



STATE OF OKLAHOMA

Request for Final and Binding Offers

April 14, 2014



Disclaimer

This Request for Final and Binding Offers is available to the two shortlisted Proposers that participated in the Official RFP process for the competitive sale of the Sooner Subdivision Railroad.

No representations, warranties, liability or offer

The Oklahoma Department of Transportation does not give any warranty or make any representations, expressed or implied, as to the completeness or accuracy of the information contained in this document or any information which may be provided in connection with it.

The Oklahoma Department of Transportation expressly disclaims any and all liability relating to or resulting from the use of such information by any interested party or other third party in the preparation of any subsequent proposal.

By accepting this Request for Final and Binding Offers, the recipient agrees to be bound by the foregoing limitations.

No liability for costs

The Oklahoma Department of Transportation shall have no obligation to pay or reimburse any interested party for costs incurred in preparing and responding to this Request.

Proposal Submission Date

All responses should be legible and must be submitted on or before the Submission Date of **3:00 p.m.** (Central Standard Time) **April 21, 2014**. The Oklahoma Department of Transportation in its sole discretion may choose to accept supplemental information after this time. The Selection Committee reserves the right to reject any submitted proposal.

Contact

All communication with eligible Proposers regarding this Request will be conducted via email directed to the Proposer's designated lead contact. It is the Proposer's responsibility to receive and periodically validate the receipt of all related correspondence.



Request for Final and Binding Offers

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1 Conditions of Sale

1.1 Conditions of Sale

The Oklahoma Department of Transportation ("Department" or "DOT") recognizes that the Sooner Sub is a valuable economic asset and transportation corridor to the State. Based upon the recommendation of the Selection Committee, the Oklahoma Transportation Commission ("Commission") may award the sale of the Sooner Sub to the Proposer that provides a Final and Binding Offer that best meets the interests of the State ("Preferred Proposer") in accordance with the Railroad Revitalization Act, 66 O.S. §§ 302.1 et seq., and this Request for Final and Binding Offers (the "Request") process.



2 Selection Process and Schedule

2.1 Description of the Selection Process

The Department is issuing this Request for Final and Binding Offers in order to select a Preferred Proposer for the Sooner Sub. This process contemplates that:

1. Both Proposers will be requested to provide a binding offer on the basis of the form of Sale Agreement that will include committed financing and a final offer price ("Final Offer Price"), and any other commitments to meet the objectives of the State, for review and consideration by the Selection Committee.
2. The Proposer determined by the Selection Committee as representing the best interests of the State will be recommended to the Transportation Commission and may be selected by the Transportation Commission as the Preferred Proposer.
3. The Working Group will work with the Preferred Proposer to satisfy statutory requirements for the sale of the Sooner Sub, including all required approvals and briefings.
4. The Preferred Proposer will be obligated to complete the commercial and financial close process, including executing the Sale Agreement and paying the purchase price to the Department, or be subject to a breakage fee as set forth herein.

2.2 Sale Agreement

The form of Sale Agreement is included in Form 2 and Proposers may not submit a proposal which requires additional changes to the form of Sale Agreement except as provided below. The form of Sale Agreement will constitute the contractual basis of final sale to the Preferred Proposer.

If selected as the Preferred Proposer, the terms and obligations contained in the Proposer's Additional Capital Improvements proposal will be incorporated into the form of Sale Agreement. For clarity, each Proposer may propose and negotiate its unique Additional Capital Improvement proposal.

Upon submission of a Final and Binding Offer, the Proposer acknowledges and agrees that the Sale Agreement and any appendices will be considered as the Preferred Proposers final and binding offer. After selection as Preferred Proposer, changes to the Sale Agreement and appendices may be negotiated by mutual agreement between the parties and as needed to incorporate the Preferred Proposer's Additional Capital Improvements proposal. However, such changes shall not result in a reduction of the Offer Price, reduce the Additional Capital Improvements offered by the Preferred Proposer or otherwise adversely impact the State's rights under the Sale Agreement.

2.3 Minimum Offer Price

The Final Offer Price offered by each Proposer must meet or exceed the Non-Binding Offer Price submitted in Phase 1 of the Official RFP process.



