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(BY ELECTRONIC MAIL TO OIT_RULES@STATE.CO.US)

Alice Huyler
Senior Policy Advisor
Governor's Office of Information Technology
1575 Sherman Street
Denver, CO 80203

Re: Additional Comments for OIT Accessibility Rulemaking

Dear Ms. Huyler,

Thank you again for the opportunity to comment on OIT's accessibility rulemaking. These comments supplement my oral testimony from January 23, 2024.

Sincerely,

Ken Nakata
Principal

11.8 Best Meets

To address the need to focus on new or updated technology as well as to give public entities better guidance for meeting the “best meets” provision, section 11.8 should give better guidance for “best meets” and “business needs.” Specifically, section 11.8 should include a new section 11.8(D).

D. Examples

The following examples are intended to illustrate how public entities may satisfy the best meets provision. It neither purports to nor is intended to replace or supplement local government procurement processes.

1. **Example 1.** *A city government is replacing its content management system (CMS) for its website. It has identified its business needs to include (1) providing a streamlined way to move content its existing CMS system and (2) meeting the city’s IT security requirements. The city identifies these business needs in its public solicitation. Five vendors respond to the city’s solicitation but only three satisfy these business needs. The city must complete its best meets analysis among the three responsive vendors.*
2. **Example 2.** *Same scenario as Example 1. To conduct its best meets requirements, the city asks each of the three vendors to provide an Accessibility Conformance Report that summarizes how each product meets the WCAG requirements. The city also asks each vendor to provide a demonstration of basic use cases (e.g. adding content, applying for a program, etc) using assistive technology for the selection team. Based on this review, the city finds that two vendors equally meet most but not all of the accessibility standards. The city can choose either of these two products and document its best meets efforts in its records.*

11.11 Undue Burden and Fundamental Alteration

OIT should provide examples of situations that may constitute an undue burden or fundamental alteration. This can be done by adding a new paragraph 11.11(G).

G. Examples

The following examples are intended to illustrate undue burden and fundamental alteration may apply under these regulations. As these defenses are determined on a case-by-case basis, however, these examples do not ensure that similar scenarios will give undue burden or fundamental alteration.

1. **Example 1.** *A large metropolitan city government with an annual budget of several billion dollars maintains a feline adoption program with 2 employees and several volunteers. The program operates on a small budget of \$150,000 annually. The program is considering upgrading its animal adoption software, but*

the only accessible version will cost \$40,000. In making an undue burden determination, the overall budget that needs to be considered is the \$150,000 budget and potentially any unallocated funds in the larger city budget.

2. **Example 2.** *Same scenario as Example 1. As part of its market research, the city identifies an animal adoption program that meets OIT's accessibility standards, costs only \$500 a year, and only works with dog adoptions. The city determines that the program cannot be adjusted to meet the needs of cat adoption. Requiring the city to use this software may be considered a fundamental alteration.*

Web-Based Resources

I also recommended in our oral testimony that OIT should develop web-based resources. We recognize that OIT currently maintains a ["Procurement Toolkit" on its website](#). This website, however, needs to provide more robust and specific guidance on tools that can be used for meeting the requirements of HB 21-1110. Again, the federal government's [Section508.gov website](#) is a good example of how to enable agencies to meet accessibility in ICT procurement. An additional resource is the [G20's Smart Cities for All Toolkit](#), which Laura Ruby helped develop when she was a Director of Accessibility Policy and Standards for Microsoft Corporation.

Additional Comments

Converge Accessibility has reviewed the comments from the City of Centennial and fully support their recommendations. We believe that their recommendations strikes the right balance between the needs of people with disabilities and local governments.