How to Request Accessibility Information from Vendors About the Revised Section 508 Standards

Speaker: Robert Baker

Room: 1151

2017 Inter‑Agency Accessibility Forum with Robert Baker

9:45 a.m. to 11 a.m.

Cynthia Clinton-Brown (CCB): Good morning everyone. Hello. It starts at 9:45 before we get officially started. How many of you here are actually involved in managing a 508 program? How many of you this is your brand new first exposure to 508? How many of you have been involved in writing 508 contracts? How many have been doing it two or three years or more?

Cynthia Clinton-Brown: Good morning everybody this is not working. Just literally left out of here and I guess ‑‑ my name is Cynthia Clinton-Brown I want to make sure you are in the right place the technical track how to request information from vendors about the revised standards. We have about 5 minutes to get to the right location if this is not for you.

(LAUGHTER)

CCB: So, welcome. And if you already ‑‑ most of you probably know Robert Baker he is really involved in the accessibility community. But I will just if you have your folders you should have his bio I will highlight a few things. He is the Director of Section 508 governance division with the Department of Homeland Security. We are actually coworkers. And he is considered a disability inclusion advocate. Robert works with the federal CIO Council. He is the brain child or led the effort for the IC accessibility playbook if you haven't heard about it I am sure you will hear more about it throughout this day at this conference. He also is an advisor to the Access Board and has a lot of work related to the revised standards that you’re going to hear about today. So, without further ado. I will be hanging out in the back I will help Robert manage the time. We want to try to end on time today so I will be holding up cards and letting them know about his time. Again, I don't ‑‑ I mean this literally worked 30 seconds as soon as he walked out it stopped. But so, Robert speak loud and if you have any questions speak loud please so everybody can hear you.

>> All right. So, thank you for coming. I like this session to be helpful and useful to you. It has a lot of stuff I want to target it to what your needs are. So, did any of you come here with any specific questions you wanted to address about how to engage the vendor community with respect to accessibility? Can you tell me what they are?

>> Well, one thing ‑‑ I am Jacqueline Turner, Department of Justice. I want to be ‑‑ I guess I have to ‑‑ right now we are just really getting our requirement issues information on how to go to vendors and ask for VPATs and try to get them how to re‑VPAT I want to make sure when we go to update the standards that I understand what to look for in the VPAT. Or, what to request from the vendors.

>> Okay. So far, I have answers to some of those questions.

>> DOJ also. More the contract language, I know the accessible ‑‑ the accessible will help but the in the meantime the difference between GPAT and VPAT we are waiting for the tool to be able to help ‑‑

>> Excellent I can help with that. Anyone else?

>> Yeah just when people will be wanting to switch from the legacy VPAT 1.0 to 2.0 how soon should industry be ready.

>> I will tell you they are getting ready we have the top two representatives in the back of the room

>> I know, thank you that's awesome.

>> Any other questions?

>> Can I add.

>> Sure.

>> We have a lot of push back from vendors that say that they will not provide one.

RB: Okay. We will address that as well. Anything else? All right. So, I am going to give you first of all a high, high level overview of the state ‑‑ one more time. A high‑level overview of the changes of the status that relates specifically to the activity of preparing contract language. The standards are much more complicated than they used to be. And just ‑‑ it's going to be hard to navigate through it and understand how different provisions tie together. I am going to try 8 slides to simply identify it for you so you have access to this information after this conference. But this is at a minimum what you need to know to get started. Then I am going to talk about three things that you can use today with resources that were finally published last night on the Section 508 refresh toolkit the end of a 6‑month turn knee ‑‑ journey with the involvement of 30 different agencies answering question how do we help agencies implement the 508 standards.

So, I am going to talk about how to identify the 508 standards for ‑‑ that are applicable in the solicitation. How to ask for vendors to respond to your requirements. And then how to protect the agency to what happens post procurement to help handle agency proactively. If I am not clear I want this to be informal raise your hand and ask questions. We only have ‑‑ I only have 30 slides so we should be able to get through this. Okay. So, when do we have to change our contracts? Well there is two answers to that question. First of all, the new standards go into ‑‑ went into effect January the 17th, 2017. Agencies must comply by January 17, 2018. But agencies should be preparing for that right now. If you are writing contracts you should be writing them right now for the revised regulations not waiting to January 17. The federal acquisition regulations haven't been updated yet so technically the requirement from the acquisition community of how you implement this hasn't been defined. But without telling you what that regulatory process looks like you can generally assume that the language that supported the old 508 is being ‑‑ support the new 508, I am not sure there is much from the process and procedural section that will change just the standards will change. A big difference in the new 508 standards is the scope of how 508 applies to what is changed. We will talk a little bit about that. There are ‑‑ they deal with the issue of what do you do with content that existed before the standards went into effect. And content that exists after. Just why would that matter from a procurement perspective? If you are paying someone to maintain I.T. that you already have that's accessible which data do you use when you are requiring the officials to respond to the maintenance contract. Obviously, there are new technical provisions and new functional performance provisions. I am going to give you that short highlight.

