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Commentary

Understanding Accessibility In The Procurement Process

By
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[Editor's Note: Hiram Kuykendall is the chief technology officer for Microassist, an Austin, Texas-based learning, development, and accessibility consulting firm. He has more than 22 years of experience in custom application development and over 12 years of accessibility remediation for custom application development, eLearning, and instructor-led training. In addition, Hiram advocates through public speaking and volunteer work specifically focused on the technical aspects of web accessibility. Hiram can be reached at accessibility@microassist.com. For 32 years, Microassist has partnered with organizations to better educate their employees, constituents, and clients through the use of traditional classroom training, innovative elearning, mission-critical applications, and ever-changing technology, emphasizing online usability and accessibility. Please visit Microassist at www.microassist.com. Any commentary or opinions do not reflect the opinions of Microassist or LexisNexis[®] Mealey Publications[™]. Copyright ©2020 by Hiram Kuykendall. Responses are welcome.]

Public sector entities such as the federal government, state government, and higher education institutions are required by various laws to try and procure products that are usable by people with disabilities. Also, many private sector organizations have internal and external requirements for purchasers to strive to purchase hardware and software that pose the fewest barriers to customers and provide the least hindrance to hiring and career advancement. Two of the most recognized laws that have implications for the acquisition of accessible products include:

- Americans with Disabilities Act (ADA) of 1990¹
 - Title I—employment (*Private Sector*)
 - Title II—public entities (and public transportation) (*State Government*)

- Title III—public accommodations (and commercial facilities) (*Private Sector*)
- Rehabilitation Act of 1973²
 - Section 504 (*Public and Private*)
 - Section 508 (*Public*)

Procurement Requirements

The obligation to meet legal requirements and the desire to create an inclusive work environment has put pressure on organization purchasers to obtain accessibility attestations as part of the purchasing process. Typically, there are three forms of accessibility purchasing attestations: Product Maturity, Organization Maturity, Contractual Language.

Product Maturity

Product Maturity includes attestations, such as an Accessibility Conformance Report (ACR). An ACR is a vendor produced accessibility attestation based on one of the Voluntary Product Accessibility Template (VPAT) versions. Currently, there are four versions of the VPAT template³:

- VPAT 2.4 508: Revised Section 508 standards – the U.S. Federal accessibility standard
- VPAT 2.4 WCAG: WCAG 2.1 or ISO/IEC 40500 – W3C/WAI's recently updated Web Content Accessibility Guidelines
- VPAT 2.4 EU: EN 301 549 – the European Union's "Accessibility requirements suitable for public procurement of ICT products and services in Europe"
- VPAT 2.4 INT: Incorporate all three of the above standards

While the ACR can be a powerful tool in understanding a product's accessibility gaps, it does have limitations. First, there must be a product in existence to audit. A vendor cannot create an ACR for services such as the development of a custom application as the product will not exist until the end of the project.

Next, each of the U.S. related VPAT templates have unique reporting criteria. Table 1, Audit Criteria by VPAT Template Type for the U.S., shows the potential reporting capabilities of the WCAG, 508, and International editions against the WCAG guidelines and Section 508 law.

Table 1 Audit Criteria by VPAT Template Type for the U.S.

Audit Criteria	WCAG Edition	508 Edition	International Edition
WCAG 2.0			
Web Software	Yes	Yes	Yes
Electronic Documents		Yes	Yes
Software		Yes	Yes
Authoring Tools		Yes	Yes
WCAG 2.1			
Web Software	Yes		Yes
Electronic Documents			Yes
Software			Yes
Authoring Tools			Yes
Revised Section 508			
508: Chapter 3: Functional Performance Criteria		Yes	Yes
508: Chapter 4: Hardware		Yes	Yes
508: Chapter 5: Software		Yes	Yes
508: Chapter 6: Support Documentation and Services		Yes	Yes

And finally, U.S. purchasers will request a vendor ACR based on the needs of the solicitation. Below is a high-level outline of how many purchasers will select a VPAT template requirement.

- Mandated by Law
 - Federal – VPAT 2.x 508 Edition
 - State Agency – Varies by State
- Policy-Driven – Varies by Organization
- Need-Driven
 - Hardware - Only in VPAT 2.x 508 Edition
 - Non-web Software - Only in VPAT 2.x 508 Edition
 - Training and Documentation - Only in VPAT 2.x 508 Edition

- Mobile App / Mobile Web - VPAT WCAG 2.x Edition

Organization Maturity

Next, purchasing services that must result in an accessible deliverable is a challenge. The lack of a product to evaluate prior to the contract signing puts purchasers in a position where they must evaluate an organization's capabilities based on other metrics. In response to this, many organizations will investigate a potential vendor's accessibility maturity. There are several tools that a purchaser can use to evaluate a company's maturity. One such tool is the inclusion of survey questions that ask specifically about an organization's accessibility and business policies, development processes, and corrective action plans. One such example is the Texas Department of Information Resources, Vendor Accessibility

Development Services Information Request (VADSIR) survey⁴. This survey specifically requests information about a vendor's key business processes, internal accessibility training programs, development and testing tools in use, processes for defect remediation, and support options.

Contractual Language

The final accessibility procurement safeguard is Contractual Language. In short, mature organizations will place accessibility stipulations within the base contract. For example, these stipulations may have time windows that dictate under what conditions and how quickly a vendor must respond to reported accessibility issues.

