value in the scoring process than standards such as accessibility standard L.

Finally, the procurement process must consider accessibility among the general, technical and functional requirements of the procurement specifications (OK Administrative code 580:15-6-21).

**9** *What are "all" the steps an agency can take to ensure they have done their due diligence in evaluating the accessibility of a COTS product, should a complaint be filed?*

Answer:

- Include the appropriate IT Access Clause in the procurement document for each COTS product or service. This clause indicates the need for a VPAT or comparable document and alerts vendors of Oklahoma's obligation to comply with a state IT accessibility law and standards.
- Research the market for available products that will meet the agency's functional or business needs;
- Consider accessibility with the general, technical and functional requirements of the procurement specifications;
- Fill out Form 055 (Accessible Electronic and Information Technology Procurement Checklist & Documentation) and/or Form 057 (Accessible Electronic and Information Technology Application Information System (AIS) Procurement Checklist);
- Verify the correct, applicable VPAT form(s) (053-4.2 to 053-4.7) are submitted and thoroughly completed. There are 5 different VPAT forms; one for each different category of product;
- Test/evaluate the product as part of the process; test/evaluate with people who use assistive technology.
- Document all decisions regarding exceptions, undue burden (Form 056), and market research and retain with the procurement file. Agencies are encouraged but not required to maintain documentation for commercial off the shelf acquisitions of \$2,500.00 (\$5000?) or less unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical (OK Administrative code 580:15-6-21(d)).

**10** *If an agency is evaluating multiple vendors for a COTS product and some vendors do not submit a VPAT; is that considered non-responsive?*

Answer: If the vendor's response was required to be submitted and is not submitted with the response, then the vendor is considered non-responsive for this requirement. State procurement policy requires a VPAT or comparable document to be submitted at a minimum (OK Administrative Code is 580:15-6-21(3)) and that accessibility will be considered among the general, technical and functional requirements of the procurement specifications.

**11** *If an agency is upgrading an existing non-compliant COTS product that has been in the environment prior to September 2005, does the entire product have to be brought into compliancy at the time of the upgrade? Why or why not?*

Answer: The Oklahoma IT Accessibility Standards were effective Sept. 8, 2005, and apply to all information technology procured, developed and/or substantially modified or substantially enhanced after the effective date of these standards, providing the procurement and/or development process was not initiated prior to the effective date. (OK Administrative Code 260:15-1-3(b)). While it is difficult to establish a uniform definition of "substantially modified" or "substantially enhanced," OSF believes the focus should not be on the back-end code, but rather on the user interface or user experience. For example, if a developer changes 40 lines of code to make an

application function more efficiently, this wouldn't dramatically change the user experience to constitute a substantial modification or substantial enhancement. However, if changes to an application or document significantly change the display of content, user features, brings about a significant alteration in the structure or appearance of the application or document, new functionality is added, or key functionality is changed or removed, these could significantly impact a user experience to the point that each item individually or collectively could constitute a substantial modification or substantial enhancement.

**12** *If an agency is upgrading an existing non-compliant custom developed product that has been in the environment prior to September 2005, does the product have to be brought into compliancy at the time of the upgrade? Why or why not?*

Answer: We have an obligation to make it accessible even though Oklahoma's standards indicate a reference to the standards effective date September 2005. It would be advisable and more efficient for the agency to make it accessible instead of retrofitting it later at a potentially greater expense. A substantial modification will occur at some point. However, the time reference does provide a tangible place to start especially in reference to websites and retrofitting static pages or PDFs, etc. It allows agencies a legal way to prioritize the greatest need.

**13** *If an agency is evaluating multiple COTS products, can they only evaluate the VPATs for the products that meet their business needs?*

Answer: An agency must evaluate all products that will meet their general, technical and functional needs. Declaring sole source does not eliminate the need to evaluate accessibility. Accessibility must be considered as one of the criteria when selecting a product.

