Subsec. (j)(6). Pub. L. 109–59, § 3023(i)(1)(A), (2), redesignated par. (5) as (6) and substituted ''Federal Public Transportation Act of 2005'' for ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' in introductory provisions. Former par. (6) redesignated (7).

Subsec. (j)(7), (8). Pub. L. 109–59, § 3023(i)(1)(A), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (j)(9). Pub. L. 109–59, § 3023(i)(3), added par. (9).

Subsec. (*l*). Pub. L. 109–59, § 3023(j), amended heading and text of subsec. (*l*) generally. Prior to amendment, text read as follows: ''The planning and programming requirements of section 135 of title 23 apply to a grant made under sections 5307–5311 of this title.''

Subsec. (m). Pub. L. 109–59, § 3023(k), inserted at end ''Rolling stock procurements of 20 vehicles or fewer made for the purpose of serving other than urbanized areas and urbanized areas with populations of 200,000 or fewer shall be subject to the same requirements as established for procurements of 10 or fewer buses under the post-delivery purchaser's requirements certification process under section 663.37(c) of title 49, Code of Federal Regulations.''

Subsec. (*o*). Pub. L. 109–59, § 3023(*l*), substituted ''chapter 6 (other than section 609) of title 23'' for ''the Transportation Infrastructure Finance and Innovation Act of 1998''.

Subsec. (p). Pub. L. 109–59, § 3023(m), added subsec. (p).

1998—Subsec. (d). Pub. L. 105–178, § 3020(a), substituted ''Condition on Charter Bus Transportation Service'' for ''Buying and Operating Buses'' in heading.

Subsec. (i). Pub. L. 105–178, § 3020(c), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''A Government grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment required by the Clean Air Act (42 U.S.C. 7401 et seq.) or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is for 90 percent of the net project cost of the equipment that is attributable to complying with those Acts. The Secretary of Transportation, through practicable administrative procedures, may determine the costs attributable to that equipment.''

Subsec. (j)(7). Pub. L. 105–178, § 3020(b), inserted heading and amended text of par. (7) generally. Prior to amendment, text read as follows: ''Not later than January 1, 1995, the Secretary of Transportation shall submit to Congress a report on purchases from foreign entities waived under paragraph (2) of this subsection in the fiscal years ending September 30, 1992, and September 30, 1993. The report shall indicate the dollar value of items for which waivers were granted.''

Subsecs. (k) to (m). Pub. L. 105–178, § 3020(d), added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

Subsec. (n). Pub. L. 105–178, § 3020(e), added subsec. (n).

Subsec. (*o*). Pub. L. 105–178, § 3020(f), added subsec. (*o*).

1996—Subsecs. (b)(1), (c), (e). Pub. L. 104–287 struck out ''(except section 5307)'' after ''under this chapter''.

1994—Subsec. (j). Pub. L. 103–429, § 6(10)(A), substituted ''America'' for ''American'' in heading.

Subsec. (*l*). Pub. L. 103–429, § 6(10)(B), added subsec. (*l*).

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.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–429 effective July 5, 1994, see section 9 of Pub. L. 103–429, set out as a note under section 321 of this title.

RULEMAKING

Pub. L. 109–59, title III, § 3023(i)(5), Aug. 10, 2005, 119 Stat. 1618, provided that: ''Not later than 180 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall issue a final rule on implementation of the requirements of section 5323(j) of title 49, United States Code (in this paragraph referred to as the 'Buy America requirements'). The purposes of the regulations shall be as follows:

''(A) MICROPROCESSOR WAIVER.—To clarify that any waiver from the Buy America requirements issued under section 5323(j)(2) of such title for a microprocessor, computer, or microcomputer applies only to a device used solely for the purpose of processing or storing data and does not extend to a product containing a microprocessor, computer, or microcomputer.

''(B) DEFINITIONS.—To define the terms 'end product', 'negotiated procurement', and 'contractor' for purposes of part 661 of title 49, Code of Federal Regulations. In defining the terms, the Secretary shall develop a list of representative items that are subject to the Buy America requirements, and shall address the procurement of systems under the definition to ensure that major system procurements are not used to circumvent the Buy America requirements.

''(C) POST-AWARD WAIVERS.—To permit a grantee to request a non-availability waiver from the Buy America requirements under section 661.7c of title 49, Code of Federal Regulations, after contract award in any case in which the contractor has made a certification of compliance with the requirements in good faith.

''(D) CERTIFICATION UNDER NEGOTIATED PROCUREMENT PROCESS.—In any case in which a negotiated procurement process is used, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer.''

FINAL ASSEMBLY OF BUSES

Pub. L. 105–178, title III, § 3035, June 9, 1998, 112 Stat. 387, provided that:

''(a) IN GENERAL.—All buses manufactured on or after September 1, 1999, that are purchased with Federal funds by recipients of assistance from the Federal Transit Administration shall conform with the Federal Transit Administration Guidance on Buy America Requirements, dated March 18, 1997.

''(b) RULE OF CONSTRUCTION.—For purposes of this section, a bus shall be considered to be manufactured on or after September 1, 1999, if the manufacturing process for that bus is not completed on or before August 31, 1999.''