The first thing to know straight EIT and replace it with ICT information and communications technology. It's basically the same thing. But the communications technology component is more richly defined in the new standards. Two, the standard is feature based not product based. So, before we would say can I have a VPAT for this product. We list the standards if it's a website, the 1194.21 website standards we would be done. It's not that simple. The new standards are feature based. ICT can have featured in web, software, in hardware, and in support. So, you have to understand the features of what you are buying. Not just the label, a phone. In order to define the applicable requirements. Okay. Electronic content. There are two types of electronic contents David spoke about this briefly this morning I want to translate what it means into plain English. If you put it on a website anybody in the American public can see no matter the kind of content a web page, video, a document available for download, an audio file, or any other kind of social media content that you can think of if it's for everyone, it has to be accessible. Easy no judgment required. If it's not for everyone. Let's just say that I wrote a web page and I gave you the address to it and all of you could go to it you consider it public facing content. Let's say I wrote an E‑mail to Chuck that E‑mail was about I will give an example let's say Chuck applied for a job in our group we wanted him to know we wanted to hire him remote him give him extra money.

>> Yay!

>> That communication to Chuck would fall under the characteristic of a nonpublic facing official agency communication. There are 9 categories and I am not going to go over them right now. There is also a guide that we just put up on the website called planning organizational support for managing electronic content. We provide really rich definitions and examples to help you understand whether it fits this category or it doesn't. But a simple way of approaching it is: If it goes to everyone, it's going to have to be accessible. If it goes to select individuals regardless of the delivery method it may ‑‑ it maybe need to be accessible you have to look at the standards to make that determination. The last on the list is authoring tools. We didn't talk about software that created technology. The new standards talk about this because without having that clarity, there was a Mac truck you could drive through not provide accessible stuff. If the tools are accessible and ‑‑ we haven't moved the bar forward. There are a lot of standards we have to pay attention to in procurement the tool has to be accessible and it has to be capable of generating accessible output. The next consideration is safe harbor. In the beginning the revised 508 standards apply to ICT, information communication technology, that has been procured and deployed after January 17, 2018 from a legal compliance perspective. What about the five‑year purchase agreements large agency box written two years ago? We are looking for the FAR to provide guidance on whether the existing contracts need to be modified to the point of the new standards I don't know where that's going to end up. But at a practical level the old standards won't be in effect from an agency perspective after January 17th. You will see deliverables after that if it's something new, you need to apply the new 508 standards to it. I don't really see a way to get around that. The way that you manage contractually we will have to wait on the FAR to figure out what we will do. Any questions about that? The Access Board is going to provide a lot more specific information because obviously this is going to be a tricky issue to deal with from a contracting perspective

>> We have a lot of IC contracts that get maintenance routine push down so the push downs after January 18 they need to be compliant?

Robert: You are my plant, that's a good question. All right. So, let's say I had this system with 10 components and I have hired someone to maintain it, to modify it support it. And let's say within that the contractor may replace parts of it because old technology no longer exists anymore they offer product substitution or replacement. The triggering thing is when you introduce something new to the environment, so, if someone is just maintaining something that already exists they are not altering or modifying it if it was already compliant under the old standards that's the basis for evaluation. But if they do anything to change it specifically change it in a way that the 508 standards cover which is basically user interface. So, if the disabled user has to do something different than they did before. The new standards are generally going to apply. I am speaking about broad brush but that's the way it goes. You will have questions going forward about safe harbor keep that principle generally in mind.

DK Robert, what are the things I am going to throw out as an idea for how to approach this until we get clarification from ARC a lot of the major projects you say multi‑year activities. We are identifying a point in the life cycle and saying everything past that point, new standards; everything before that point, existing standards or the other way around after that point existing standards before that point, start with the new standards.

We HHS because I know there are a lot of HHS people, our point is the preliminary design. When you finish the preliminary design or the requirements list at that point those requirements are either existing standards or new standards if it's a new requirements list, it's new standards you already have a list in place you are in development you continue where you are at which is the existing standards the reason is there is no right place but turning the Titanic mid ‑‑ you know mid-course – can be very unsettling for development teams and can be a real challenge. We just picked a point and said: From now on, starting October 1, new projects as soon as they hit preliminary design review, they are already done that. Stick to the standards that you are on for the new stuff ‑‑ again, that's how we are handling it until we get some details from the FAR.

Robert: I would like to add one principle to this: An agency can claim an exception the safe harbor thing is an exception. So, in your acquisition you can claim the exception to your claim for what you want. The vendor can't. You can decide to apply the revised 508 standards to any and all of your technology from this point forward it's your choice. You don't have to claim an exception. What you need to do is make a choice that makes sense for your organization at this point in time for ‑‑

>> I had just a quick question. I know I have read the rule and I know when it says if it was compliant. Do you have a definition? I know like ‑‑

>> Yes.

>> Okay. Thank you.

Robert: Compliant is what we have been dealing with 18 years how you measure compliance with the original 508 standards that are published and will stay published for a I will who. A good technique for doing that web and software is use the interagency trusted tester ‑‑ test methodology or the AED ‑‑ the test methodology or electronic documents we don't have a trust methodology for hardware

>> Pretty much everything has to support it. Like partially supports would that be compliant?

Robert: Nope. Access Board is clear fully compliant if it's not ‑‑ keep in mind, I hate it sounds a little complicated, the ‑‑ it was ‑‑ if the feature is fully compliant.

>> Got it.

Robert: Not necessarily you can't see the feature is wholly compliant and that ‑‑ and that condition confers on the whole product. You need to know what you are modifying. Do we know how accessible it was?

