

curity 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 chapter 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 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—

(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 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 2015 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; Pub. L. 114–94, div. A, title III, §3030(e), Dec. 4, 2015, 129 Stat. 1497.)

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

HISTORICAL AND REVISION NOTES—CONTINUED
PUB. L. 103–272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

Editorial Notes

REFERENCES IN TEXT

The Federal Public Transportation Act of 2015, referred to in subsec. (h), is title III of Pub. L. 114–94, Dec. 4, 2015, 129 Stat. 1446. For complete classification of this Act to the Code, see Short Title of 2015 Amendment note set out under section 5101 of this title and Tables.

AMENDMENTS

2015—Subsec. (e)(2). Pub. L. 114–94, §3030(e)(1), struck out “at least two” after “allow”.

Subsec. (h). Pub. L. 114–94, §3030(e)(2), substituted “Federal Public Transportation Act of 2015” for “Federal Public Transportation Act of 2012”.

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 re-

quirement for contracting for architectural, engineering, and design services.”

2005—Pub. L. 109-59 amended section generally. Prior to amendment, section consisted of subsecs. (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 financial 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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

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.

INNOVATIVE PROCUREMENT

Pub. L. 114-94, div. A, title III, §3019, Dec. 4, 2015, 129 Stat. 1488, provided that:

“(a) DEFINITION.—In this section, the term ‘grantee’ means a recipient or subrecipient of assistance under chapter 53 of title 49, United States Code.

“(b) COOPERATIVE PROCUREMENT.—

“(1) DEFINITIONS; GENERAL RULES.—

“(A) DEFINITIONS.—In this subsection—

“(i) the term ‘cooperative procurement contract’ means a contract—

“(I) entered into between a State government or eligible nonprofit entity and 1 or more vendors; and

“(II) under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants;

“(ii) the term ‘eligible nonprofit entity’ means—

“(I) a nonprofit cooperative purchasing organization that is not a grantee; or

“(II) a consortium of entities described in subclause (I);

“(iii) the terms ‘lead nonprofit entity’ and ‘lead procurement agency’ mean an eligible nonprofit entity or a State government, respectively, that acts in an administrative capacity on behalf of each participant in a cooperative procurement contract;

“(iv) the term ‘participant’ means a grantee that participates in a cooperative procurement contract; and

“(v) the term ‘participate’ means to purchase rolling stock and related equipment under a cooperative procurement contract using assistance provided under chapter 53 of title 49, United States Code.

“(B) GENERAL RULES.—

“(i) PROCUREMENT NOT LIMITED TO INTRASTATE PARTICIPANTS.—A grantee may participate in a cooperative procurement contract without regard to whether the grantee is located in the same State as the parties to the contract.

“(ii) VOLUNTARY PARTICIPATION.—Participation by grantees in a cooperative procurement contract shall be voluntary.

“(iii) CONTRACT TERMS.—The lead procurement agency or lead nonprofit entity for a cooperative procurement contract shall develop the terms of the contract.

“(iv) DURATION.—A cooperative procurement contract—

“(I) subject to subclauses (II) and (III), may be for an initial term of not more than 2 years;

“(II) may include not more than 3 optional extensions for terms of not more than 1 year each; and

“(III) may be in effect for a total period of not more than 5 years, including each extension authorized under subclause (II).

“(v) ADMINISTRATIVE EXPENSES.—A lead procurement agency or lead nonprofit entity, as applicable, that enters into a cooperative procurement contract—

“(I) may charge the participants in the contract for the cost of administering, planning, and providing technical assistance for the contract in an amount that is not more than 1 percent of the total value of the contract; and

“(II) with respect to the cost described in subclause (I), may incorporate the cost into the price of the contract or directly charge the participants for the cost, but not both.

“(2) STATE COOPERATIVE PROCUREMENT SCHEDULES.—

“(A) AUTHORITY.—A State government may enter into a cooperative procurement contract with 1 or more vendors if—

“(i) the vendors agree to provide an option to purchase rolling stock and related equipment to

the State government and any other participant; and

“(ii) the State government acts throughout the term of the contract as the lead procurement agency.

“(B) APPLICABILITY OF POLICIES AND PROCEDURES.—In procuring rolling stock and related equipment under a cooperative procurement contract under this subsection, a State government shall comply with the policies and procedures that apply to procurement by the State government when using non-Federal funds, to the extent that the policies and procedures are in conformance with applicable Federal law.

“(3) PILOT PROGRAM FOR NONPROFIT COOPERATIVE PROCUREMENTS.—

“(A) ESTABLISHMENT.—The Secretary [of Transportation] shall establish and carry out a pilot program to demonstrate the effectiveness of cooperative procurement contracts administered by eligible nonprofit entities.

“(B) DESIGNATION.—In carrying out the program under this paragraph, the Secretary shall designate not less than 3 eligible nonprofit entities to enter into a cooperative procurement contract under which the eligible nonprofit entity acts throughout the term of the contract as the lead nonprofit entity.

