§ 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 title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

(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 not more than 5 years after the date of the original contract.

(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 2005 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, including the performance reported in the Contractor Performance Assessment Reports required under section 5309 (l)(2); and
   (D) the contractor’s financial and technical resources.


### Historical and Revision Notes

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<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
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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**


**Amendments**


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 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).


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.”


Effective Date of 1998 Amendment


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.