

into a memorandum of agreement to coordinate the roles and responsibilities of the Department of Transportation and the Department of Homeland Security in providing assistance for public transportation, including the provision of public transportation services and the repair and restoration of public transportation systems in areas for which the President has declared a major disaster or emergency.

“(3) CONTENTS OF AGREEMENT.—The memorandum of agreement required under paragraph (2) shall—

“(A) provide for improved coordination and expeditious use of public transportation, as appropriate, in response to and recovery from a major disaster or emergency;

“(B) establish procedures to address—

“(i) issues that have contributed to delays in the reimbursement of eligible transportation-related expenses relating to a major disaster or emergency;

“(ii) any challenges identified in the review under paragraph (4); and

“(iii) the coordination of assistance for public transportation provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] and section 5324 of title 49, United States Code, as amended by this Act, as appropriate; and

“(C) provide for the development and distribution of clear guidelines for State, local, and tribal governments, including public transportation systems, relating to—

“(i) assistance available for public transportation systems for activities relating to a major disaster or emergency—

“(I) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

“(II) under section 5324 of title 49, United States Code, as amended by this Act; and

“(III) from other sources, including other Federal agencies; and

“(ii) reimbursement procedures that speed the process of—

“(I) applying for assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and section 5324 of title 49, United States Code, as amended by this Act; and

“(II) distributing assistance for public transportation systems under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and section 5324 of title 49, United States Code, as amended by this Act.

“(4) AFTER ACTION REVIEW.—Before entering into a memorandum of agreement under paragraph (2), the Secretary of Transportation and the Secretary of Homeland Security (acting through the Administrator of the Federal Emergency Management Agency), in consultation with State, local, and tribal governments (including public transportation systems) that have experienced a major disaster or emergency, shall review after action reports relating to major disasters, emergencies, and exercises, to identify areas where coordination between the Department of Transportation and the Department of Homeland Security and the provision of public transportation services should be improved.

“(5) FACTORS FOR DECLARATIONS OF MAJOR DISASTERS AND EMERGENCIES.—The Administrator of the Federal Emergency Management Agency shall make available to State, local, and tribal governments, including public transportation systems, a description of the factors that the President considers in declaring a major disaster or emergency, including any pre-disaster emergency declaration policies.

“(6) BRIEFINGS.—

“(A) INITIAL BRIEFING.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall jointly brief the Committee on Banking, Housing, and Urban Affairs and the Committee on Homeland Security and Governmental Affairs of the Senate on the memorandum of agreement required under paragraph (2).

“(B) QUARTERLY BRIEFINGS.—Each quarter of the 1-year period beginning on the date on which the Secretary of Transportation and the Secretary of Homeland Security enter into the memorandum of agreement required under paragraph (2), the Secretary of Transportation and the Secretary of Homeland Security shall jointly brief the Committee on Banking, Housing, and Urban Affairs and the Committee on Homeland Security and Governmental Affairs of the Senate on the implementation of the memorandum of agreement.”

§ 5325. Contract requirements

(a) COMPETITION.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

(b) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—

(1) PROCEDURES FOR AWARDING CONTRACT.—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement of a State adopted before August 10, 2005.

(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

(A) PERFORMANCE OF AUDITS.—Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of the Federal Acquisition Regulation, or any successor thereto.

(B) INDIRECT COST RATES.—A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(C) APPLICATION OF RATES.—After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

(D) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chap-

ter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

(d) DESIGN-BUILD PROJECTS.—

(1) TERM DEFINED.—In this subsection, the term “design-build project”—

(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that meets specific performance criteria; and

(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

(e) MULTIYEAR ROLLING STOCK.—

(1) CONTRACTS.—A recipient procuring rolling stock with Government financial assistance under this chapter may make a multi-year contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for—

(A) not more than 5 years after the date of the original contract for bus procurements; and

(B) not more than 7 years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock.

(2) COOPERATION AMONG RECIPIENTS.—The Secretary shall allow at least two recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

(f) ACQUIRING ROLLING STOCK.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(g) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

(h) GRANT PROHIBITION.—A grant awarded under this chapter or the Federal Public Transportation Act of 2012 may not be used to support a procurement that uses an exclusionary or discriminatory specification.

(i) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-

State dealers shall apply to vehicles purchased with a grant under this chapter.

(j) AWARDS TO RESPONSIBLE CONTRACTORS.—

(1) IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

(A) the integrity of the contractor;

(B) the contractor’s compliance with public policy;

(C) the contractor’s past performance; and

(D) the contractor’s financial and technical resources.

(k) VETERANS EMPLOYMENT.—Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 825; Pub. L. 104-287, §5(16), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 105-178, title III, §3022, June 9, 1998, 112 Stat. 363; Pub. L. 105-206, title IX, §9009(n), July 22, 1998, 112 Stat. 857; Pub. L. 107-217, §3(n)(2), Aug. 21, 2002, 116 Stat. 1302; Pub. L. 109-59, title III, §3025(a), Aug. 10, 2005, 119 Stat. 1620; Pub. L. 110-244, title II, §201(k), June 6, 2008, 122 Stat. 1611; Pub. L. 112-141, div. B, §§20018, 20030(d), July 6, 2012, 126 Stat. 706, 730.)

