

agencies to ensure that, when acquiring EIT, Federal employees with disabilities and members of the public with disabilities have access to and use of information and data that is comparable to individuals without disabilities. This EIT access requirement does not apply to a contractor's internal workplaces. EIT that is neither used nor accessed by Federal employees or members of the public is not subject to the Access Board accessibility standards. Contractors in their professional capacity are not members of the public for purposes of Section 508.

**339.201-70 Required provision and contract clause.**

(a) The Contracting Officer shall insert the provision in *352.239-73(a)*, Electronic and Information Technology Accessibility, in solicitations valued at more than the micro-purchase threshold that involve the development, acquisition, maintenance, or use of EIT products and services subject to Section 508 of the Rehabilitation Act of 1973, as amended, including EIT deliverables such as electronic documents and reports. (NOTE: Exceptions to this requirement can be found in *FAR 39.204*.) After approval of the Section 508 Official or designee, the Contracting Officer may waive the requirement for offerors to provide an HHS Section 508 Product Assessment Template, if Section 508 EIT conformance can be determined conclusively through other less formal methods. The Contracting Officer shall document in the award file any waiver for submission of the Product Assessment Template. The approval of a waiver by the Section 508 Official does not, however, eliminate the requirement for product assessment against Section 508 accessibility standards.

(b) The Contracting Officer shall insert the clause in *352.239-73(b)*, Electronic and Information Technology Accessibility, in contracts and orders that involve the development, acquisition, maintenance, or use of EIT products and services, including EIT deliverables such as electronic documents and reports, subject to Section 508 of the Rehabilitation Act of 1973, as amended, unless the EIT products and services are incidental to the project.

(NOTE: Other exceptions to this requirement can be found at *FAR 39.204*.)

(c) When acquiring EIT products and services subject to Section 508 of the Rehabilitation Act of 1973, as amended, in the following circumstances, the Contracting Officer shall insert the paragraph in *352.239-73(c)*, Schedule for Contractor Submission of Section 508 Annual Report, which requires a contractor to provide an HHS Section 508 Annual Report, at the end of the clause in *352.239-73(b)* and cite the schedule for report submission, where indicated:

- (1) New multiple-year contracts.
- (2) Existing multiple-year contracts, with a performance period of 1 year or more remaining as of January 16, 2008 (the effective date of HHS' interim acquisition guidance).
- (3) New multiple-year task and delivery orders exceeding \$100,000 awarded under IDIQ or FSS contracts.
- (4) Existing multiple-year task and delivery orders exceeding \$100,000 awarded under IDIQ or FSS contracts, with a task/delivery order performance period of 1 year or more remaining as of January 16, 2008.
- (5) New multiple-year BPA orders that exceed \$100,000.
- (6) Existing multiple-year BPA orders with a performance period of 1 year or more remaining as of January 16, 2008.
- (7) New multiple-year contracts with option periods/quantities.
- (8) Existing multiple-year contracts with option periods/quantities remaining as of January 16, 2008.

(d) Before adding funds to a multiple-year contract or order—*see 339.201-70(c)*, that involves the acquisition of EIT products and services, including EIT deliverables such as electronic documents and reports, subject to Section 508 of the Rehabilitation Act of 1973, as amended, the Contracting Officer shall ensure that the contractor has provided to the Contracting Officer and COTR a properly completed HHS Section 508 Annual Report—*see Section 508 policy on HHS Office on Disability Web site*. The Contracting Officer shall request that the contractor provide the report in sufficient time for its review and approval by the Contracting Officer, COTR, and the Section 508 Official

or designee, prior to funding performance beyond the currently funded contract performance period. The Contracting Officer shall ensure that the report and all related approvals are made a part of the official contract/order file. The Section 508 Official or designee shall monitor the Annual Reports, direct corrective measures to improve their submission and quality, and report improvement actions taken to the HHS Office on Disability.

#### **339.203 Approval of exceptions.**

(a) Procedures to document exception and determination requests are set forth in the OPDIV/STAFFDIV Section 508 Implementation Plans required by paragraph 4.1 of the HHS Section 508 policy.

(b) In the development of an AP or other acquisition request document, the Contracting Officer shall ensure that all Section 508 commercial non-availability or undue burden exception determination requests for applicable EIT requirements are: (1) Documented and certified in accordance with the requirements of paragraph 4.3, Section 508 Compliance Exceptions, of the HHS Section 508 policy; (2) signed by the Project Officer; (3) approved by the OPDIV Section 508 Official or designee; and (4) included in the AP or other acquisition request document provided by the Project Officer to the contracting office.

(c) In instances where a technical evaluation has been performed, and no organization's proposed products or services meet some or all of Section 508 accessibility standards, in order to proceed with the acquisition, the Contracting Officer shall provide an exception determination request along with the technical evaluation panel's assessment of the Section 508 evaluation factor to the designated Section 508 Official or designee for review and approval/disapproval. *See 315.304* regarding obtaining approval of technical evaluation panel assessments by the Section 508 Official or designee. The Contracting Officer shall include the Section 508 Official's or designee's approval/disapproval of the exception determination request in the official contract file and reference it, as appropriate, in all source selection docu-

ments. For further information, *see* paragraphs 4.3, Section 508 Compliance Exceptions, and paragraph 11, Appendix A, of HHS Section 508 policy—*see* Section 508 policy on HHS Office on Disability Web site.

### **Subpart 339.70—Use of General Services Administration Blanket Purchase Agreements for Independent Risk Analysis Services**

#### **339.7000 Policy.**

GSA has established government-wide BPAs for independent risk analysis services, including verification and validation of in-house risk assessments. For information on ordering procedures, *see* the attachment to OMB memorandum (M-08-10), Use of Commercial Independent Risk Analysis Services Blanket Purchase Agreements (BPA), dated February 4, 2008, available on the OMB Web site. HHS policy is for contracting activities to use the GSA BPA sources to the maximum practicable extent.

#### **339.7001 Request for approval to make an award to other than a GSA BPA holder.**

The Contracting Officer, in conjunction with the OPDIV/STAFFDIV Chief Information Security Officer (CISO), may determine, as part of conducting market research for independent risk analysis services expected to exceed the micro-purchase threshold, that obtaining the required services from a source other than a GSA BPA holder will result in the best value to the Government. In that event, the Contracting Officer shall prepare a request for approval at least 15 business days prior to the planned date of the contract or order award and forward it through the HCA and the OPDIV/STAFFDIV CISO for concurrence, to the SPE. The SPE shall coordinate the processing of the request with the CAO and the HHS CIO. The request for approval shall briefly describe the services required, indicate the intended source's pricing and other terms and conditions, and provide the rationale for award to the intended source rather