



OKLAHOMA DEPARTMENT OF TRANSPORTATION

Cowboy Subdivision Railroad Sale Request for Proposals

May 19, 2016



Disclaimer

This Request for Proposals (“RFP”) is available to parties that are interested in participating in the statutory competitive process for the proposed sale of the Cowboy Subdivision Railroad (“Cowboy Sub” or “the Line”).

No representations, warranties, liability or offer

The Oklahoma Department of Transportation (“ODOT”, “the Department”, “we” or “us”) has prepared this RFP to provide preliminary information on the Cowboy Subdivision Railroad to interested parties. 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.

This RFP does not constitute an offer to sell or negotiate. The Department reserves the right, in its sole discretion, to reject all proposals submitted in response to this RFP.

By accepting this RFP, 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 RFP. No Proposer is entitled to any compensation pursuant to this RFP.

ODOT rights

ODOT reserves its rights with respect to this RFP including, but not limited to, the unqualified right, at any time and in its sole discretion, to change, modify or terminate this RFP.

No party receiving this RFP (including any potential Proposer) shall have any rights against ODOT relating to this RFP. ODOT makes no representations, warranties, or guarantees that the information contained in this RFP is accurate, complete, or timely or that such information accurately represents the conditions that would be encountered during the performance of any subsequent contract if an RFP or other solicitation is issued relating to the Transaction. The furnishing of the information in this RFP shall not create or be deemed to create any obligation or liability upon ODOT.

The Department reserves the right to reject any submitted proposal or Proposer related to this RFP.

Ownership of Submitted Materials

All materials submitted in response to this RFP shall become the property of ODOT and will not be returned.

If certain components of the communications with the Department or in the Proposals are deemed confidential or proprietary, the Proposers must indicate the parts they would like to keep confidential.



ODOT will keep such information confidential to the extent permitted under the Oklahoma Open Records Act, 51 O.S. 24A.1, et seq.

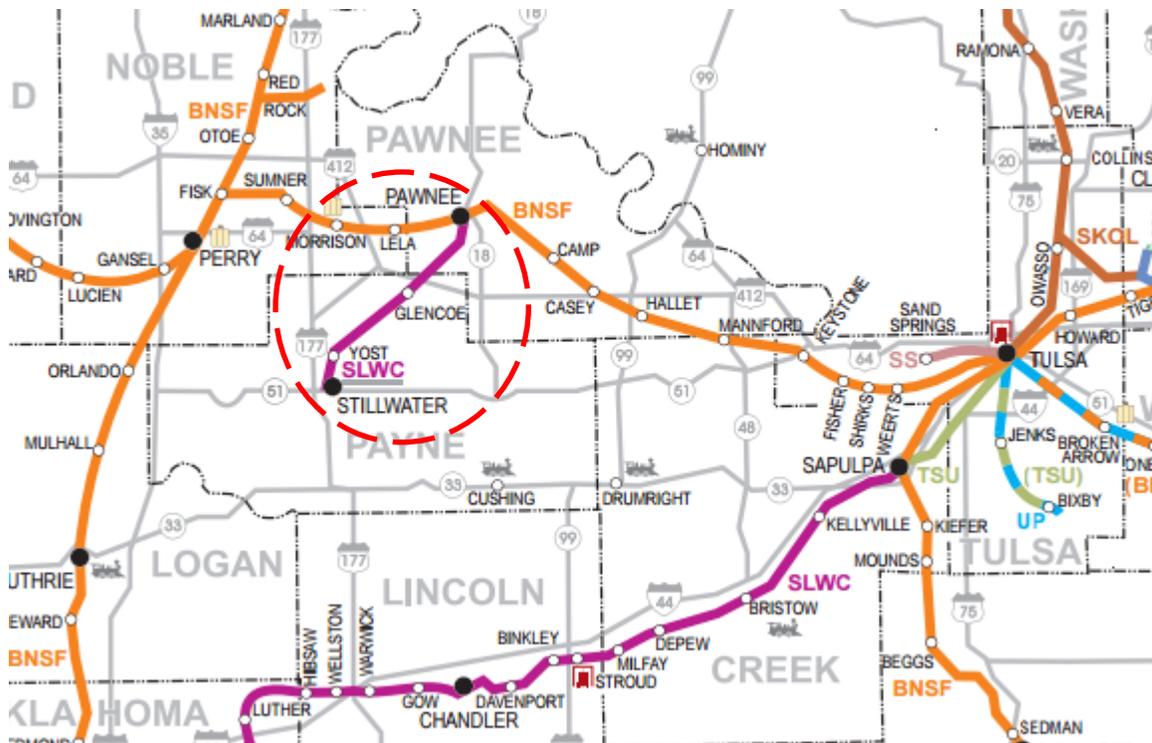
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1. Introduction