“(C) NOTICE OF INTENT TO PARTICIPATE.—At a time determined appropriate by the lead nonprofit entity, each participant in a cooperative procurement contract under this paragraph shall submit to the lead nonprofit entity a nonbinding notice of intent to participate.

“(4) JOINT PROCUREMENT CLEARINGHOUSE.—

“(A) IN GENERAL.—The Secretary shall establish a clearinghouse for the purpose of allowing grantees to aggregate planned rolling stock purchases and identify joint procurement participants.

“(B) NONPROFIT CONSULTATION.—In establishing the clearinghouse under subparagraph (A), the Secretary may consult with nonprofit entities with expertise in public transportation or procurement, and other stakeholders as the Secretary determines appropriate.

“(C) INFORMATION ON PROCUREMENTS.—The clearinghouse may include information on bus size, engine type, floor type, and any other attributes necessary to identify joint procurement participants.

“(D) LIMITATIONS.—

“(i) ACCESS.—The clearinghouse shall only be accessible to the Federal Transit Administration, a nonprofit entity coordinating for such clearinghouse with the Secretary, and grantees.

“(ii) PARTICIPATION.—No grantee shall be required to submit procurement information to the database.

“(C) LEASING ARRANGEMENTS.—

“(1) CAPITAL LEASE DEFINED.—

“(A) IN GENERAL.—In this subsection, the term ‘capital lease’ means any agreement under which a grantee acquires the right to use rolling stock or related equipment for a specified period of time, in exchange for a periodic payment.

“(B) MAINTENANCE.—A capital lease may require that the lessor provide maintenance of the rolling stock or related equipment covered by the lease.

“(2) PROGRAM TO SUPPORT INNOVATIVE LEASING ARRANGEMENTS.—

“(A) AUTHORITY.—A grantee may use assistance provided under chapter 53 of title 49, United States Code, to enter into a capital lease if—

“(i) the rolling stock or related equipment covered under the lease is eligible for capital assistance under such chapter; and

“(ii) there is or will be no Federal interest in the rolling stock or related equipment covered under the lease as of the date on which the lease takes effect.

“(B) GRANTEE REQUIREMENTS.—A grantee that enters into a capital lease shall—

“(i) maintain an inventory of the rolling stock or related equipment acquired under the lease; and

“(ii) maintain on the accounting records of the grantee the liability of the grantee under the lease.

“(C) ELIGIBLE LEASE COSTS.—The costs for which a grantee may use assistance under chapter 53 of title 49, United States Code, with respect to a capital lease, include—

“(i) the cost of the rolling stock or related equipment;

“(ii) associated financing costs, including interest, legal fees, and financial advisor fees;

“(iii) ancillary costs such as delivery and installation charges; and

“(iv) maintenance costs.

“(D) TERMS.—A grantee shall negotiate the terms of any lease agreement that the grantee enters into.

“(E) APPLICABILITY OF PROCUREMENT REQUIREMENTS.—

“(i) LEASE REQUIREMENTS.—Part 639 of title 49, Code of Federal Regulations, or any successor regulation, and implementing guidance applicable to leasing shall not apply to a capital lease.

“(ii) BUY AMERICA.—The requirements under section 5323(j) of title 49, United States Code, shall apply to a capital lease.

“(3) CAPITAL LEASING OF CERTAIN ZERO EMISSION VEHICLE COMPONENTS.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘removable power source’—

“(I) means a power source that is separately installed in, and removable from, a zero emission vehicle; and

“(II) may include a battery, a fuel cell, an ultra-capacitor, or other advanced power source used in a zero emission vehicle; and

“(ii) the term ‘zero emission vehicle’ has the meaning given the term in section 5339(c) of title 49, United States Code.

“(B) LEASED POWER SOURCES.—Notwithstanding any other provision of law, for purposes of this subsection, the cost of a removable power source that is necessary for the operation of a zero emission vehicle shall not be treated as part of the cost of the vehicle if the removable power source is acquired using a capital lease.

“(C) ELIGIBLE CAPITAL LEASE.—A grantee may acquire a removable power source by itself through a capital lease.

“(D) PROCUREMENT REGULATIONS.—For purposes of this section, a removable power source shall be subject to section 200.88 of title 2, Code of Federal Regulations.

“(4) REPORTING REQUIREMENT.—Not later than 3 years after the date on which a grantee enters into a capital lease under this subsection, the grantee shall submit to the Secretary a report that contains—

“(A) an evaluation of the overall costs and benefits of leasing rolling stock; and

“(B) a comparison of the expected short-term and long-term maintenance costs of leasing versus buying rolling stock.

“(5) REPORT.—The Secretary shall make publicly available an annual report on this subsection for each fiscal year, not later than December 31 of the calendar year in which that fiscal year ends. The report shall include a detailed description of the activities carried out under this subsection, and evaluation of the program including the evaluation of the data reported in paragraph (4).

“(d) BUY AMERICA.—The requirements of section 5323(j) of title 49, United States Code, shall apply to all procurements under this section.”

§ 5326. Transit asset management

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