

tract” 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.

#### 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. Repealed. Pub. L. 109-59, title III, § 3025(b), Aug. 10, 2005, 119 Stat. 1622]**

Section, Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 826; Pub. L. 103-429, §6(11), Oct. 31, 1994, 108 Stat. 4379; Pub. L. 105-178, title III, §3023(a), (b), June 9, 1998, 112 Stat. 364, related to turnkey system projects, acquisition of rolling stock, and procurement of associated capital maintenance items.

#### **§ 5327. Project management oversight**

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and record-keeping system;

(5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts;

(12) the recipient’s commitment to submit a project budget and project schedule to the Secretary each month; and

(13) safety and security management.

(b) PLAN APPROVAL.—(1) The Secretary shall approve a plan not later than 60 days after it is submitted. If the approval cannot be completed within 60 days, the Secretary shall notify the recipient, explain the reasons for the delay, and estimate the additional time that will be required.

(2) The Secretary shall inform the recipient of the reasons when a plan is disapproved.

(c) LIMITATIONS.—

(1) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Of the amounts made available to carry out this chapter for a fiscal year, the Secretary may use not more than the following amounts to make contracts for the activities described in paragraph (2):

(A) 0.5 percent of amounts made available to carry out section 5305.

(B) 0.75 percent of amounts made available to carry out section 5307.

(C) 1 percent of amounts made available to carry out section 5309.

(D) 0.5 percent of amounts made available to carry out section 5310.

(E) 0.5 percent of amounts made available to carry out section 5311.

(F) 0.5 percent of amounts made available to carry out section 5320.

(2) ACTIVITIES.—Paragraph (1) shall apply to the following:

(A) Activities to oversee the construction of a major project.

(B) Activities to review and audit the safety and security, procurement, management, and financial compliance of a recipient or

subrecipient of funds under sections 5305, 5307, 5309, 5310, 5311, and 5320.

(C) Activities to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section.

(3) LIMITATIONS ON APPLICABILITY.—Subsections (a), (b), and (e) do not apply to contracts under this section for activities described in paragraphs (2)(B) and (2)(C).

(4) GOVERNMENT'S SHARE OF COSTS.—The Government shall pay the entire cost of carrying out a contract under this subsection.

(5) AVAILABILITY OF CERTAIN FUNDS.—Beginning in fiscal year 2006, funds available under paragraph (1)(C) shall be made available to the Secretary before allocating the funds appropriated to carry out any project under a full funding grant agreement or project construction grant agreement.

(d) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter or section 14(b) of the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320), as added by section 2 of the National Capital Transportation Amendments of 1979 (Public Law 96-184, 93 Stat. 1320), shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall include—

(1) a definition of "major capital project" for subsection (c) of this section that excludes a project to acquire rolling stock or to maintain or rehabilitate a vehicle; and

(2) a requirement that oversight begin during the preliminary engineering stage of a project, unless the Secretary finds it more appropriate to begin the oversight during another stage of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

(f) FINANCIAL PLAN.—A recipient of financial assistance for a project under this chapter with an estimated total cost of \$1,000,000,000 or more shall submit to the Secretary an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 826; Pub. L. 103-429, §6(12), Oct. 31, 1994, 108 Stat. 4379; Pub. L. 104-287, §5(17), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 105-178, title III, §3024, June 9, 1998, 112 Stat. 364; Pub. L. 109-59, title III, §3026, Aug. 10, 2005, 119 Stat. 1622.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5327(a) .....	49 App.:1619(d), (e).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §23(b)-(g); added Apr. 2, 1987, Pub. L. 100-17, §324, 101 Stat. 236.

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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5327(b) .....	49 App.:1619(g).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §23(a); added Apr. 2, 1987, Pub. L. 100-17, §324, 101 Stat. 235; Dec. 18, 1991, Pub. L. 102-240, §3027, 105 Stat. 2115.
5327(c)(1) ....	49 App.:1619(a).	
5327(c)(2) ....	49 App.:1619(h).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §23(h); added Nov. 21, 1989, Pub. L. 101-164, §340, 103 Stat. 1099.
5327(c)(3) ....	49 App.:1619(b).	
5327(d) .....	49 App.:1619(c).	
5327(e) .....	49 App.:1619(f).	

In subsection (a), before clause (1), the words "as required in each case by the Secretary" are omitted as surplus. In clause (11), the words "such items as" and "where applicable" are omitted as surplus.

In subsection (c)(1), the words "Beginning October 1, 1987" are omitted as executed. The words "with any person" are omitted as surplus.

In subsection (c)(2), the words "In addition to the purposes provided for under subsection (a) of this section" and "with any person" are omitted as surplus. The cross-reference to paragraph (1) is not changed. The cross-reference in 49 App.:1619(h), the source provision being restated in this subsection, is no longer correct, but is apparently still meant to apply to funds made available under 49 App.:1619(a).

In subsection (e), before clause (1), the text of 49 App.:1619(f) (2d sentence) is omitted as executed. In clause (1), The words "vehicles or other" and "the performance of" are omitted as surplus.

PUB. L. 103-429

This amends 49:5327(c)(1) to correct an erroneous cross-reference.

PUB. L. 104-287

This amends 49:5327(c) to correct an erroneous cross-reference.

