



EITA

Question and Answer Session

September 23, 2009

*Prepared by:
Department of Central Services
Office of State Finance
Oklahoma ABLE Tech*

Table of Contents

| | | |
|-----------|--|---|
| 1 | Who and what agency is responsible and held accountable for making final decisions and answering questions about accessibility compliance?..... | 1 |
| 2 | Does a COTS product have to meet all the accessibility standards before it can be legally procured?..... | 1 |
| 3 | How does accessibility fit into the procurement term: “best value”? | 1 |
| 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? | 2 |
| 5 | What percentage of weight is given to the accessibility section of the evaluation tool as it relates to cost and functionality? | 2 |
| 6 | Are there any criteria that should be used when evaluating a VPAT? If so, what are they?..... | 3 |
| 7 | In a typical evaluation tool, how should the accessibility standards be structured within the tool template? | 3 |
| 8 | What options does an agency have if, when evaluating COTS products, none of them are 100 % compliant? | 3 |
| 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?..... | 4 |
| 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? | 4 |
| 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? | 4 |
| 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? | 5 |
| 13 | If an agency is evaluating multiple COTS products, can they only evaluate the VPATs for the products that meet their business needs? | 5 |
| 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? .. | 5 |
| 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? | 5 |
| 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. | 5 |
| 17 | Do we need to verify accessibility, and get VPATs for open source, free software? For instance – Open Office? SuSE Linux? Nagios (network management)?..... | 6 |
| 18 | Does the accessibility standard differentiate the requirements between a COTS product and a custom developed product? | 6 |

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) 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 OKDHS 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, because OKDHS 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.