2.4 Breakage Fee and Deposit

Once a Final and Binding Offer is selected by the Commission, the Preferred Proposer will be subject to a breakage fee of USD\$2 million if the Preferred Proposer fails to close on the acquisition of the Sooner Sub by July 31, 2014 in accordance with the terms of the Final and Binding Offer, unless the failure to close is the result of fault or failure of the State, the failure to obtain necessary governmental approvals, or otherwise as set forth in the form of Agreement. The Preferred Proposer will need to either provide a cash deposit which can be applied to the Purchase Price at closing, or provide a letter of credit, in the amount of the breakage fee within 10 business days of being selected as the Preferred Proposer.

2.5 Proposal Content and Evaluation

The Selection Committee will determine the proposal that represents the best interests of the State. The best value proposal will be determined through the evaluation of both qualitative and quantitative factors, including the Offer Price and Business Plan and Projected Economic Activity as defined below.

Proposals will be evaluated and scored as follows:

1. Offer Price (40 Points)
 - a. Each Proposer's Offer Price will be scored as a percentage of the highest Offer Price.
 - b. Offer Price is defined as total cash to be paid to the Department at Financial Close (date Sale Agreement is signed), and will not include any payments that are contingent on actions by the State or the Department.
 - c. The Final Offer Price may not be less than the Non-Binding Offer submitted by the Proposer.
2. Business Plan and Projected Economic Activity (60 points)
 - a. Additional Capital Improvements in Next 10 Years
 - i. Capital improvements to be offered by the Proposer in addition to those obligations contained in the Sale Agreement, such as:
 - a. Planned expansions to the Sooner Sub
 - b. Upgrades to the Sooner Sub
 - c. Capital to operate passenger rail in excess of the minimums required in the Sale Agreement
 - ii. Only capital investments in addition to those prescribed in the Sale Agreement, that are determined by the Selection Committee to be related to the Sooner Sub and that can be completed within 10 years after execution of the Sale Agreement will be scored.
 - iii. The Selection Committee will review the reasonableness of the Additional Capital Improvements to ensure the projections are not excessive and may request additional supporting information from the Proposer if the reasonableness is questioned
 - iv. The purpose of this requirement is to allow each Proposer to receive credit for adding value to the asset in addition to the obligations contained in the Sale Agreement. In order for the Additional Capital Improvements to be scored, the Proposer must commit to complete the stated capital investments within a specified timeline and will be subject to penalties if the specified timeline is not met.
 - b. Selection Committee's Policy Objectives
 - i. Proposers shall provide language as to how they will meet the objectives of the Selection Committee as defined below:
 - a. Assurances that the line will be accessible to other rail companies.
 - b. Assurances that current customers will continue to be served in substantially the same way as they are served currently.



- c. Assurances the line will be upgraded to FRA Class 3 (40mph) status by the seventh year after the line is sold.
 - d. Passenger rail operations must be a part of Proposer's Final and Binding Offer and must be operational by the 5th year after the sale is complete, including a 6 month trial of service once per day, five days per week. This trial will assist the Proposer in deciding whether to operate passenger rail service past year 10. If the Proposer decides to not operate passenger rail service past year 10, the Department may, as set forth in the Sale Agreement, take back a passenger rail easement.
 - e. Right of State to re-acquire in instances of financial distress or proposed abandonment or discontinuance.
- c. Projected Economic Activity
- i. The economic activity expected to be generated by the Preferred Proposer's proposed business plan, including passenger rail plans.

Each component score will be added together to form the Proposer's score. The Proposer with the highest score may be recommended by the Selection Committee as the Preferred Proposer.

2.6 Timetable

The table below outlines the anticipated timeline for consideration by the Department.