HISTORICAL AND REVISION NOTES
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5325(a)	49 App.:1608(b)(1).	July 9, 1964, Pub. L. 88-365, §12(b)(1), 78 Stat. 306; Sept. 8, 1966, Pub. L. 89-562, §2(a)(1), 80 Stat. 715; May 25, 1967, Pub. L. 90-19, §20(a), 81 Stat. 25; Nov. 6, 1978, Pub. L. 95-599, §308(a)(1), 92 Stat. 2745.
5325(b)	49 App.:1608(b)(2).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §12(b)(2); added Nov. 6, 1978, Pub. L. 95-599, §308(a)(2), 92 Stat. 2745; restated Jan. 6, 1983, Pub. L. 97-424, §308, 96 Stat. 2151.
5325(c)	49 App.:1608(b)(3).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §12(b)(3); added Apr. 2, 1987, Pub. L. 100-17, §315(a), 101 Stat. 232.
5325(d)	49 App.:1608(b)(4).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §12(b)(4); added Apr. 2, 1987, Pub. L. 100-17, §316, 101 Stat. 232.

In subsection (a), the words “reconstruction”, “in furtherance of the purposes”, “by applicants”, “procedures as defined by the Secretary”, “of the contracting parties”, and “the operations or activities under” are

omitted as surplus. The words “shall be made available to” are substituted for “shall . . . have access to”, and the words “an officer or employee of the Secretary or Comptroller General” are substituted for “any of their duly authorized representatives”, for consistency in the revised title and with other titles of the United States Code.

Subsection (b) is substituted for 49 App.:1608(b)(2) for clarity. The text of 49 App.:1608(b)(2) (last sentence) is omitted as executed.

PUB. L. 104-287

This amends the catchline for 49:5325(d) to make a clarifying amendment.

REFERENCES IN TEXT

The Federal Public Transportation Act of 2012, referred to in subsec. (h), is div. B of Pub. L. 112-141, July 6, 2012, 126 Stat. 622. For complete classification of this Act to the Code, see Short Title of 2012 Amendment note set out under section 5101 of this title and Tables.

AMENDMENTS

2012—Subsec. (b)(2)(A). Pub. L. 112-141, §20030(d), substituted “the Federal Acquisition Regulation, or any successor thereto” for “title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation)”.

Subsec. (e)(1). Pub. L. 112-141, §20018(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.”

Subsec. (h). Pub. L. 112-141, §20018(2), substituted “Federal Public Transportation Act of 2012” for “Federal Public Transportation Act of 2005”.

Subsec. (j)(2)(C). Pub. L. 112-141, §20018(3), struck out “, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2)” after “past performance”.

Subsec. (k). Pub. L. 112-141, §20018(4), added subsec. (k).

2008—Subsec. (b)(1). Pub. L. 110-244, §201(k)(1), inserted “adopted before August 10, 2005” before period at end.

Subsec. (b)(2), (3). Pub. L. 110-244, §201(k)(2), (3), redesignated par. (3) as (2) and struck out former par. (2). Text read as follows: “Paragraph (1) does not apply to the extent a State has adopted by law, before the date of enactment of the Federal Public Transportation Act of 2005, an equivalent State qualifications-based requirement for contracting for architectural, engineering, and design services.”

2005—Pub. L. 109-59 amended section generally. Prior to amendment, section consisted of subssecs. (a) to (c) relating to noncompetitive bidding in subsec. (a), procedures for award of architectural, engineering, and design contracts in subsec. (b), and efficient procurement in subsec. (c).

2002—Subsec. (b). Pub. L. 107-217 substituted “chapter 11 of title 40” for “title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)”.

1998—Subsec. (b). Pub. L. 105-178, §3022(b), as added by Pub. L. 105-206, inserted “or requirement” after “A contract” and “When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23, United States Code.” before “This subsection does not apply”.

Pub. L. 105-178, §3022(a)(1), (2), redesignated subsec. (d) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “A recipient of finan-

cial assistance of the United States Government under this chapter may make a contract to expend that assistance to acquire rolling stock—

“(1) based on—

“(A) initial capital costs; or

“(B) performance, standardization, life cycle costs, and other factors; or

“(2) with a party selected through a competitive procurement process.”

Subsec. (c). Pub. L. 105-178, §3022(a)(1), (3), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “A recipient of a grant under section 5307 of this title procuring an associated capital maintenance item under section 5307(b) may make a contract directly with the original manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

“(1) the manufacturer or supplier is the only source for the item; and

“(2) the price of the item is no more than the price similar customers pay for the item.”

Subsec. (d). Pub. L. 105-178, §3022(a)(2), redesignated subsec. (d) as (b).

1996—Subsec. (d). Pub. L. 104-287 substituted “ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS” for “MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS” in heading.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-287 effective July 5, 1994, see section 8(1) of Pub. L. 104-287, set out as a note under section 5303 of this title.

§ 5326. Transit asset management

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) CAPITAL ASSET.—The term “capital asset” includes equipment, rolling stock, infrastructure, and facilities for use in public transportation and owned or leased by a recipient or subrecipient of Federal financial assistance under this chapter.

(2) TRANSIT ASSET MANAGEMENT PLAN.—The term “transit asset management plan” means a plan developed by a recipient of funding under this chapter that—

(A) includes, at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization; and

(B) the recipient certifies complies with the rule issued under this section.

(3) TRANSIT ASSET MANAGEMENT SYSTEM.—The term “transit asset management system” means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively throughout the life cycle of such assets.