>> That's a perfect answer, thank you.

>> Could you (inaudible) feature what is a feature an example.

Robert: Okay. I will go back augment tools capability to generate accessible output. A mobile device where the controls for that device accessible to a local screen reader. And, of course, you have got the references that you can point to for that.

Robert, I have a question. When you say specific features if you have a whole application and it's not compliant there are features within it that are compliant ‑‑

Robert: You can claim the exception for the features that were compliant with the old standards as long as they don't modify that feature if they don't have to do any additional work to bring it up to the current specs. But you have to have a document ‑‑ how do you know it comports to the old.

>> That's the (inaudible). I know exactly the opposite. This is from an old acquisition. (inaudible)

Robert: You can do that you can create a standard that's more robust than the law requires. But it's also on a feature by feature basis. So, speaking of exceptions. We have already drilled down to features and components. Let me talk about undue burden. How many think you can create undue burden if the project is oh, I guess a $2 million development effort the agency has got a $50 million I.T. budget. And organizational budget of $200 million if the folks say we can't make the $1 million accessible how likely is it to warrant undue burden exception? Let's say $10 million? The agency I.T. budget is $10 million does that warrant undue burden? A hundred percent of that program I.T.'s budget. Okay. The reality the court is not allowing undue burden to be realized in just about any court case. But theoretically the courts look at the entire budget of an agency compared to the budget to comply with 508 to see whether there is undue burden. Very high standard. Not quite what the Access Board intended when they wrote the standards back in 2 thousand. So, in the new standards they try to clarify this by using the baseline the denominator of the budget of the I.T. program that manages that ICT component. So, the threshold for undue burden has gone (indicating).

You have to be careful when you claim it because there is a tremendous amount of work that you have to be prepared to do in court if that gets changed. Generally, I don't advise people to go here at all. But they have a legal threshold. Nothing? Okay. Commercial non-availability that's neat. It's now an exception it caused to be a clause in the standards. We can say as an agency that we are claiming that there are no products that fully meet the standards that are available to us, in response to our solicitations. We picked a product that is most accessible. That doesn't mean we pick a product that's cheapest and that we like the most.

(LAUGHTER)

Robert: There are many, many folks in government who try to do that as a justification. It's not best meets based on those kind of factors it's best meets based on the 508 standards here is a way of looking at it. There was solicitation. I get back 10 offers, five of those offers actually pass the technical evaluation i.e., they meet he my business plan. They might be some better than others but they pass the first cut. Then look at how accessible are those remaining 5. You might have two or three that are partially accessible if that makes sense 80% score versus a hundred percent score. Out of the ones that most meet the standards pick that one. Regardless of price. It's really the way it's supposed to work. The Access Board has done further is say, by the way, when you claim it you go out and buy technology it's not fully accessible you have to claim the exception and you have to document. You have to document the basis for the 508 evaluation. Of course, you need to document the basis for the technical evaluation. But you also need to document that you have evaluated it for 508. If you just get accessibility conformance report based on VPAT and you haven't evaluated it, you have taken it at face value there is no way your contracting officer can support the documentation requirement of this new regulation. There has to be a process to evaluate ‑‑

>> So that means what you are saying in contract‑ese there has to be a 508-contract evaluation factor as well.

Robert: There is one other surprise. Undue burden fundamental alteration you could claim exception but you have to provide an alternative means. You can go ahead and buy and not provide accessible technology but you have to support the function in an equally effective way for people. Now you have to claim best means. Think about that. Because this is where most of our action happens. Most of buying technology isn't fully compliant. Know that when you ‑‑ when the offers come back and you don't have the option of buying a fully compliant technology you have a documentation requirement and B someone in the agency has to plan ahead and identify what is the alternative for people who won't be able to use these functions of the product. Okay.

Next parts are easy. In our contracts, we have to identify what standards apply. If you ‑‑ I am going to talk a little bit more in a couple of minutes about how to do it. But I want to plant this thought in your head. If you say 508 applies. I guarantee you most vendor community isn't going to know what it means. If you point to the regs, see go here (indicating). Two sentences ‑‑ contract language it isn't effective. Basically, it increases your agency's risk, it doesn't keep you from risk. It makes sense to pay attention to actually know what you are asking the vendors to respond to. So, the big change is we can go to the WCAG standards which are known worldwide you are going to provide us web, or electronic content in the form of documents or E‑mails or whatever. Got to conform with WCAG pretty simple at face value. But you have to determine whether that website is ‑‑ has software features. Because if it does you have to add additional standards for the software. You might be buying a solution like a VOIP which includes servers and VOIP phones and the server that sits on the desktop and a web management portal for administrative purposes. We went through all of these standards being applicable for one item. There is a reference to new standards and specifically understand which ones do or don't apply. Functional performance criteria. Can someone tell me when the functional performance criteria today apply?

>> When you can't find something in the document in the standard.

Robert: Great answer. In the new ‑‑ the answer is a little more specific when you can't find somewhere where the chapters 4 and 5 apply. Chapters 4 and 5 of hardware software. WCAG is strong enough there isn't a website that doesn't relate to WCAG there are a lot of working groups that have tried to determine that test applies to electronic documents and other parts of content that WCAG applies to the answer it's pretty comprehensive. So, software, and hardware specifically might not be feature proof. Five years from now we might deal with wholly graphic stuff, that's where the functional criteria was born.