Evaluation Process

The purchasing process for organizations with a strong culture on inclusivity will have policies that govern accessibility requirements within the organization. For example, it is not uncommon for a university to have an Information and Communication Technology (ICT) Accessibility Policy or a more general accessibility policy. In both cases, the policy will establish some base guidelines that will have implications for acquiring products and services. For example, the policy may require that products capable of being evaluated under the Web Content Accessibility Guidelines use a particular version such as WCAG version 2.0 or 2.1. In addition, the policy may contain or reference purchasing procedures a purchaser must follow. For example, some universities require purchasers to acquire a vendor attestation such as an ACR (completed VPAT) and perform an additional manual accessibility test by internal staff as an extra layer of verification prior to a product purchase.

While the purchasing process may vary, there are several key processes generally included.

Exemption Process

Organizations have limited resources and strive to focus them on areas that have the biggest impact. As such, most policies and laws such as Section 508 have an exemption process that excludes certain product categories. For example, Section 508 has an exception for telecommunications equipment and customer premises equipment.⁵ In short, organizations won't evaluate products that fall under an exempt category for accessibility.

Exception Process

The single most important concept of the procurement process is that it is not intended to be an immediate pass/fail based on vendor attestations. The procurement process is about having conversations and establishing a reasonable plan for product acquisition. In the event that a product has accessibility defects, the purchaser should communicate those findings back to the requestor within the organization. The requestor is then given an opportunity to reject the product based on the accessibility findings or elect to continue the purchase via an exception process.

An exception process generally will require the requestor to provide risk analysis information such as what population is affected by the inaccessibility (public-facing, internal, students, et cetera) and a reason for the exception. Common exception reasons include:

- Market place exception (unique in the industry)
- Cost prohibitive
- Underlying technology platform is not accessible
- Large programming impact

In addition, robust policies will also require the requestor to provide a written account of how they will minimize impact to the organization. There are many names for this type of accommodation plan, such as Equally Effective Alternate Access (EEAAP) or Corrective Action Plan (CAP). In short, these plans address:

- Persons or groups affected – The population affected by the inaccessibility.
- Responsible persons – List of names and titles of employees responsible for executing and maintaining the EEAAP/CAP
- How accommodations are provided – Details on how the responsible department(s)/person(s) communicate and maintain any accommodations. For example, "Included product training videos without closed captions will be captioned by IT staff within 24 hours of request by a student."
- Resource requirements – Clear listing of staff required to perform and maintain the accommodation.
- Timelines – Timeline for any immediate remediation plans, processes, or response times for unforeseen events.

And finally, the exception may be contingent on the vendor making repairs. While this can be part of the EEAA/CAP plan, it can also be a contract amendment in the form of a contract rider or an amendment directly to the contract. Each of these can contain a roadmap that outlines tasks and timelines for all parties.

Appeal Process

In the event an exception is not approved, many policies provide for an appeals process. The appeals process is generally an open discussion at higher levels within the organization and focuses on organization risk and the requestor's need.

Summary of Possible Procurement Outcomes

There are a finite number of accessibility purchasing recommendations. In general, the first round of purchasing evaluations will come down to three core recommendations with findings:

- Award Eligible
- Award Eligible Exception Process
 - Corrective Action Plan/Equally Effective Alternate Access
 - Roadmap
 - Rider
- Recommend Rejection
 - Not Credible
 - Key Feature Failure

Vendor Considerations

In summary, vendors should consider the following when preparing a strategy for responding to solicitations with accessibility requirements.

- A VPAT is called an Accessibility Conformance Report (ACR) when completed by a vendor.
- If you do not have a product attestation such as an ACR, you will be ineligible to bid on most federal, state, and institutions of higher education contracts for products.
- Having an accurate ACR with accessibility defects does not automatically disqualify you from consideration.

- Having an ACR or other attestation that shows defects may slow down the procurement cycle as the requestor will have to undergo an exception process.
- Vendors may be asked to provide organization attestations when the solicitation is for a service or product that cannot be audited and reported on in advance.
- Vendors should closely review the accessibility of contract language. Knowledgeable purchasers may include accessibility remediation stipulations with timelines.
- The contracting portion of the purchase process is about communication. This communication can be helping the purchaser to understand your product capability, working with the purchaser on an accommodation plan, and/or committing to make changes to your product to bring it into compliance.
- Vendors should evaluate their own internal accessibility policies. Having a sound policy foundation for the organization will help promote accessible product development in addition to paving the way for inclusive hiring and career advancement within the organization.

Purchaser Considerations

In summary, purchasers should consider the following when preparing a strategy for acquiring accessible products.

- A VPAT is called an Accessibility Conformance Report (ACR) when completed by a vendor.
- ACR (VPAT) is only effective for products. Services, where there is no product, must rely on other types of attestations such as organizational attestations and contract language.
- Contract language that includes the vendor obligations before, during, and after the contract will give the organization some leverage to coax the vendor into maintaining compliance.
- A purchaser must understand their unique policies and procedures for procuring goods and services. Understanding the difference between exemptions and exceptions can save considerable time as exemptions are excluded from accessibility considerations. Further, understanding the

process for working with vendors, including undergoing an exception process, can be a win for both the purchaser and the vendor.

- In the end, purchasers can award based on the attestations, award with an exception process, or recommend rejection of the offer.

Endnotes

1. Americans with Disabilities Act of 1990, (42 U.S.C. § 12101 et seq.), <https://www.ada.gov/pubs/adastatute08.htm>.
2. Sections 504 and 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 et seq.), <https://www.section508.gov>.
3. VPAT - Information Technology Industry Council, <https://www.itic.org/policy/accessibility/vpat>.
4. Vendor Accessibility Development Services Information Request (VADSIR), <https://dir.texas.gov/View-Resources/Pages/Content.aspx?id=39>.
5. Section 508; Hardware; C204.1 EXCEPTION <https://www.federalregister.gov/d/2017-00395/p-496>. ■

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