Milestone	Date
4/10/14	<ul style="list-style-type: none"> • Last day for Proposer comments to be submitted on the Draft Sale Agreement and Draft Request for Final and Binding Offers
4/14/14	<ul style="list-style-type: none"> • Form of Sale Agreement and Request for Final and Binding Offers are submitted to Proposers
4/16/14	<ul style="list-style-type: none"> • Last day that discussions between the Working Group and Proposers can be held or for questions to be answered.
4/21/14	<ul style="list-style-type: none"> • Final and Binding Offers submitted by Proposers
4/30/14	<ul style="list-style-type: none"> • Select Committee review of Proposers Final and Binding Offer concluded.
5/5/14	<ul style="list-style-type: none"> • Transportation Commission selects a Preferred Proposer and authorizes the Selection Committee to work with the Preferred Proposer to reach financial close
5/5/14 – 7/31/14	<ul style="list-style-type: none"> • Selection Committee and Working Group to work with Preferred Proposer to complete the financial close process, including executing a signed sale agreement (subject to STB approval)



3 Guidelines for Response Submission

3.1 Instructions for Preparing Response

Proposals should be prepared as follows:

- Maximum 15 pages of responses
- Minimum 10 point font

3.2 Questions and Clarifications

All Proposer questions and comments should be submitted in writing to the following email address: rfprail@odot.org. Questions are permitted until April 16, 2014 at 3:00 pm CST. Answers to questions will be provided to all Proposers, as appropriate.

3.3 Delivery Instructions

To be considered, Final and Binding Offers must be submitted via email in the Portable Document Format (.pdf) to the following email address rfprail@odot.org prior to April 21, 2014 at 3:00 p.m. CST.



4 Request for Final and Binding Offer Requirements

4.1 Required Submittal Items

Proposers are required to prepare proposals in accordance with the following format. As described in Section 2.2 above, all items provided for Items 2a below will be included as an appendix to the Sale Agreement and will constitute binding commitments from the Preferred Proposer.

Request for Final and Binding Offer Submittal Requirements

1. *Offer Price*
 - a. Proposer's Offer Price should be indicated on Form 1
 - b. The Offer Price must be based on the form of Sale Agreement
 - c. The Offer Price cannot be less than the Proposer's Non-Binding Offer Price
 - d. All Offer Prices must be unconditional
2. *Business Plan and Projected Economic Activity*
 - a. Business Plan
 - i. Proposed plan and spending for upgrade of the Sooner Sub to FRA Class 3
 - ii. Proposed capital improvements to be made within 10 years in addition to those required in the Sale Agreement for the following items:
 - a. Planned expansions to the Sooner Sub
 - b. Upgrades to the Sooner Sub other than the minimum upgrade required in the Sale Agreement
 - c. Capital expenditures for projects related to the acquisition and operations over the Sooner Sub
 - d. Capital to operate passenger rail in excess of the minimums required in the Sale Agreement
 - iii. For each additional capital improvement, the Proposer must provide the projected cost, projected timing of the capital improvements and the proposed final date for completion of the capital improvement. If the proposed final date is not met, the Preferred Proposer will be subject to financial penalties.
 - b. Selection Committee's Policy Objectives
 - i. Proposer shall provide language as to how it will meet the objectives of the Selection Committee as defined below:
 - a. Assurances that the line will be accessible to other rail companies.
 - b. Assurances that current customers will continue to be served in substantially the same way as they are served currently.
 - c. Assurances the line will be upgraded to FRA Class 3 (40mph) status by the seventh year after the line is sold
 - d. Assurances that Passenger rail operations must be a part of Proposer's Final and Binding Offer and must be operational by the 5th year after the sale is complete, including a 6 month trial of service once per day, five days per week. This trial will assist the Proposer in deciding whether to operate passenger rail service past year 10. If the Proposer decides to not operate passenger rail service past year 10, the Department may, as set forth in the Sale Agreement, take back a passenger rail easement.
 - e. Assurances that the State has the right to re-acquire in instances of financial distress or proposed abandonment and discontinuance.



- c. Projected Economic Activity
 - i. Details regarding the number and type of jobs created or retained for operating the Sooner Sub following the ownership transfer
 - ii. Projected annual tax revenue to the State and municipalities due to private ownership
 - iii. Projected annual economic, service and access impact to the local energy, agricultural and construction industries and other businesses as applicable
 - iv. Projected capital investments into all capital improvements stipulated in the Sale Agreement and all Additional Capital Improvements proposed.
 - v. Proposers must provide sufficiently detailed information for the Department of Commerce to prepare its economic benefit/activity report and for the Selection Committee to adequately assess the feasibility of the projections.



5 Forms

1. Form 1 – Form of Offer
2. Form 2 – Form of Sale Agreement