>> You said this is ‑‑ this includes documents?

Robert: Electronic content includes documents electronic documents equal WCAG really simple.

>> but the WCAG, is it WCAG and functional ‑‑

Robert: No, no. Functional only applies to software and hardware because WCAG is always going to apply.

>> We just used that last week virtual ‑‑ virtual reality simulation for mine safety a room with all of the mechanisms in place for virtual reality and the feedback

Robert: That would be software.

>> Because it has physical tactile hand controls so the system as a whole is PC evaluation rather than software and all of the rest because the software was just a tiny piece of something that not ‑‑ the end users didn't even see. So, the end users were wearing body suits and things.

Robert: A new concept is now includes cognitive disabilities. That's significant. So, you have got visual. Full and limited. Hearing full and limited. Mobility. Speech but we have cognitive, English as a second language. And learning disabilities. They are not ‑‑ there are no standards for this group. There is just a functional performance so it's very subjective. It's a group to be considered ‑‑ to consider I will know you from my time at the Social Security Administration. For the first four categories, we have this many members of the American public that there is categories would support. When you start with limited language learning disabilities and cognitive the list grows.

>> Wow.

Robert: Okay? They are not assistive technology users. They are people who don't consider themselves disabled if they can't access your content, then it's inaccessible to you. If they can't use the applications it's inaccessible. We have an obligation to think of who your audience is and who we are serving. Okay. Three steps on how to request information from vendors. Step 1, identify all items – do I have something that ICT is it information and communication technology. Go to the website, look for the document called instructions for applicable of the 508 standards and it will walk you through all of this. Okay? It's the second link on the refresh toolkit web page. A ton of work went into making this. Before we had products. Now we have ICT items. Excuse me items that contain ICT so think about it. I am going to buy a VOIP system I have multiple ICT features in the VOIP system. I have a consulting contract for analyzing something. And I am going to get reports that report if it's electronic is an ICT, the base contract is (inaudible) we need to look at procurements and for each item we are requesting ask: Does it contain something that is ICT feature. And then we have to specify that that has to be accessible in our contract. Okay. So, imagine that there is a checklist on the website to walk you through. You have that available to you today. I will tell you the checklist was created with the Access Board and has the full blessing. With GSA and 30 different agencies with top 508 programs we vetted it as much as we can. It's not perfect. But it's a starting point. It's got like 10 questions. I highly advise starting there to try to create your own process by looking at the web ‑‑ the 508 standards and figure this out for yourself. GSA is going to create an automated tool based on the checklist. At some point, you can answer a couple of questions it will spit out the answer. That will make it easier. But you can start doing this today. You don't have to wait for the tool to be ready. And I think someone asked the question about GPAT and VPAT. The tool is not going to create a GPAT it creates a list of requirements that are applicable to what you are buying, and it's going to provide contract language that incorporates that. All right? We will get into what we will ask vendors to provide in a minute. What we are trying to achieve by doing this is to get beyond having simple broad nonspecific contract language to very specific contract language that really lays out this is how the new law applies to what we are trying to buy. All right? Hopefully it's going to reduce ambiguity when dealing with the vendor community. If we don't do this they have to figure this out for themselves. Large organizations that are heavily invested in accessibility they know how to do this they don't need our help. But that's not the whole I.T. community. They do need our help to get started. They do need our help knowing they are supposed to I have go us something and how to fill out a report so that we can make that a good award decision. Let's talk about that process. Step 2. Request for accessibility information from vendors. I would like to point your attention to the back (indicating) and Tony who are members of the ITIC international organization that owns the VPAT. They graciously updated that over the past year. To work with the new 508 standards. The new template which looks like (indicating) I think I have it up here. It's very long ‑‑ it's not sharing. Now? Okay. Thank you. The document has section called it communicates to the community what it is. It's a template to create a report that report is called an accessibility conformance report. We are not asking vendors to give us VPATs but asking them to give us accessibility conformance reports. They can give more information than technically required but we are trying to get the word "voluntary" out of the conversation.

(LAUGHTER)

Robert: That's one of the reasons why vendors say I don't have to give you anything they see the title. You define the requirements if a vendor says I won't give you the information that you request you can tell them then we are not considering you for award it's your choice. If you want to do business with the government and do business with us provide us information on the accessibility (inaudible). We want to make sure that that document is ‑‑ it provides us quality information. In the past the VPAT have had a reputation for being all ends of the spectrum of quality a lot of people don't trust them as a result. ITI worked very hard with the community to figure out how to provide stronger instructions to make sure that the information that they provide is supportable. And at our request, they also graciously included in this section called essential requirements, a requirement for vendors to tell us how they provide performance information. If they do any kind of testing. That won't give us the test results but it will give us and idea whether it was completed by a marketing rep or someone who put thought into it. We don't want agencies to always have to test everything to validate a vendor conformance report. We want the documents to be useful and ITI did a good job.