1.1 Overview

The Oklahoma Department of Transportation invites interested parties (“Proposers”) to provide responses to this RFP for the proposed sale of the Cowboy Sub a 22-mile segment of railroad between Pawnee Junction, Oklahoma and Stillwater, Oklahoma (“the Line”). As noted in the map below, the Cowboy Sub includes the rail line between Milepost 8.46 in Pawnee Junction, Oklahoma and Milepost 30.79 in Stillwater, Oklahoma, consisting of all track structures and associated rights-of-way and all appurtenances thereof and including but not necessarily limited to rail and fastenings, switches and frogs, ties, ballast, roadbed, embankment, other structures or things necessary for support of operations.



Source: State of Oklahoma Official Railroad Map

In 1998, the State of Oklahoma (“State”) purchased the Cowboy Sub from the Burlington Northern Santa Fe Railway Company (now BNSF Railway Company, “BNSF”) (Attachment 1). The purchase was part of an asset preservation effort by the State to save as many rail lines as possible from being abandoned and dismantled after several Class I railroad companies were declared bankrupt or merged, and subsequently disposed of excess rail lines. Upon purchase of the Cowboy Sub, the Department sought short line operators to lease the line in an effort to keep the Cowboy Sub operational. The Department entered into a “Track Lease and Operating Agreement” with Stillwater Central Railroad Inc. (Watco Companies), in 1998, allowing it to operate on the line.

The Department entered into an amended Track Lease and Operating Agreement (the “Track Lease”) with Stillwater Central Railroad, LLC dated as of January 1, 2013 (Attachment 5). The Track Lease is scheduled to expire on December 31, 2017, unless terminated earlier, or extended, in accordance with



the terms of the Track Lease. The line serves the communities of Stillwater and Glencoe and currently serves three customers and transports various types of cargo:

- 1) National Standard is a producer of welded wire, tire bead wire and other industrial wire products. It ships wire rods that are used in making rail cars.
- 2) Stillwater Mill produces animal feeds and ships grain on the Cowboy Sub (wheat, corn, soybeans, milo etc.)
- 3) J.M. Huber transports limestone to be used in manufacturing ceramics.

Total average rail car volume on the line for the period 2009 - 2014 was 640 cars per year.

1.2 Cowboy Sub RFP Objectives

The Department is considering the sale of the Cowboy Sub in order to meet the following goals and objectives:

1. Increased economic activity throughout the State of Oklahoma through increased volume growth, tax revenues, job creation through the sale of the Cowboy Sub to a private operator.
2. Sustaining rail access to the communities served by the Line and surrounding area.
3. Enhanced customer service, development opportunities and new customer creation along the Cowboy Sub line.

1.3 Statutory Process and Considerations

The Department is issuing this RFP and sales process ("Process") in accordance with the Railroad Revitalization Act contained in 66 O.S. §§ 304 (A) et seq. ("Act"). (Attachment 2)

The Process, as provided in 66 O.S. § 304 (A) (4) will consist of the following:

1. The Department will initiate a RFP.
2. The Department will conduct an evaluation of all submitted proposals.
3. The Oklahoma Department of Commerce will prepare an economic impact study based on each Proposer's Business Plan. The economic impact studies will be considered in addition to the evaluation of each Proposal as described in Section 2.2.5.
4. Recommendations from the Cabinet Secretaries of the Oklahoma Departments of Transportation, Finance, Commerce, Agriculture and Energy ("Steering Committee") will be provided to the Department and the Transportation Commission.
5. The Transportation Commission will receive and consider the recommendation of the Steering Committee and will be responsible to determine if the sale of railroad assets within its jurisdiction is in the best interests of the State of Oklahoma, and for authorizing the sale of such assets.

Further description of the selection and evaluation components of the Process is included in the Act and this RFP.