§ 5324. Special provisions for capital projects

(a) RELOCATION AND REAL PROPERTY REQUIREMENTS.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) shall apply to financial assistance for capital projects under this chapter.

(b) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

(1) COOPERATION AND CONSULTATION.—In carrying out the policy of section 5301(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.

(2) PUBLIC PARTICIPATION IN ENVIRONMENTAL REVIEWS.—In performing environmental reviews, the Secretary shall review each transcript of a hearing submitted under section 5323(b) to establish that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that the project application includes a record of—

(A) the environmental impact of the proposal;

(B) adverse environmental effects that cannot be avoided;

(C) alternatives to the proposal; and

(D) irreversible and irretrievable impacts on the environment.

(3) APPROVAL OF APPLICATIONS FOR ASSISTANCE.—

(A) FINDINGS BY THE SECRETARY.—The Secretary may approve an application for financial assistance for a capital project in accordance with this chapter only if the Secretary makes written findings, after reviewing the application and the transcript of any hearing held before a State or local governmental authority under section 5323(b), that—

(i) an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest;

(ii) the preservation and enhancement of the environment and the interest of the community in which the project is located were considered; and

(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

(B) HEARING.—If a hearing has not been conducted or the Secretary decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

(C) AVAILABILITY OF FINDINGS.—The Secretary's findings under subparagraph (A) shall be made a matter of public record.

(c) RAILROAD CORRIDOR PRESERVATION.—

(1) IN GENERAL.—The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

(2) ENVIRONMENTAL REVIEWS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

(Pub. L. 103–272, § 1(d), July 5, 1994, 108 Stat. 824; Pub. L. 109–59, title III, § 3024(a), Aug. 10, 2005, 119 Stat. 1619.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5324(a)	49 App.:1606(a).	July 9, 1964, Pub. L. 88–365, § 7(a), 78 Stat. 305; May 25, 1967, Pub. L. 90–19, § 20(a), 81 Stat. 25.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5324(b)(1)	49 App.:1610(a) (last sentence).	July 9, 1964, Pub. L. 88–365, § 14(a) (last sentence)–(c), 78 Stat. 308; 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; restated Oct. 15, 1970, Pub. L. 91–453, § 6, 84 Stat. 966.
5324(b)(2)	49 App.:1610(b).	
5324(b)(3)	49 App.:1610(c).	
5324(c)	49 App.:1608(d).	July 9, 1964, Pub. L. 88–365, § 12(d), 78 Stat. 307; Aug. 10, 1965, Pub. L. 89–117, § 1109, 79 Stat. 507; 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(c), 92 Stat. 2747.

In subsection (a), before clause (1), the word ''provided'' is substituted for ''extended'' for clarity. The words ''to any project'' are omitted as surplus. In clause (2), the words ''available . . . displaced'' are omitted as surplus.

In subsection (b)(1), the words ''Health and Human Services'' are substituted for ''Health, Education, and Welfare'' in section 14(a) (last sentence) of the Urban Mass Transportation Act of 1964 (Public Law 88–365, 78 Stat. 308) [subsequently changed to the Federal Transit Act by section 3003(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2087)] because of 20:3508(b).

In subsection (b)(2), before clause (A), the words ''In carrying out section 5306 of this title'' are added for clarity and consistency with subsections (b)(3) and (c) of this section. The word ''detailed'' is omitted as surplus. In clause (B), the words ''should the proposal be implemented'' are omitted as surplus. In clause (D), the words ''which may be involved in the proposed project should it be implemented'' are omitted as surplus.

In subsection (b)(3)(A), before clause (i), the word ''financial'' is added for clarity. The words ''full and complete'' are omitted as surplus. In clause (ii), the word ''fair'' is omitted as surplus. In clause (iii), the word ''either'' is omitted as surplus.

In subsection (b)(3)(B), the words ''before the State or local agency pursuant to section 1602(d) of this Appendix'' and ''before the State or local public agency . . . to permit him'' are omitted as surplus.

In subsection (c), the words ''The Secretary of Transportation may not'' are substituted for ''None of the provisions of this chapter shall be construed to authorize the Secretary to'' to eliminate unnecessary words. The words ''in any manner . . . mode of'' and ''rates, fares, tolls, rentals, or other . . . fixed or prescribed . . . by any local public or private transit agency'' are omitted as surplus. The words ''However, the Secretary may'' are substituted for ''but nothing in this subsection shall prevent the Secretary from taking such actions as may be necessary to'' to eliminate unnecessary words. The words ''local governmental authority, corporation, or association'' are substituted for ''agency or agencies'' for consistency with sections 5309 and 5310 of the revised title.

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (a), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified generally to chapter 61 (§ 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

AMENDMENTS

2005—Pub. L. 109–59 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c)

relating to requirements of a relocation program for families displaced by a project, consideration of economic, social, and environmental interests, and prohibition against regulating the operation of a mass transportation system for which a grant is made under section 5309 and regulating any charge for the system after a grant is made.

§ 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