Question. When you get the responses should there be a bunch of these for each of the items, a bunch of them for each of the features for one for the solution or ‑‑

Robert: That is your choice. I expect for the post part VPATs are going to be provided for products if they offer you 10 products they will give you 10 VPATs when you get into custom development where it's a compendium of multiple products together you could ask for this post award to report the compliance of the overall solution. You don't have to think of this as just a stat particular tool you get from a vendor not specific to your agency. You can also use it as a tool ‑‑ in a sense that's what the GPAT tried to do. All of the work ITI put into this reporting tool is far beyond anything that we have had. We are looking to leverage the resource as much as possible. Is that clear? John ‑‑ did you want to add anything.

>> We designed it so the same format (inaudible)

>> Would you like to add anything.

>> Just the term voluntary Robert badgered us to eliminate that word

>> That's probably the right word.

>> You notice a little R circled behind the template those are registered markers. When you go to the document you find the full name we didn't want to take voluntary out of there VPAT is a locally recognized brand name. Typically, even though you are beginning ‑‑ you are getting a deliverable, you are still going to automatically ask for VPAT because it's part of the lexicon of the process. So, we endeavored to I appreciate Robert's comments build into detail ‑‑

>> You saw how much scrolling I did, that was all instructions.

>> That comes out of the document.

(LAUGHTER)

>> When they hand it over to you they shouldn't be handing you a document ‑‑

Robert: Right they shouldn't.

>> You will probably see that too will take time.

>> a (inaudible) can get rid of the (inaudible).

>> This is Tony. We are trying to with this deemphasize the voluntary aspect as you can see looks more clear compared to accessibility. We are trying to move ahead.

Robert: If you ‑‑ there is a document under program management in the website how to request information from vendors everything I am talking about here is explained in much more detail in that document. In there it says: Ask for accessibility conformance report based on the VPAT GSA will include that generally in their language. We are trying to promote this change in language. But we understand we are in a traditional environment the VPAT has a reputation that's not going away. We want to stop folks from saying we don't have to give it to you. It's voluntary to do business with government that's the voluntary.

>> Right.

Robert: Let me see if I can pull the presentation back up.

>> One other point too, the VPAT is used in multiple markets and venues. So, for example, it's in some large companies I heard use this in their own procurement I won't name names because I could be wrong. But in that respect, like Tony's company may go forward and say we want to compete for that product by the way here is our VPAT and performance report and whatever terminology they want to use. It's not mandated in that environment but nevertheless we are trying to push the tools (inaudible).

Robert: So, the voluntary product accessibility template is far better than it was. However, it may not give you the information that you need to make a solid conformance determination that supports best needs. So, think about it. Try ‑‑ what we are trying it do is give you capability to document that you picked the most accessible product. What kind of due diligence can you do in addition to saying give me ACR compliance report. There are a couple of things up here that you can do. You can state in your requirements that the VPAT excuse me the ACR report must address all of the requirements that you state in your solicitation. You can many could out and say it. Don't assume that they get that. If you take the time to identify accessible requirement we only accept a report that addresses what we said was applicable. That sounds like common sense. The next item: You can explicitly tell them you won't accept a report it doesn't explain how the item meets the standards. They give you a report that's incomplete you can say no it's not complete. We are glad you gave us the item. But you want to be ‑‑ you need to follow the instructions in the report. You need to train your contracting officers to be aware that this is not a checklist item. It's a template to an evaluation. The next item is: Indicate whether conformance is achieved through all or specific parts of the item. Remember, feature, not product based. If you don't know, don't assume. If they don't tell you go back to them and ask. It's better to put it in contract language up front and say your report must address this.

>> Yes, hi. You kind of answered it putting the requirements inside of the solicitation, we need to tell them it needs to be a report? A compliance report not the VPAT

>> We are asking for an accessibility report this is ‑‑ these are quality standards for that report. There is nothing here that's new. It's in the instructions. But you are highlighting them for the vendors who don't choose to read the instructions because that will happen.

>> Okay.

>> Can we get a copy of this of what you are presenting?

Robert: Actually, for all of the presentations today, GSA is going to make them available to all participants I believe they are going on Section 508.gov and reference from the refresh toolkit so they are easy for you to find. And everything we are talking about is explained in much more depth the resources that were published as of last night on the toolkit website. You can go back and refer to them and then we hope that you will provide us or questions of reading what about this or that.

>> You can find them on 508.gov.

Robert: The second to the last item must describe the evaluation methods used. This is stated in the instructions. I expect a lot of vendors will look past that. If you require your solicitation given yourself the option of saying, your report doesn't meet our quality standard revise it until it does. If you don't put it there you are on thinner ice you might have awkward conversations with the vendor you prefer not to have state it up front. Then I like the last one: State that the agency reserves the right to independently validate the claims before accepting it. This is a court liability thing. A vendor can say I gave you a VPAT it clearly said my product was more accessible than the product selected there for I am going to bid protest. First the way to fight it, know that we evaluated your report, it did or did not meet quality standards and based on our tech evaluation, we think we have assessed it under the level of conformance of what you claimed.

A better way to do it if it's mission critical. Hire a team to test it. Use the test results to inform the decision before you make an award at the end of the day it's the agency is at risk. If it doesn't conform you are at risk.

Now, yes Cathy

>> So, you mentioned manual accessibility. If you have done testing and found the report is not accurate should you share that with other government agencies so that they don't have the same misconception.

>> Great question from Cathy sort of a plant.