1.4 Proposer Eligibility

A Proposer must be an owner (i.e. individuals, co-partnerships, associations, corporations, companies, transportation companies, public service corporations or fund) of one or more operating railroads and/or



have a minimum of five years of experience operating a common carrier railroad authorized by, and subject to the jurisdiction of the United States Surface Transportation Board (“STB”) or its predecessor the Interstate Commerce Commission. If the Proposer does not meet the minimum experience mentioned in the preceding sentence, then Proposer must be a subsidiary of, or under common control with, a railroad that meets such qualifications.

To participate in the RFP process and to submit a proposal as outlined in this RFP, Proposers will need to submit Form A “Proposer Eligibility” prior to any Proposer participating in the RFP process. Form A documents must be submitted to rfprail@odot.org. Upon the receipts of the form, the Department will contact proposers to confirm their eligibility in a timely fashion.

The Department will determine Proposer eligibility using the information requested on Form A. If a Proposer team has more than one party, a Form A must be filled out for each entity of the Proposer Team. The Department has the right to request additional information prior to the Department’s determination of the Proposer’s eligibility.

1.5 Proposer Communication Protocol

Once a Proposer’s eligibility has been confirmed as per Section 1.4, all eligible Proposers will adhere to the communication protocol outlined below to guide interactions between the Department and the eligible Proposers.

Point of Contact

ODOT will not accept telephone or oral requests. All communication with eligible Proposers regarding this Request for Proposals will be conducted via email directed to the Proposer’s designated lead contact. All communication will be conducted from rfprail@odot.org email address (“Point of Contact”). It is the Proposer’s responsibility to receive and periodically validate the receipt of all related correspondence. No requests for additional information or clarification to any person other than the Point of Contact will be considered.

Access to RFP Information

An official version of the RFP and Attachments and any RFP addendums can be found via this web link:

http://ok.gov/odot/Programs_and_Projects/Rail_Programs/Cowboy_Sub_Sale/index.html

In addition to posting procurement documents, this web link will also contain a repository for all commonly available and public question and answer (“Q&A”) dialogue or other key communications from the Department.

Planned Interactive Communication Opportunities

The Department intends to offer opportunities to eligible Proposers to facilitate eligible Proposer due diligence and Proposal formulation. These opportunities include:

- **Industry day forum** to allow eligible Proposers to receive verbal briefings about the Cowboy Sub and a site tour of the Cowboy Sub line.
- **One-on-one discussions** to allow more direct conversations to discuss confidential and proprietary information as well to advance negotiation exchanges.
- Written **Q&A** through the noted web link to facilitate clarifications around the RFP or due diligence activities. Additional information regarding the Q&A process is provided in Section 3.3.



More detailed information about these interactive communication opportunities will be made available to eligible Proposers at a later time.

Further Discussions

ODOT reserves the right, at its sole discretion, to conduct further discussions with one or more Proposers after Non-Binding Proposals and, separately, Binding Proposals to this RFP are due. An opportunity to participate in such discussions, if any, will be communicated separately to Proposers. In the event discussions are held in connection with this RFP, ODOT reserves the right to require a non-disclosure agreement (“NDA”) from all parties.

2. Selection Process and Schedule

2.1 Description of the Selection Process

The Department will solicit interest from eligible proposers through a competitive public sale procurement process. The following two-phase process has been developed in accordance with the Department's statutory authority as described in the Act and in Section 1.3:

- 1) **Phase I: Non-Binding Offer Proposal (“Non-Binding Proposal”), and**
- 2) **Phase II: Final Binding Offer Proposal (“Binding Proposal”)**

The below graphic illustrates a high-level summary of the two-phase process that will be used to review and evaluate proposals, and ultimately, award and close with the Preferred Proposer.



Phase I features a Non-Binding Proposal in which Proposers will prepare a proposal document which does not bind the proposer but rather establishes a contractual negotiating framework between the Proposer and the Department as both teams work toward a definitive Binding Proposal. Through this Non-Binding Proposal, the eligible Proposer expresses an interest in acquiring the Cowboy Sub, outlines an operating plan, discusses economic impacts and commits to a good faith price to negotiate all while ensuring the confidentiality of the process.

A summary of the Non-Binding Proposal process is outlined in Section 2.2. The Non-Binding Proposal submission requirements are located in Section 3.