REFERENCES IN TEXT

The National Capital Transportation Act of 1969, referred to in subsecs. (a) and (d), is Pub. L. 91-143, Dec. 9, 1969, 83 Stat. 320, as amended, which amended section 24 of Title 12, Banks and Banking, and section 684 of former Title 40, Public Buildings, Property, and Works, and repealed sections 651, 652, 661 to 665, 671, 682, and 683 of former Title 40 and provisions set out as notes under section 651 of former Title 40. Section 14(b) of that Act is not classified to the Code. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (a)(13). Pub. L. 109-59, §3026(a), added par. (13).

Subsec. (c). Pub. L. 109-59, §3026(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) specified limitations on use of available amounts for certain purposes.

1998—Subsec. (c)(2). Pub. L. 105-178, §3024(a), substituted "enter into contracts" for "make contracts" and inserted "and to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section" before period at end of first sentence.

Subsec. (f). Pub. L. 105-178, §3024(b), added subsec. (f).  
1996—Subsec. (c)(1). Pub. L. 104-287 substituted "to carry out a major project under section 5309" for "to carry out a major project under section 5307".

1994—Subsec. (c)(1). Pub. L. 103-429 substituted "section 5307, 5309, 5311, or 103(e)(4) or that Act" for "section 5307, 5309, 5311, or 103(e)(4) of that Act".

## 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.

## FINANCING OF OVERSIGHT ACTIVITIES

Pub. L. 107-87, title III, §319, Dec. 18, 2001, 115 Stat. 858, provided that: "Beginning in fiscal year 2002 and thereafter, the Secretary may use up to 1 percent of the amounts made available to carry out 49 U.S.C. 5309 for oversight activities under 49 U.S.C. 5327."

**§ 5328. Project review**

## (a) SCHEDULE.—

(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis required by subsections (d) and (e) of section 5309 in the alternatives analysis and in preparing a draft environmental impact statement and shall approve the draft for circulation not later than 45 days after the applicant submits the draft to the Secretary.

(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—After the draft is circulated and not later than 30 days after the applicant selects a locally preferred alternative, the Secretary shall allow the project to advance to the preliminary engineering stage if the Secretary finds the project meets the requirements of subsection (d) or (e) of section 5309.

(3) RECORD OF DECISION.—The Secretary shall issue a record of decision and allow a project to advance to the final design stage not later than 120 days after the final environmental impact statement for the project is completed if the Secretary determines that the project meets the requirements of subsection (d) or (e) of section 5309.

(4) FUNDING AGREEMENTS.—The Secretary shall enter into a full funding grant agreement or project construction grant agreement, as appropriate, between the Government and the project sponsor if the Secretary determines that the project meets the requirements of subsection (d) or (e) of section 5309.

(b) ALLOWED DELAYS.—(1) Advancement of a project under the time requirements of subsection (a) of this section may be delayed only—

(A) for the time the applicant may request; or

(B) during the time the Secretary finds, after reasonable notice and an opportunity for comment, that the applicant, for reasons attributable only to the applicant, has not complied substantially with the provisions of this chapter applicable to the project.

(2) Not more than 10 days after imposing a delay under paragraph (1)(B) of this subsection, the Secretary shall give the applicant a written statement explaining the reasons for the delay and describing actions the applicant must take to end the delay.

(3) At least once every 6 months, the Secretary shall report to the Committee on Transportation and Infrastructure of the House of Rep-

resentatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on each situation in which the Secretary has not met a time requirement of subsection (a) of this section or delayed a time requirement under paragraph (1)(B) of this subsection. The report shall explain the reasons for the delay and include a plan for achieving timely completion of the Secretary's review.

(c) PROGRAM OF INTERRELATED PROJECTS.—(1) In this subsection, a program of interrelated projects includes the following:

(A) the New Jersey Urban Core Project (as defined in title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 2087)).

(B) the San Francisco Bay Area Rail Extension Program, consisting of at least an extension of the San Francisco Bay Area Rapid Transit District to the San Francisco International Airport (Phase 1a to Colma and Phase 1b to San Francisco Airport), the Santa Clara County Transit District Tasman Corridor Project, a program element designated by a change to the Metropolitan Transportation Commission Resolution No. 1876, and a program element financed completely with non-Government amounts, including the BART Warm Springs Extension, Dublin Extension, and West Pittsburg Extension.

(C) the Los Angeles Metro Rail Minimum Operable Segment-3 Program, consisting of 7 stations and approximately 11.6 miles of heavy rail subway on the following lines:

(i) one line running west and northwest from the Hollywood/Vine station to the North Hollywood station, with 2 intermediate stations.

(ii) one line running west from the Wilshire/Western station to the Pico/San Vicente station, with one intermediate station.

(iii) the East Side Extension, consisting of an initial line of approximately 3 miles, with at least 2 stations, beginning at Union Station and running generally east.

(D) the Baltimore-Washington Transportation Improvement Program, consisting of 3 extensions of the Baltimore Light Rail to Hunt Valley, Penn Station, and Baltimore-Washington Airport, MARC extensions to Frederick and Waldorf, Maryland, and an extension of the Washington Subway system to Largo, Maryland.

(E) the Tri-County Metropolitan Transportation District of Oregon Light Rail Program, consisting of the locally preferred alternative for the Westside Light Rail Project, including system related costs, contained in the Department of Transportation and Related Agencies Appropriations Act, 1991 (Public Law 101-516, 104 Stat. 2155), and defined in House Report 101-584, the Hillsboro extension to the Westside Light Rail Project contained in that Act, and the locally preferred alternative for the South/North Corridor Project.

(F) the Queens Local/Express Connector Program, consisting of the locally preferred alternative for the connection of the 63d Street tunnel extension to the Queens Boulevard lines, the bell-mouth part of the connector