



**MEMORANDUM of AGREEMENT
BETWEEN THE
U.S. DEPARTMENT OF TRANSPORTATION
AND
U.S. DEPARTMENT OF COMMERCE
FOR THE
DEVELOPMENT OF A DOMESTIC SUPPLY BASE FOR INTERMODAL TRANSPORTATION IN THE US**

August 2011

I. PURPOSE AND GOALS

This Memorandum of Agreement (MOA) constitutes an agreement between the U.S. Department of Transportation (DOT) and the U.S. Department of Commerce (DOC) (hereinafter referred to individually as "Party" and collectively as the "Parties") to establish and collaborate on a series of activities focused on the development of a domestic supply base for intermodal transportation in the United States.

The purpose of this MOA is to:

- Define a broad framework for collaboration between DOT and DOC that would advance DOT and DOC goals stated below;
- Identify specific programmatic areas by which this DOT/DOC collaboration can leverage the capabilities of the DOC National Institute of Standards and Technology (NIST), especially the NIST Laboratory Programs and the NIST Hollings Manufacturing Extension Partnership program (MEP); and
- Define specific areas of collaboration focus that advance the programmatic interests and statutory requirements of the following DOT Operating Administrations (OAs): Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), and Research and Innovative Technology Administration (RITA).

This domestic supply base development-focused effort provides Federal resources that will be appropriately defined in corresponding statements of work (SOWs) as provided for in Interagency Agreements (IAAs) that detail specific programmatically-focused aspects of this collaboration. The existing DOT OAs that are impacted are stated above in the MOA Purpose. The intent of this MOA is to help coordinate and integrate the resources and capabilities of DOT, its participating OAs, and DOC NIST to optimize benefits and results.

The objectives of the Parties to this MOA are to coordinate, leverage, and build upon the experience and capabilities of the NIST MEP relating to supply chain development, as well as the technical capabilities and experience of the NIST Laboratories relating to standards development and harmonization, in order to effectively and efficiently meet the goals and objectives of the referenced DOT OAs and programs; to ensure that MOA efforts efficiently draw upon the expertise of each Party; and to avoid redundancies among these two Federal departments.

The goals of the Parties in supporting these efforts are to:

- Ensure the development of a domestic supply base to support intermodal transportation in the United States, such as intercity high speed rail transportation, public transportation systems, highway construction or reconstruction, or airport improvement projects;
- Ensure compliance with applicable Buy America or Buy American provisions associated with defined DOT programs across the participating DOT OAs; and
- Encourage technologies developed with DOT support and resources to be transitioned into commercial markets and applications. This includes but is not limited to those of the DOT Small Business Innovation Research (SBIR) Program.

II. BACKGROUND

- The DOT is responsible for compliance with “Buy America” or “Buy American” requirements to ensure that certain transportation projects are built with U.S.-made products, e.g., Pub. L. 111-5, § 1605; 49 U.S.C. § 50101; 23 U.S.C. § 313; 49 U.S.C. §§ 24405, 50101, 5323(j). Section 412 of the Consolidated Appropriations Act, 2010, Pub. L. 111-117, as continued by the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. 112-10 (Act), provides that all funds expended pursuant to the Act must be consistent with such requirements. The DOT and its OAs are tasked with implementing and ensuring compliance of these statutory provisions while promoting the development of intermodal transportation as well as the advancement of small businesses within the United States through its various programs including the disadvantaged business enterprise (DBE) program, Pub. L. 105-178, § 1101(b); Pub. L. 109-59, § 1011(b), and the SBIR program, Pub. L. 97-219; Pub. L. 102-564.
- The DOC's mission includes the development of technology and procedures needed to improve quality, to modernize manufacturing processes that would ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of technologies. This mission is carried out by DOC NIST. 15 U.S.C. § 272(b)(1) and (b)(11).
- The DOT and DOC share a mutual interest in meeting their objectives to the extent that they support and promote the growth of the U.S. transportation industry and advance the technologies used in transportation systems throughout the United States.

III. ROLES AND RESPONSIBILITIES OF THE PARTIES

Each Party to this MOA intends to carry out its responsibilities through the individuals and organizations identified as follows:

A. Department of Transportation: Subject to the availability of funding and pursuant to separate IAAs, the DOT OAs, including FAA, FHWA, FRA, FTA, MARAD, and RITA, intend to provide expertise to DOC's NIST to facilitate interagency coordination and support the activities of this collaboration, with the review and oversight of the DOT Office of the Secretary.