Subject to the receipt of qualified Proposals, the Department will review each Non-Binding Proposal and it intends to shortlist up to two Proposers for further negotiation and proceeding to the Phase II Binding Proposal process.

More information about Phase II Binding Proposals is included in Section 2.3. An RFP addendum will be issued by the Department governing the Binding Proposal process will be issued at a later stage. The Binding Proposal will represent an advanced binding proposal that that will provide the Department a final



(firm) offer, information on committed financing and a comprehensive redline mark-up of the indicative Term Sheet.

More detailed information about each phase of the RFP is discussed in the following sections.

2.2 Phase I: Non-Binding Proposals

2.2.1 Proposer Due Diligence

After the RFP is issued by the Department, Proposers will be able to review due diligence data for analysis, which will be distributed publicly through the Department's noted web link in Section 1.5. The Department will also arrange for an Industry Day and one-on-one meetings.

Furthermore, there will be a question and answer ("Q&A") period that will commence from the issuance of this RFP and will end seven days before Non-Binding Offer Proposal Due Date.

Form A must be received and a determination of Proposer eligibility must be made by the Department before any Proposer will be able to participate in the due diligence activities including Q&A, industry days, review of Cowboy Sub data and other communications with the Department.

It will be up to the Proposer during the due diligence period to explore with the operator the manner and terms on which Proposer will be able to obtain access to the intrastate rail network.

2.2.2 Proposer Submission Requirements

The Proposal submission guidelines and response requirements are discussed in detail in Section 3.

2.2.3 Minimum Offer Price

To ensure the Department's objectives are met and to create a competitive proposal environment, the Department has determined a minimum price that must be met or exceeded in order for a Proposal to be considered ("Minimum Offer Price"). If any Proposal does not meet or exceed the Minimum Offer Price that proposal will be determined to be non-compliant and will not be scored. The Minimum Offer Price is \$5,000,000.

2.2.4 Non-Binding Offer Proposal Deadline

Per the Act, the Department will allow 90 days after the RFP is issued for a Proposer to submit its Non-Binding Proposal. The deadline to receive Non-Binding Offer Proposals is 3 P.M. CDT on August 17, 2016.

2.2.5 Evaluation of Non-Binding Proposals

The Department may select up to two Proposals received from all qualified Proposers. Non-Binding Proposals will be ranked based on which provide the "best value" as determined by qualitative and quantitative factors, including the required Business Plan and Projected Economic Activity and the Offer Price. Non-Binding Proposals will be evaluated and scored as follows:

1. Price and Financial Proposal (40 Points) as per Section 3.1.
 - a) Proposer's Offer Price will be scored as a percentage of the highest Offer Price received by the Department.
 - b) Scoring Formula = Proposer's Offer Price / highest Offer Price * 40 points.
 - c) For example, if Proposer's Offer Price is 14 and the highest Offer Price is 18, the Proposer's score would be calculated as follows: $14 / 18 * 40 = 31$ (out of a maximum of 40 points).
 - d) If the minimum Offer Price is not met the Proposal will not be considered.

2. Business Proposal including the Business Plan and Projected Economic Activity (60 points) as per Section 3.2.

Responses to the questions provided in Section 3.2 will be evaluated, qualitatively, and will be scored on a scale of 0 to 60. Proposers should provide sufficiently comprehensive answers to each question to enable a proper evaluation of the Business Plan and Projected Economic Activity through Form B.

Each component score will be added together to form the Proposer's score. Based on the evaluation of the Proposals, the Department intends on shortlisting a number of Proposers to be determined at the discretion of the Selection Committee for further negotiation and the Binding Proposal phase as described in Section 2.3 of this RFP.

2.3 Phase II: Binding Proposals

After the Department shortlists Proposers, it will issue an addendum to this RFP governing the Binding Proposal process.

