APRIL 2026

Considerations for Disability Inclusive Procurement

These FAQs are provided by Disability:IN in collaboration with K&L Gates LLP for general informational purposes only, not as legal advice. Consult with counsel to address any specific questions or concerns related to the content, herein.

K&L GATES

RFP Inquiries: To what extent can corporations mandate specific accessibility features or minimum performance expectations during the RFP process?

Corporations generally have broad discretion in setting accessibility requirements or minimum performance expectations in procurement. Corporations can typically include any bid or proposal requirements in the procurement and determine that an entity is non-responsive for not providing assurances these requirements would be met. Further, the contract documents that are eventually signed should have an accessibility section that not only requires compliance with ADA, CVAA, Rehabilitation Act, and/or other applicable federal or state statutes[1], but also contain more specific language incorporating the compliance standard into the contract (such as WCAG 2.1 AA compliant for websites).

Risk Mitigation in Language: Are there specific “watch-outs” in RFP language or scoring rubrics that might inadvertently cause these technical requirements to be mischaracterized as “exclusionary,” “social,” or “diversity-led” efforts?

Yes - It is advisable to avoid targeted terminology from Executive Orders 14173 and 14398, particularly terms like “diversity” and “equity,” as well as terms like “marginalized.” Notably, however, there should be no risk in using terms like “disability inclusion” and “accessibility”. Be careful about using terms like “intersectionality” as it combines “disability” with other protected criteria such as race or ethnicity, where there has been a focus by the current administration on eliminating race/ethnicity-based considerations in contracting under 42 USC Section 1981.

Contractual Mandates: To what extent can corporations require binding accessibility standards within Master Service Agreements (MSAs)? Is there recommended language that helps ensure these are treated as standard technical warranties?

Corporations commonly impose these types of standards, and it is within their discretion to do so. They can require compliance with the ADA, CVAA, and other statutes, as well as provide more specific criteria (such as compliance with WCAG 2.1 AA). As another example, they can expressly reference DOJ’s accessibility regulations for buildings and public accommodations or the HUD safe harbor standards for multifamily buildings.

Ongoing Accountability: What are the legal considerations for maintaining post-signature accountability (e.g., recurring audits or updated accessibility conformance reports)?

Audits, conformance reports, and overall follow up are important for a variety of reasons, including to ensure compliance with the contract (i.e., receiving the benefit of the bargain), as well as to ensure the procuring corporation is in compliance with their own obligations to the extent the contracting corporation is viewed as an agent, co-employer, subcontractor, subgrantee, or collaborator. There are situations where the procuring corporation has a non-delegable duty to comply with the ADA or other

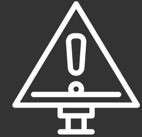
---

[1]For global companies, it also may include other laws, such as the European Accessibility Act.

disability-related laws so a failure of a contractor or subcontractor to do so could make the procuring corporation liable.

An important consideration is to have a third party do the auditing so as to protect the procuring corporation from acquiescing or approving noncompliance with disability-related law or regulations, which could create risk of liability for the procuring corporation.

Termination for Non-Performance: Is there specific guidance for terminating a contract due to a failure to meet accessibility standards or can companies use standard termination for non-performance protocol?



Standard termination for non-performance is typically acceptable. Nonetheless, it is useful to have a clause that provides examples of what would constitute a for cause termination, and that should include the failure to comply with accessibility-related laws. This will help avoid a situation where the noncompliant corporation argues that the noncompliance is not central to the contract or otherwise not a material breach of a core performance term. It is important to emphasize that disability-related compliance is central to the contract and that noncompliance is a material breach.

Third-Party Liability: In what scenarios could a corporation be held liable for procuring and deploying an inaccessible product or service provided by a vendor?

This is a significant risk. Typically compliance with the ADA, CVAA, Rehabilitation Act, and other disability-related laws and regulations are considered to be non-delegable duties. It could come up in numerous ways. Having a website that is noncompliant with Title I, II, or III of the ADA could lead to claims by employees, constituents, or customers, even if the vendor has indicated the website is compliant. Having a vendor create and manage an event which is inaccessible to wheelchairs or where sign language interpreters would not be available when needed, does not just cause liability to the vendor but to the host organization as well. Using web conferencing software that cannot do captioning causes a problem for the employer or public accommodation, not only the web conferencing vendor.

Hierarchy of Standards: From a legal defensibility perspective, are all accessibility standards (e.g., WCAG, Section 508, ISO) created equal, or are certain criteria more resilient against challenges than others?

Statutory and regulatory requirements that apply to the corporation are the most resilient. Thus, the ADA (or state law equivalent) is the most cited law in this area (except for federal government entities where the Rehabilitation Act is more likely to be cited). Section 508 does not apply to businesses/corporations so it is looked to as a guide rather than a binding obligation, although the CVAA is a law of broader applicability to messaging and video conferencing for example. WCAG 2.1 AA is simply an industry standard (although referenced in regulations now) and can change over time.