**14** *If a COTS product is procured on a state wide or a general services agreement contract and a VPAT is already on file; does the agency have to ask for a new one or is the VPAT on file acceptable?*

Answer: Ideally, the agency that awards the statewide contract should be the agency that maintains the current VPAT for the products on a statewide contract. For statewide contracts, DCS shall be the repository for VPATS associated with each statewide contract. DCS currently has provided links to the manufacturers on the statewide contracts to expedite VPAT searches by agencies. DCS is working towards a solution that will keep VPATS immediately available linked to its contracts on the agency web page.

DCS intends to collect and maintain VPATs for future statewide contract awards. When necessary, DCS will utilize IT commodity councils to review the VPATs for minimum compliance to Oklahoma Information Technology Accessibility Standards. DCS will require that vendors update the VPATs (or verify current status of the same) annually and make them available to state agencies to further expedite the acquisition process.

However, agencies should review VPAT information during the requisition process for two important reasons:

- VPATs are subject to change as technology changes, and this may affect the agency's purchasing decision; and,
- An agency must ensure the acquisition of a product best meets the agency's general, technical, functional, and accessibility requirements based upon its application in accordance with normal purchasing guidelines and prudent action.

**15** *If there are custom developed products that started development prior to September 2005 and are released on a limited basis today; do they need to be fully compliant when the final module is released?*

Answer: No. However, if the application is public facing, the agency needs to consider the impact of non-compliance on the users of the product. In addition, if an agency accepts federal funds and is subject to Section 508 of the Rehabilitation Act, the agency must also adhere to those accessibility standards. The Access Board's standards became enforceable on June 21, 2001.

**16** *Does a subscription service need to be accessible? Do we need VPATs from vendors providing on-line subscription services? If so, do they have to be 100% compliant before we can subscribe to the service? E.g. Gartner, Lexus/Nexus, etc.*

Answer: There are two issues to be considered when buying access to a subscription service. While the actual subscription service should be treated like a COTS product, an agency should inquire about the accessibility compliance of any customizable features. With regard to the customizable features an agency should collect a VPAT from the subscription service.

If the product is considered to be “back office” IT, the product may qualify as an exception to the Oklahoma IT Accessibility Standard.

Finally, for IT \$2,500 and less, agencies are encouraged but not required to maintain documentation for commercial off the shelf acquisitions unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical (OK Administrative code 580:15-6-21(d)). This does not include VPATs or comparable documents, which are required for all IT products as a part of the procurement process.

See the answer to question #7.

**17 Do we need to verify accessibility, and get VPATs for open source, free software? For instance – Open Office? SuSE Linux? Nagios (network management)?**

Answer: Yes, an open source and free software does need to be accessible. In most cases for open source solutions, you cannot get a VPAT as there is no company typically considered the owner of the solution. However, the agency should obtain a VPAT from a vendor or company that uses open source in the development of a solution. Accessibility is just one of the criteria that an agency should evaluate (along with general, technical, functional requirements).

If the product is considered to be “back office” IT, the product can qualify as an exception to the Oklahoma IT Accessibility Standard.

For IT \$2,500 and less, agencies are encouraged but not required to maintain documentation for commercial off the shelf acquisitions unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical (OK Administrative code 580:15-6-21(d)). This does not include VPATs or comparable documents, which are required for all IT products as a part of the procurement process.

See the answer to question #7.

**18 Does the accessibility standard differentiate the requirements between a COTS product and a custom developed product?**

Answer: Only with respect to liability. Both COTS and custom products must comply with all the identified applicable standards to be accepted by the agency.