(LAUGHTER)

>> How ‑‑ if my agency evaluates a report using the assessment method and I want to share that with you why should you accept that I did a good job my agency did a good job. We created a way to do that. Through interagency trust program and the testing methodology for documents so web software and electronic documents we have a government‑wide testing methodology we certify testers that they know how to do the work. The idea is to share test results between agencies we can agree on the testing process.

Robert, I have a question about that trust and tester program assume my understanding in the past a blind person can't complete that that's what is indicated has that changed?

Robert: The testing program requires code inspection not ACT inspection coding tools are accessible that a blind person should be able to ‑‑ I can't give you an answer (inaudible). We have the old methodology for the old state and what you said is true for that. We are working on revising the testing methodology for the revised standards hoping to have it done some time in the spring and maybe we will have a better answer for you then so it continues to improve

>> I know it's highly recommended we have a real small program and I am basically our only tester. Right now, I have to trust a tester.

Robert: There are companies that will provide you test results based on trusted testers you don't have to rely on your own staff. There are more testers now.

>> Thanks.

Robert: Okay. Now I am going to push the bar forward a little bit. If there is one slide here that I think is new, really new, that is ‑‑ if an ACR isn't enough good selection you can ask the vendor to provide test results. It won't ‑‑ you can ask for anything. But realize that there is a cost. It might slow down, you might have to give them response time it might be they have to provide information with more pages. You need to have more time for the evaluation. But you can ask for the vendor to provide test results that they use. You can ask them to demonstrate the item to you. A pre‑award open setting. You can ask them to document the core functions that they know can't be used by people with disabilities. You can ask them specific information about how that tool can produce electronic content and you can ask for information on how to configure and install the item for accessibility if you want to wait until after to know how to do that? You want to see how robust the guidance is before you enter into a business relationship with them or risk getting into a business relationship and find out you have a contract with a third party vendor that you didn't know was there. You can ask them if they have training on how to use the accessibility features. You can ask them for an accessibility test that would appear law you to test using common user scenarios otherwise you have to figure out how to use the product yourself when you test. You communicate that. You may want to ask a vendor how much is your I.T. accessibility program describe it to me. None of these things is going to be in the ACR. All of these things are probably most appropriate when you have a very high risk procurement. You don't want to do this on all of them. But these methods have been used by a lot of agencies. This isn't new stuff it's the first time it's published in one place.

>> Do you have say you are developing a system can you ask them to provide their testers are (inaudible)

Robert: Sure can that depends on the type of acquisition the statement of work. You can dictate that. Performance work statement that's the performance based you can't tell them how to do it. The speak with Mark Urban later he has (inaudible) the reality is you can define the requirements of your solicitation the agency will pay for what it gets. There is a trade‑off with how much you ask for and the risk that you are taking on based on the level of due diligence.

>> I think it's important to note don't ask for anything that you are not actually going to look at you are going to spend the time to ask for it and go through it, make shower the process is something that you are ‑‑ otherwise you are basically asking them ‑‑ you are not providing any value to the agency.

>> You would know what is really nice when evaluation ‑‑

>> (inaudible)

>> in real life when I looked at vendor are responses and VPATs they show large ignorance (inaudible) we need to educate them before, I see so many responses the same answers for everything. Or VPAT they just write JAWS

>> a little bit of pre‑planning in the solicitation where you establish quality requirements up front can help you manage the situation. The VPAT has a lot of good ‑‑ there is a lot more documentation how to comply with the revised 508 standards than the old ones the information is available to the vendor community. The agencies have to decide are we going to put the due diligence and say, no to a vendor who doesn't comply. So that's just as much on us as it is them. But I think the new VPAT template goes a long way to close the gap. Okay. The last item is include 508 in the evaluation factors how many people do that? How many? Guess what the 508 is not an evaluation factor all of the rest of the stuff is a waste of time. This is what I have seen over and over again. One of the primary reasons 508 is not more used in the procurement community they don't use the simple step give me a piece of paper and it's a waste of the vendor's time or waste of the procurement officer's time at the end of the day people with disabilities are the losers. Just put in an evaluation factor. "Must conform to the applicable Section 508 requirements" it doesn't have to be elaborate. But an evaluation factor that is evaluated prior to making an award decision not after. Okay?

So, I mentioned that the VPAT has been published last Monday. Right?

>> Tuesday.

Robert: Okay. It's on our website as well, I will show it to you in a minute of the all of the guidance around everything that I just told you is in great detail on the website; of course soon accessible requirements tool will incorporate some of this ‑‑ some of these quality factors recommended evaluation factors and recommended responses from vendors to help you tailor solicitation language that best meets your needs. I am going to get into the proactive mode.

