

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 39 and 52

Federal Acquisition Regulation; FAR
Case 2001-033, Section 508 Contract
Clause

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are considering whether there is a need at this time for changes to the Federal Acquisition Regulation or other acquisition guidance to promote more consistent and effective implementation of Section 508 of the Rehabilitation Act of 1973 and, if so, what specific changes are needed. The Councils request that interested parties provide comments.

DATES: Interested parties should submit comments in writing on or before August 26, 2002 to be considered in the formulation of a proposed rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farnotice.2001-033@gsa.gov

Please submit comments only and cite FAR Case 2001-033, Section 508 Contract Clause (Notice) in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. The TTY Federal Relay Number for further information is 1-800-877-8973. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAR Case 2001-033, Section 508 Contract Clause (Notice).

SUPPLEMENTARY INFORMATION: Section 508 of the Rehabilitation Act of 1973 requires that when Federal departments or agencies develop, procure, maintain, or use electronic and information technology (EIT), they must ensure that the EIT allows (1) Federal employees with disabilities to have access to and use of information and data that is comparable to the access and use of information and data by other Federal employees; and (2) members of the public with disabilities seeking information from an agency to have access to and use of information and data that is comparable to the access and use of information and data by other members of the public who are not individuals with disabilities. The Councils agreed to amend the Federal Acquisition Regulation (FAR) under FAR Case 1999-607, Electronic and Information Technology Accessibility, to implement Section 508 (see **Federal Register** published at 66 FR 20894, April 25, 2001). The final rule became effective on June 25, 2001.

The FAR final rule incorporated standards developed by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board"). Among other things, the standards set forth the technical and functional performance criteria for EIT accessibility. While only Federal agencies must comply with the requirements of Section 508; vendors interested in selling EIT to the Federal government are responsible for providing products or services that meet the applicable Access Board standards (and will be bound by the terms and conditions of the contract into which they enter).

The FAR rule implementing Section 508 does not require vendors to certify that offered products or services comply with the requirements of Section 508. Agencies are not to require such certification as a matter of policy, unless they have followed the procedures set forth in (i) FAR Subpart 1.3 on agency acquisition rulemaking, implementing section 22 of the Office of Federal Procurement Policy Act (OFPP Act), 41 U.S.C. 418b, and (ii) section 29 of the OFPP Act, 41 U.S.C. 425, addressing contractor certification requirements. (Section 29(c)(2) of the OFPP Act prohibits an executive agency from promulgating a regulation requiring

certification unless it is required by statute, or approved on an exception basis by the agency head after the senior procurement executive provides written justification.)

As part of the implementation effort some have suggested a need for additional guidance. For example, some assert that the inclusion of an EIT clause in the FAR will promote greater consistency and reduce confusion in the implementation of Section 508 by avoiding the proliferation of agency specific clauses. By contrast, others contend that EIT standards are a "requirements issue" and are best addressed through the statement of work or other specifications instead of a clause.

The Councils are seeking the following input to help them determine the best approach to promote more consistent and effective implementation of Section 508.

1. *Need for additional guidance.* The Councils ask that respondents discuss whether additional acquisition guidance to implement Section 508 is needed at this time. Respondents are encouraged to discuss potential advantages and disadvantages.

2. *Form of guidance.* To the extent additional guidance is desired, the Councils ask respondents to identify if such guidance should be in the form of a FAR clause, a solicitation provision, other FAR coverage, or non-regulatory guidance. If a clause is desirable, respondents are encouraged to identify the types of EIT purchases on which a clause should focus (e.g., all EIT purchases, EIT services only). The non-regulatory guidance may be in the form of reference material or frequently asked questions on the web site at <http://www.section508.gov>. Respondents are encouraged to discuss potential advantages and disadvantages of the form of guidance they suggest and why they believe other forms of guidance would be less beneficial or not appropriate.

3. *Content of guidance.* The Councils invite respondents' ideas regarding what should be included in the guidance.

Dated: June 20, 2002.

Al Matera,

Director, Acquisition Policy Division.

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