In March 2009, DCS revised the IT Access Clause to clarify who is accountable for making final decisions about accessibility compliance, as follows:

**For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization.** The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the Contractor from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

**For Information Technology or Communications Products, Systems or Applications requiring development and/or customization.** The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance will be necessary on the Contractor's part. Such requirements will be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the Contractor, from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the Contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

**19** *If we publish a fully accessibility compliant document, can we publish an alternate version with the same functionality using Word, Excel or other programs, but which is not fully compliant, so that we can serve the needs of those who regularly use a format other than that of our compliant document?*

Answer: Agencies may publish an alternate version with the same functionality to serve their mission and functional needs of those who require a format other than html. If an agency is serving a customer who prefers an excel table over html version, the agency may need to offer the data/information in the excel format in order to meet their mission and goals serving their customers. However, the agency is obligated to provide the information accessibly. If the agency decides to provide a compliant version in another way and there are two documents with the same information on the Web, then a reference to Oklahoma's IT Accessibility Standard for Web-Based Intranet and Internet Information and Applications Standard K provides guiding language for this situation: "a text-only page, with equivalent information or functionality, shall be provided to make a Web site comply with provisions of these standards when compliance cannot be accomplished in any other way. The content of the text only page shall be updated whenever the primary page changes. The non-accessible version must be as accessible as possible." The key sentence is: "the non-accessible version must be as accessible as possible."

**20** *If we publish a non-compliant document, can we provide a compliant alternative which does not provide the exact same functionality as the non-compliant version by making it as accessible as possible?*

Answer: No. The compliant version must provide equal functionality and capabilities which could also be achieved in a variety of ways – this is considered equivalent facilitation.

**21** *If we have a fully compliant version of a document online, can we also have a non-compliant print-friendly version online? For example: Each month, one of our programs creates 45 Excel compliant tables for our monthly statistical bulletin to publish online. The state library does not have the time to download all those tables and put them together to send out to other libraries. We prepared a PDF with all the tables, just for their purpose, which is not compliant; however, we stated in the e-mail to the state library that it was for printing purposes only and included all 45 Excel compliant files. We would like to include this non-compliant PDF online if possible. The state library was going to stop collecting the bulletin data if we did not come up with a way to provide them with the information in a way they could easily utilize.*

Answer: Agencies may publish an alternate version with the same functionality to serve their mission and functional needs of those who require a format other than html. However, the agency is obligated to provide the information accessibly. If the agency decides to provide a compliant version in another way and there are two documents with the same information on the Web, then a reference to Oklahoma's IT Accessibility Standard for Web-Based Intranet and Internet Information and Applications, Standard K provides guiding language for this situation: "a text-only page, with equivalent information or functionality, shall be provided to make a Web site comply with provisions of these standards when compliance cannot be accomplished in any other way. The content of the text only page shall be updated whenever the primary page changes. The non-accessible version must be as accessible as possible." The key sentence is: "the non-accessible version must be as accessible as possible."

In the agency example above, the easiest way to meet the need would be to create a single MS Excel workbook with 45 worksheets and send that file to the state library. The agency could also create a single PDF file that merges the MS Excel tables and provide that on a CD.

**22** 62 OS. 34.28 defines *Undue Burden* as significant difficulty or expense, including, but not limited to, difficulty or expense associated with technical feasibility. Litigation seems to imply that expense is not a viable “undue burden” in a large agency. Give an example of undue burden as relates to difficulty associated with technical feasibility?

Answer: ABLE Tech is not aware of any Oklahoma undue burden claims. ABLE Tech will provide answer with the knowledge of what we do know about proving undue burden given the history of the definition, legislation, and case law.

Section 508 federal standards 1194.4, Definition, Undue burden. *Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, an agency shall consider all agency resources available to the program or component for which the product is being developed, procured, maintained, or used.*

*Oklahoma Standards, Definition, Undue Burden. Significant difficulty or expense, including, but not limited to, difficulty or expense associated with technical feasibility.*

The term is based on case law. The legislative history of the ADA states that the term “undue burden” is derived from Section 504 of the Rehabilitation Act and the regulations there under, and is analogous to the term “undue hardship” in Title I of the ADA. The Access Board (charged with creating the 508 standards) did not include “technical feasibility” as a factor within the definition since the original definition is based on case law but “technical feasibility” was not established by case law or in existing regulations under Section 504. The Board recognized that undue burden is determined on a case-by-case basis and that factors such as technical feasibility may not apply in every determination.