Highlights of the Binding Proposal and negotiation process are presented below:

- Before Binding Proposals are received, preliminary negotiations will commence with each shortlisted Proposer to facilitate discussions and modifications that may be necessary for Proposers to provide a Binding Proposal and to establish a more comprehensive sale terms.
- All Binding Proposals must include necessary updates to the Proposer's Non-Binding Proposal as presented in the RFP addendum that will be shortlisted Proposers. to provide information on committed financing (if necessary), a final (firm) offer price ("Final Offer Price"), comprehensive red line mark-up of the Term Sheet of the Department's sale terms and conditions, an updated business plan that lists the projected economic activity for review and consideration by the Department of Commerce, and a bid security of \$500,000.
- The Binding Proposals must remain open until accepted or rejected by the Department after a determination of the Transportation Commission, with closing being subject to possible statutory and STB approvals, and negotiation of a definitive purchase and sale agreement.
- The Binding Proposals will be reviewed by the Department and the Steering Committee to determine the best value for the State.
- The Proposer that provides the best value proposal ("Preferred Proposer") will be recommended by the Steering Committee to the Transportation Commission within the 90 days of the RFP Closure (when Non-Binding Proposals are due).
- The Transportation Commission will be responsible to determine if the sale of Cowboy Sub is in the best interests of the State of Oklahoma.
- If a determination is rendered by the Transportation Commission that the sale of the Cowboy Sub is appropriate, the Transportation Commission will authorize the sale of the Cowboy Sub and the Department will then commence final negotiations with the Preferred Proposer. The final negotiation process will be subject to breakage fees (to be defined by the Department at a later time) if a transaction is not completed.
- If the Preferred Proposer is unable to successfully negotiate a satisfactory final agreement with the Department, the Department reserves the right to invite the second ranked Proposer to negotiate as the new Preferred Proposer with the Department.

The Preferred Proposer will complete the commercial and financial close process, including executing the sales agreement and paying the negotiated purchase price to the Department. The Preferred Proposer must also satisfy statutory requirements for the sale of the Cowboy Sub, including all required State approvals and briefings, and any necessary approvals of the STB. After all requirements have been satisfied and the transfer of the Cowboy Sub is made to the Preferred Proposer, the Preferred Proposer will be referred to as the "Purchaser".

2.4 Timetable

The table below outlines the anticipated timeline for consideration by the Department. All dates are subject to change.

Milestone	Date
RFP issued	May 19, 2016
Proposer eligibility determined	After submission of Form A
Discussion and interaction with Proposers	May 20, 2016 – August 17, 2016
Industry Informational Session	TBD
One-on-One Discussions with Proposers	TBD
Non-Binding Offer Proposals Due – RFP Closure Date (includes non-binding Offer Price)	August 17, 2016
Determine shortlisted Proposers and issue Request for Binding Proposals	September 16, 2016
Shortlisted Proposers preliminary negotiations	September 19, 2016 – October 13, 2016
Binding Proposals Due (includes Firm Offer Price)	October 14, 2016
Evaluate Binding Proposals and brief State of Oklahoma Cabinet Secretaries and Transportation Commission	October 17, 2016 – November 15, 2016
Transportation Commission review and consideration of recommended Preferred Proposer; written notice to Speaker of the House and President Pro Tempore of the Senate of determination that sale within the Commission's jurisdiction is in the best interests of the State	TBD
Transportation Commission authorizes the sale of the Blackwell Line	TBD

After the Transportation Commission authorizes the sale of the Cowboy Sub, final negotiations will commence. Any final agreements and timetables are contingent on the possible STB reviews and approvals required.



3. Request for Proposals Submission Requirements

These requirements apply for Non-Binding Proposal submission.

Eligible Proposers are required to prepare Non-Binding Proposals in accordance with the following submission requirements.

Non-Binding Proposal Format

Proposals should be prepared as follows:

- Maximum 30 pages of responses (excluding requested appendices and Term Sheet document)
- Minimum 10 point font

The Non-Binding Offer Proposals shall be submitted separately in two parts:

- **Part A: Price and Financial Proposal**
- **Part B: Business Proposal**

To be considered, all Non-Binding Proposals from eligible Proposers (per the Section 1.4 and Section 1.5 each part must be submitted separately) must be submitted via email in the Portable Document Format (.pdf) to the following email address rfprail@odot.org prior to August 17, 2016 at 3:00 p.m. CDT.

The Department reserves the right in its' sole discretion to modify these Non-Binding Proposal submission requirements. Additional information or clarifications may be requested by the Department to make a shortlist recommendation.

A RFP addendum will be provided to the shortlisted Proposers at a later time to detail the additional information and requirements that will be necessary to complete the Binding Proposal.

3.1 Price and Financial Proposal (Part A)

Part A shall be opened first and will be checked to ensure that the Offer Price is equal to or greater than the Minimum Offer Price in Section 2.2.3. Non-Binding Proposals that do not meet the Minimum Offer Price will not be reviewed further.