Accessibility and procurement is not about making a selection decision. However, most procurement officers think that their job is ‑‑ when they make the award they are done. There is such a thing as contract management. Which is supposed to happen. Where you know, the officials are evaluating whether the contract is performing consistent with the contract. This is especially important when the item that they are giving you doesn't exist yet. Something that they are developing. Altering, modifying configuring. In‑‑ installing integrated point to the clouds providing posting services maintaining replacing in the future. Once they have got your money you have lost your leverage. Unless you are proactive and put provisions and clauses in your solicitation that say: The awardee with comply with these terms and conditions. If you don't, then we can use the nonperformance clauses in the contract to penalize you. This is ‑‑ this is building on the standard contract process for accessibility it doesn't just end after award it continues post award for services that the vender provides. Here are some ways to do that. Challenge number 1. They give you inaccurate conformance claim you bought it. Now what. First of all, you don't have to give them the money before you accept the product you give them the money after. The determine is based on the risk. Are you going to evaluate what they just gave you actually matches the conformance before you give them any money before you accept the product? Then if you find out no they didn't if you have a clause that says they are required to the product should match the conformance claim you can do that. Think about the times where you said I have this crappy document that doesn't say anything. Make a decision based on it. Well, you can get a better document at the end of the day you can't be assured that it's going to help you manage risk without taking these few steps. Next step. Let's say that your risk is too high for accepting the claims at face value but you don't have tester resources. You don't have a way to validate it. Then write in the contract that you want them to perform 508 testing before they give you a product for acceptance. You can tell them use the trusted tester methodology use the AED COP methodology. They have to spend the money hire testers this is post award. In order to get paid you have to demonstrate you met the performance. Next challenge is technology changes post award. So, acceptance can be a multi stage process. They could give you a product that is continually developing and modifying configuring, at each stage they get paid for acceptance. Every time there is an acceptance part in your life cycle you have the opportunity to do due diligence around that.

But you have to be careful in how you are communicating what you are going to do. You can tell the vendor that if you are going to install, configure or integrate a product or host a product, that at the end of them providing that service, they can't reduce the level of conformance that was available without providing the service. That's one good way of managing risk. You can tell them that each iteration of what they provide you as the product in develop modifying the existing product that that deliverable continues to meet the 508 standards. All of the conformance reporting that goes with that in the testing can support the due diligence behind the determination.

If a vendor is providing training. You can say each electronic deliverable that goes with that training after you develop it will conform with the standards. So, I think most agencies are more comfortable thinking about buying off the shelf technology if the product I can teach it feel it basically it's a buy order it they deliver it to the warehouse and we install it. The reality most of the accessibility challenges come from things customized developed and integrated for us. If you don't have proactive terms, provisions and clauses in your contract language, you really don't have a lot of options to manage accessibility after you issue the report. There is a whole guideline just on this one section in the refresh toolkit that you can use to stimulate ideas, am I requiring a vendor to ‑‑ should I include the clause in my contract. I see Mark wanting to say something

>> Just one of the things we found is really good point is requiring update to an ACR as past of ‑‑ as part of your option year exercise they have to come back to you especially if it's a multi‑year project one of the larger development schemes or software as a service where they are constantly updating the products where are you today versus where you were then, and that option exercise a contract activity where there is a modification of the contract happening anyway. That is a great break point for contracting officer who may not be a 508 expert to know oh, I get update ACR as a requirement for accepting the option that you are exercising. You keep current with this moving target that Robert was talking about that's one way.

>> This is a gold mine this is the first time in 18 years we have a level of depth of expertise and guidance in one place to help inform you to do really strong contracting around 508 and more is coming. So, I highly suggest that you get involved ‑‑ if you are involved with writing 508 contract language or acquisition with a ICT ‑‑ or item including ICT you look at these resources and take out what works for you and if you have questions, contact the group and say, what about this? What about that? What we have done is we can't say that we have succeeded in implementing the revised standards because we are starting ourselves. But this is our best effort at coming up with a common starting point for all of us to move forward. Now I understand a lot of what I have gone over is technical. I didn't give you high level overview of procurement and acquisitions I may have lost some of you along the way, if I did I apologize for doing that. But if you take the chance to read the materials and still have questions I will be happy to answer whatever questions that you have. I also want to point out that Pete and Corinne is project manager for the ‑‑ they are not familiar with 508 and have 508 in the acquisition life cycle, but it's a high-level review if you are just getting started with this material I suggest that you talk to them and tell them where the accessibility stuff is.

>> Sure. Thank you.

>> Pete is the partnership on employment an accessible technology. And we just released a new purchasing tool this week called buy I.T. and you can find it on our website WWW.peatworks.org/buy‑it. Yes, as Robert mentioned we focus on accessible workplace technology for both ‑‑ with mainly ADAAG employers helping them to make workplaces more accessible.

Robert: Very nice website well designed it's really good at a very high level. There is also high-level guidance on Section 508.gov about acquisition. And also, I recommend that you come to John Sullivan's presentation this afternoon he can take complex steps that GSA are trying through automation make it easier for you.

>> (inaudible)

Robert: Are there any questions?

>> One question. During the acquisition process vendors submit the ACR or VPAT and there are some I guess known accessibility issues with the product or delivering, what is the tool is there a tool to put on the table for the vendor to document how they plan to remediate the known issues.

Robert: With the contracting, there are certain limitations of the FAR that provide some boundaries on what we can and can't do. If you are buying something off the shelf, you know, you are buying what exists. That's a commercially available. Unless you are willing to pay for something to be done, you can't require someone to give you something that's commercially available and then on their own dime pay for this. If you put in the contract an option to state if the agency finds there are accessibility issues we want improvements upon there is a service option that we find at a later date if you sign up for this award, then we can go back to you and say, let's do some remediation. If the cuss ‑‑ if you are custom designing something or configuring or building if it's brand new technology that's different. You could say we must fully define what it states. With that you have the provisions of the contract of nonconformance if they don't conform. It's muddy when they build something with commercial off the shelf products it's a big Microsoft CRM and they are coming in to condition figure that they are integrator they didn't build the system or own the product they can't fix the system. They can only make sure they don't reduce the level of conformance the system has when they provide services. You have three different things that you can do. You buy commercial off the shelf products, you can have additional clause that says if it's not fully accessible we bought it we are going to pay for you to fix it. You could simply not buy it.