The Board also noted that available financial resources vary greatly from one agency to another, and what constitutes an undue burden for a smaller agency may not be an undue burden for another, larger agency having more resources to commit to a particular procurement. It is inappropriate for the Board to assess a set percentage for the increased cost of a product that would be considered an undue burden in every case.

Each EIT product procured would necessarily be determined on a case-by-case basis. Undue burden analysis is applied on a provision by provision basis. A separate undue burden analysis must be conducted and be documented for each applicable provision. Undue burden is a difficult threshold to meet.

**23** *What flexibility is there in either procuring COTS or putting documents on the web in terms of percent accessible (meets 80% of the standards), back-office uses available to only a few employees (how many is a few?), and allowing a plan/timeline for vendor or developer to make accessible? Does the notion of “reasonable timelines for conforming to IT accessibility standards” apply only after a complaint has been filed (260:15-1-7), or can “reasonable timelines” be considered upon initial software purchase or publication of documents to the Web?*

Answer: This is a question about flexibility and allowable percentages of compliance within several scenarios - each will be addressed separately.

With respect to true COTS: (commercial, off-the-shelf) products, please see questions 3 and 8. The answer to # 3 is that accessibility is considered with the general, technical and functional requirements and when evaluated as such is established as part of the best value. Question and answer for #8 discusses the options for establishing true COTS and how to evaluate. The agency must procure the product that best meets the general, technical and functional requirements as defined by the agency, in addition to the product that best meets accessibility standards. The procurement process must consider accessibility among the general, technical and functional requirements of the procurement specifications (OK Administrative code 580:15-6-21).

In terms of flexibility and percentages acceptable for Web pages: The federal and state laws on IT accessibility do not define in specific measures or percentages of allowable partial compliance, and it would not be appropriate for OSF, DCS, or ABLE Tech to assign an allowable percentage for acceptable compliance.

To address the question related to the term “back office”: Though not found in the Oklahoma IT Accessibility Standards or rules, “back office” refers to an exception noted in the Oklahoma standards as well as in the Oklahoma Administrative Code (580:15-6-21) related to Information Technology (IT). Exception (C) states an exception for “IT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment.” The agency must intend to locate the product in a physical space frequented only by service personnel. Second, the use of the product by the service personnel must be for

maintenance, repair or occasional monitoring. If both conditions are met, the product does not have to meet the standards. Hardware that might meet these dual conditions includes: telephone equipment placed on racks in a "closet" or small room and network routers and storage devices or servers located in rooms or areas frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment. *Software.* Software which is installed or operated on a product which falls under this exception would be exempt from the standards if the software application could only be operated from the physical place where the product is located. This might include specialized diagnostic software. By contrast, if the software could be operated from a remote workstation, the software would be subject to the Access Board's standards irrespective of who is using it since the product interface is not located in a physical space which meets the criteria for this exception.

The following items may be considered to be "back office" exempt:

- Servers, mainframe, and storage devices located in the lab or data center
- Terminals and consoles attached to the servers/mainframe
- Routers and switches
- Network-related equipment (behind the wall)
- PBX (telephone) server equipment
- Equipment located in the ETC lab programmed for the data center
- Software associated with the mainframe and servers that are located in areas not normally physically accessible by employees

## Notes

- Software that resides in a data center, but is accessible via the network to employees, is not exempt. (e.g., Oracle)
- Any product that people can interact with has to be compliant. For example, a server located in the data center is exempt, but the same server located in someone's office must be compliant. Another example is modems. One that is inside a PC is exempt while one that is external and has an LCD display or buttons, etc., must be compliant.
- The definition of "back office" is becoming more limited in scope."