B. Department of Commerce: The DOC NIST intends to provide expertise from its MEP staff and to facilitate coordination with the nationwide network of MEP Centers, as appropriate. The DOC NIST also intends to provide expertise as appropriate from its Laboratory Programs, including and especially relating to standards coordination and development, to facilitate interagency coordination and support the activities of this collaboration.

IV. MOA MANAGEMENT

The DOT's Principal Point of Contact (POC) for this agreement is the Deputy Secretary of Transportation or his designee. The DOC's Principal POC is the Under Secretary of Commerce for Standards and Technology or his designee.

For each implementing DOT OA, the Deputy Administrator or his/her designee will serve as the POC for response to inquiries related to his/her OA's respective activities and associated areas of expertise and authority.

Subject to legal and fiscal limitations and agency priorities, each Party plans to engage relevant programs and offices within their agency to provide or coordinate resources or activities; support development of appropriate tools or training; make staff available or otherwise provide employee support for collaboration and projects; and provide contractor support for the development and maintenance of collaboration resources.

All Parties expressly acknowledge that the activities under this MOA shall be subject to the availability of appropriated funds and personnel or the approval of other sources of funding.

V. SPECIFIC PROJECTS

As indicated in Section I of this MOA, each DOT OA with the applicable subject-matter expertise that seeks to participate in an initiative contemplated under this MOA will enter into separate implementing IAAs and SOWs (Project SOWs) to govern each project performed in conjunction with this MOA. The Parties intend that these Project SOWs will be jointly created by the appropriate OA POC and the DOC's Principal POC to ensure that the defined needs and issues are addressed in a timely manner. The Project SOWs will detail the project resources to be provided by the collaborating entities, including the commitment of any direct funding, in-kind resources and other resources required during the projects. The Project SOWs will detail tasking for each Party to the IAAs, along with how the particular projects are to be managed. For those SOWs that involve the NIST MEP, the intended roles of MEP Centers, affiliates, and partners will also be detailed in Project SOWs.

VI. METRICS AND TARGETS

The Parties intend to develop metrics and annual targets related to the Parties' goals, and to work collaboratively to seek continuous improvement and performance over time.

VII. AUTHORITIES

The authorities to enter this framework MOA are:

Department of Commerce: 15 U.S.C. §§ 272(b)(1), (b)(11), and 278k;

Department of Transportation: 49 U.S.C. § 301.

The Parties expect to use the following authorities to implement this MOA, pursuant to individual IAAs: 15 U.S.C. §§ 273, 275a, 275b, 278k(d); 31 U.S.C. § 1535.

VIII. LIMITATIONS

Nothing in this MOA is to be construed as indicating a financial commitment by a Party for the expenditure of funds except as authorized in specific appropriations.

As required by the Antideficiency Act, 31 U.S.C. §§ 1341-42, 1517, all commitments made by the Parties in this MOA are subject to the availability of appropriated funds and to budget priorities. Nothing in this MOA, in and of itself, obligates any Party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the Parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

This MOA does not, and is not intended to, impose any legally binding requirements on Federal agencies, States or the regulated public. Policy and procedures set forth in this MOA are intended solely as guidance. If necessary or desirable, the Parties may jointly agree upon and issue formal guidance interpreting this MOA and background materials upon which it is based. This MOA does not constitute final agency action on any issue. Any actions contemplated by this MOA are to be carried out in an appropriate administrative process by the acting agency in accordance with all applicable laws and regulations.

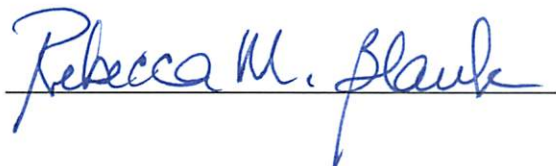

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not a party to this agreement against the Parties, their officers or employees, or any other person. This MOA does not direct or apply to any person outside of the Parties.

IX. COMMENCEMENT/ DURATION/ MODIFICATION/ TERMINATION

This MOA is to take effect upon the last signature date of the Parties, and shall remain in effect for a period of 5 years. This MOA may be extended or modified at any time while it is in effect, per the mutual written agreement of the Parties. Additionally, a Party may terminate its participation in this MOA at any time by providing written notice to the other Party's Principal POC at least 60 days in advance of the desired termination date. The implementing IAAs, depending on the type of funding committed, may be re-issued on an annual basis, subject to the availability of funding.

Signed this 17 day of October, 2011.

Rebecca M. Blank, Acting Secretary of Commerce
U.S. Department of Commerce

Handwritten signature of Rebecca M. Blank in blue ink, written over a horizontal line.Handwritten signature of Ray LaHood in blue ink, written over a horizontal line.

Ray LaHood, Secretary of Transportation
U.S. Department of Transportation