>> Or I ‑‑

Robert: Cynthia, I will tell you after we have done it.

>> I thought it was (inaudible)

Robert: It allows you to buy partially accessible product it doesn't allow you to tell the vender ‑‑ you have to create a contract clause.

>> One of the things that you can ask for and we talked about a list of other things that you can ask for, is vendor says to you: Or you know there are issues there is not accessible stuff in it a template or format say tell us the schedule if we have issues in your ACR tell us the schedule when you plan ‑‑ or when you plan on addressing those so that you can make ‑‑ when you do a best needs evaluation you have to say where the technology is going. If they give you just a list just a list with dates or release version, organizations will say I don't have a date for you yet I know we are going to fix that problem it's in the ‑‑ it's on the list of things to fix. That happens with off the shelf products if they are willing to put the information in that gives you something to support your best needs approach. Okay it's not accessible today but I have a piece of paper as part of the submission that's legally binding that you put those legally binding requirements in version 4 is going to fix that.

Robert: What we can't do ‑‑ make it clear people fall into the trap you can't go into a solicitation and say you must give me a fully conforming product whether it is now or not. You can buy what exists and pay for them to provide services but you have to outline the services. You could do good market research collect all of the information that you need and set yourself up but you have to be very careful you can't remember something that you are not paying for.

>> If version 4 comes around it is not compliant and payment ‑‑

>> If it has the clauses you are protected.

>> You say, hey, you said version 4 would comply.

>> If you said version 3 you found it was say 80% accessible.

>> (inaudible)

>> This is really new, what you’re saying. Let me make sure I got it right. Buy a product they give you their VPAT, ACR they say this is not accessible. At that point, I decide I am going to buy it anyway because I need it. I then can't require them to fix the things it's not accessible unless I am ready to fund it.

>> But you can ask them for do you have a plan for what you are going to ‑‑ as part of it but you have to put it in the proposal. Every vendor has the opportunity to come back and say, yes, we have issues this is when we are going to fix it or these aren't scheduled to be fixed any time soon because they are fundamental challenges we are still working through whatever the information that you want to have I use a spreadsheet that says for the high risk again for high risk (inaudible) but you could simply list all of the items you said were does not meet or partially support and tell them if there is a planned version and if you can (inaudible).

>> Now, we go to another question. In that VPAT or that ACR they said this is (indicating) and then once I secure the product it's not. Now who ‑‑ they are on the hook they told me it was. They have to fix it ‑‑

Robert: It's a whole lot better if you put provisions and clauses that say prior to acceptance we have the option to validate your claim and if we feel that you haven't validated we can implement the contract clauses for nonconformance. If you don't say it, it depends how well the contract is written but you could ease your way into that. The reality is vendors who are you can ‑‑ if you say there is a challenge you have a constructive dialogue and in many cases, they will work towards addressing them. But you can't require them without a contract to do it. You can ask.

>> Thank you. Any perspectives?

>> I think that's an interesting point. I am learning a lot from this conversation. I think the real key points to emphasize strongly is that a VPAT, ACR (inaudible) is the start of a conversation it's a filtering process where you start to engage on whatever your acquisition solicitation is. It's not the last word per se but you have to figure out which vendors are going to make you whole in the process. In fact, the idea of building something into an offer that talks about the remedies ‑‑ when the remedies may be available I will go back to my team hey this is a good idea you should consider doing this on your own volition instead of having to be engaged.

Robert: This is a rich discussion. We want to get perfect stuff and we don't. The whole idea behind this is to help you do a better job of protecting the agency to give you options to do better due diligence and go back. You don't get that when you say must comply with 508. If you use a portion of the resources on the site. (indicating) up here this is the refresh tool kit. The link called instructions‑revised 508 standards applicable checklist. That that's the resource that helps you identify I have the items in my solicitation how does 508 apply. It's also the part that the tool that John is working on to help automate the future you can use this guide to do it now. It's not that complicated. Over here under program management there is a link called how to request accessibility information from vendors and contractors, and underneath that how to define accessibility provisions and clauses. So, thank you very much for your time.

(APPLAUSE)

Robert: Good luck to you.

(Short recess taken.)

(Short recess taken.)

Revising 508 policy for managing access will begin at 11:30 with Deborah Kaplan and Pierce Crowell

2017 Inter‑Agency Accessibility Forum

Friday, October 13, 2017

"Revising 508 policy for managing access" with Deborah Kaplan and Pierce Crowell

2017 Inter‑Agency Accessibility Forum

>> Good morning everyone, we start at 11:30. My name is Cynthia I want to make sure you are in the right session this is the technical session WCA gosh ‑‑ revising agency 508 policy for the refresh and managing for user access room 1151 you have a few minutes to get to the right room if it's not where you wanted to be.

>> Anybody have trouble hearing please come up to the front that's what the seats are reserved for.

>> Cynthia: I am the facilitator for today with the office of accessible technology which is an office within DHS Department of Homeland Security I will be facilitating today's session introducing our speakers and keeping track of time. There he is.