Federal 508 sites provide clarification at

<http://www.section508.gov/index.cfm?FuseAction=Content&ID=92> and at the USPTO site at <http://www.uspto.gov/go/cio/s508/14e.htm>.

In reference to the question of allowing a reasonable timeline or plan for a vendor/developer to meet accessibility compliance: "Reasonable timelines" is only referenced in the context of the complaint process found in OAC 260: 15-1-7. Reasonable timelines are to be included in the plan to conforming to applicable IT Accessibility Standards. The intent of the 508 or EITA law is to address accessibility proactively or during the initial stages of purchase or development.

**24** *The IT Accessibility Standards, Para 3.3(b) and 580:15-6-21 state that "accessibility determination . . ." will be subservient to the general, technical & functional requirements of the specifications." Does this imply that business needs can outweigh the accessibility of the product? It goes on to say that product evaluation will include a review of the vendor-provided VPAT, "with judgments made regarding degree of conformance to the access standards". Please comment on the meaning of the term "degrees of conformance to the access standards."*

Answer: The use of the term "subservient" in the OSF IT Accessibility Standards (page 8 section (b)) is a conflict of wording with the purchasing rules in the Oklahoma Administrative Code. The terminology and direction of that paragraph was discussed in a workgroup involving DCS, OSF, and ABLE Tech and discrepancy was noted in September 2008.

Oklahoma Administrative code 580:15-6-21. Information Technology (IT)

(a) Procurement.

(3) When procuring a product, the accessibility determination will be conducted as part of the evaluation. Accessibility will be considered among the general, technical and functional requirements of the procurement specifications. At a minimum, it will be done through review of vendor provided information submitted in the form of a Voluntary Product Accessibility Template (VPAT) or comparable document with judgments made regarding degree of conformance to the access standards. The relative accessibility weighing may be adjusted for due cause based on the specific procurement. Agencies cannot claim a product, as a whole is not commercially available because no product in the marketplace meets all the standards.

**25 Please clarify “equivalent facilitation” or equivalent functionality.**

Answer: The Oklahoma IT Accessibility standards defines “Equivalent Functionality” as

*“3.5 Equivalent Facilitation Nothing in these standards is intended to prevent the use of designs or technologies as alternatives to those prescribed in these standards provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.*

*Agencies may accept IT offered by vendors, which uses designs or technologies that do not meet the applicable technical provisions, but provide substantially equivalent or greater access to and use of a product for people with disabilities. This is referred to as "equivalent facilitation."*

*Equivalent facilitation is not an exception or variance from the requirement to provide comparable access. Rather, it is recognition that technologies may be developed or used in ways not envisioned by the technical provisions of this document but still result in the same or better functional access. Functional outcome – not form – is the key to evaluating whether a technology results in "substantially equivalent or greater access."*

When documents (MS Word or PDF) are served on the Web, they fall under the definition provided in the Oklahoma Information Technology Accessibility Standards for Web pages - “Web pages: Electronic content connected to the World Wide Web or an intranet and available via a browser.”

However, the standards cannot cover every possible iteration of Information Technology. Within the standards document is the concept of “equivalent facilitation,” which is recognition that technologies may be developed or used in ways not envisioned by the technical provisions of the standards, but still result in the same, or better, functional access.

**26 Can both versions of a form remain online even with a difference in functionality?**

*An agency has versions of the same form online that do not offer the same functionality. One form is in Microsoft Word; the other is a PDF format, both made as accessible as possible. More details about the example are as follows:*

- *The MS Word version of the form is as accessible as possible and has expandable form fields to allow users to type information into a text box that grows as needed to accommodate as much text as the user types in.*
- *The MS Word version allows the user to save the filled-out form to their computer.*
- *The MS Word version form must be “protected” with a password so that users cannot change the text of the official agency form itself.*
- *In a protected MS Word form, screen reading software will not read the informational text or instructions; only the form field label help text (up to 138 characters) will be read, e.g. “First Name”, “Last Name”, “Address”, etc. Sometimes agency forms must have paragraphs or pages of instructions, because text tags do not provide enough space to provide sufficient instructions.*
- *The PDF version, which is also accessible, has no capability of expandable form fields and will not allow users to save filled-in forms.*

Answer: From a technical standpoint, the form in MS Word format and the form in PDF format do not have the same functionality and, in fact, it is not technically possible. There is no way to make the PDF have the same functionality as the Word document and vice versa because the applications simply do not work the same way. Both; however, have been made as accessible as possible. This meets Oklahoma’s requirements for accessibility because the 2 files together provide substantially equivalent access and functionality to both disabled and non-disabled persons. The MS Word version can be filled out by both disabled and non-disabled persons, but its

textual instructions are not rendered by screen readers due to the limitations of password-protected locked MS Word documents. The PDF format; however, provides equivalent alternate text to those using screen readers and other assistive technology. This is not unprecedented as many IRS tax forms have a form file and a separate file for instructions.

Essentially, if the 2 files are both as accessible as possible and together they effectively provide equivalent facilitation, then this solution meets the Oklahoma IT Accessibility Standards. Functional outcome – not form – is the key to evaluating whether a technology results in substantially equivalent access to and use of a product for people with disabilities.

In this case, when the pair of files (MS Word and PDF) is taken as a whole, equivalent facilitation is achieved regardless of disability. The only difference for a person with a visual disability who uses a screen reader is that the instructions must be read from a separate accessible PDF file. Other disability groups (e.g. mobility impaired); however, who can see the form instructions embedded in the MS Word form, are well served by the very same accessible MS Word document that non-disabled people use.

Granted, this is not a perfect solution because it does require the use of a text-only page (PDF format) to provide page content to a screen reader that cannot otherwise be rendered by a locked MS Word document; however, it is technically impossible for 1 file to provide all of the functionality that is provided by the pair of files taken together.

**27** *Please clarify the difference between customizable and configurable?*

The answer: The term “customizable” is used to describe a solution which is provided or developed by a vendor or agency and which the solution can be made fully compliant.

Essentially a customizable solution is about the code. A vendor or agency would have the ability to ensure adherence to accessibility standards by reworking the code and is most commonly associated with custom application development.

The term “configurable” refers to the ability to make changes to a solution that typically make the implementation unique to a user or an agency, but do not change the underlying (or primary) code of the solution.

COTS (commercial, off-the-shelf) products are not customizable, but they may be configurable. For example, you cannot manipulate the underlying code of Microsoft Word, but you configure the software to have a different appearance (colors, fonts, etc.) from user to user.

**28** *Please explain the process for submitting a formal Annual Accessibility Complaint Report.*

Answer: the report is due by Oct. 1 each year and is submitted to the Office of State Finance.

Currently, there is no official form for the report, although OSF is evaluating whether to develop a form in the future. A simple Word document attached to an e-mail will suffice. E-mail completed formal reports to [Procurement\\_Group.OSF@osf.ok.gov](mailto:Procurement_Group.OSF@osf.ok.gov).

Formal accessibility complaints are required to be reported. A complaint is considered formal per the method outlined in OAC 260:15-1-6(b) and (c). That rule details what constitutes a formal complaint and what must be included in the complaint. A formal complaint must be written and filed with the agency responsible for the technology in question. The written complaint must contain the following: the name, contact, address and telephone number of the complainant, identify the technology in question and describe the non-conformance with the Oklahoma Electronic and Information Technology Accessibility standards in sufficient detail enough to enable a thorough investigation.

Complaints may be filed involving any information technology covered by the Oklahoma IT Accessibility standards (see [http://www.ok.gov/OSF/documents/isd\\_itas.doc](http://www.ok.gov/OSF/documents/isd_itas.doc)). This would include multimedia, Internet and Intranet Web sites, Web-based applications, software, operating systems, hardware, desktop or portable PCs, and telecommunications products.