1. Proposer's Non-Binding Offer price.
2. Proposed capital investment plan for the Cowboy Sub, which should include a forecast of anticipated capital investment that the Proposer anticipates making into the Cowboy Sub.

In addition, please provide the following information to fill in the below tables:

Acquisition Price: \$

Other payments to the State by year, if applicable (modify, as necessary):

Payment	2017	2018	2019	2020	2021	2022-2027
Total						



Expected capital investments, as necessary

Capital Investment	2017	2018	2019	2020	2021	2022-2027
Total						

Description of investments or improvements:

Please also include the description of investments or improvements:

- _____
- _____

3.2 Business Proposal (Part B)

Part B will provide the Department an overview of the Proposer, the business plan, commercial positions relative to the draft Term Sheet (Attachment 6) and an indication of economic impacts that will be a result of the sale of the Cowboy Sub.

Part B updates will be required at the Binding Proposal phase to reflect more advanced financials, and also comprehensive commercial terms and conditions for each of the shortlisted Proposers' Proposals. Additional instructions will be provided by the Department during the Binding Proposal phase to the shortlisted Proposers.

The following sections will need to be provided for the Business Proposal:

1. Proposer Overview
 - a. Overview of the Proposer (including Proposer's rail operating experience)
 - b. Proposer contact details and lead contact including the email address for official correspondence
 - c. Proposer's value proposition to the State if selected to purchase the Cowboy Sub
 - d. Describe parental relationships and any Guarantor relationships that apply
 - e. Provide details of prior bankruptcies or operational issues experienced by the Proposer or Guarantor within the last five years that the State should have knowledge of when evaluating the Proposer as a potential acquirer
2. Mark-up of provided draft Term Sheet (Attachment 6) and compliance with Conditions of Sale per Section 4 of this RFP.
3. Business Plan
 - a. Provide an overview of expected Cowboy Sub operations and/or use of the railroad, including:
 - i. Expected cargo types to be serviced by the Cowboy Sub
 - ii. Expected operational improvements, or methods thereto
 - iii. Rehabilitation or capital improvements to the Cowboy Sub, or methods thereto
 - iv. Potential expansion options
 - v. Industry/Business developments
 - vi. Number of employees to be used to operate the Cowboy Sub
 - vii. Identify where management will be based, and where operating employees will be based / report for duty
 - b. Provide an overview of how the Cowboy Sub will be marketed, including:
 - i. Potential business development efforts along the Cowboy Sub

- ii. Expected marketing plan for Cowboy Sub customers and users
 - iii. Rate or service modifications to better serve customers (Proposer should provide estimates of potential fees/rates, including any comparison to similar local, regional and State services operated by the Proposer)
 - iv. Expected impact to existing Cowboy Sub customers and users
 - c. Experience operating short line railroads or experience working in concert with or hiring short line railroad operators for business purposes.
 - d. Plan to interact with other railroad companies to develop interline traffic on the Cowboy Sub as per the existing lease
 - e. Plans to obtain any necessary Surface Transportation Board approvals and estimates of the required approval timelines
 - f. Details of any instances where the Proposer has been fined by Federal, State or municipal agencies within the last five years
4. Projected Economic Activity (Refer to Form B)

The Department needs this information to assist with statutory requirements to review the economic impact of each Proposal. The Proposers should be as detailed as possible without incurring excessive expenses to produce economic studies. Information should be provided on Form B for each entity of the Proposal team, as applicable.

3.3 Questions and Clarifications

All questions from eligible Proposers should be submitted in writing to the following email address: rfrail@odot.org.

The questions must include the RFP Contact's name, address, telephone number, email address and the Proposer he/she represents.

Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to this RFP.

Questions and comments, including requests for clarification or interpretation, shall:

- (i) be in writing and sequentially numbered;
- (ii) specifically reference the relevant RFP section, question number, and page number, unless such request is of general application (in which case the request for clarification shall so note);
- (iii) mark individual questions or information as confidential or proprietary, if applicable; and
- (iv) not identify the party's identity in the body of the question.

ODOT will provide responses to questions and clarification requests within a reasonable time following receipt. ODOT will post responses to those questions of general application and requests for clarifications which ODOT deems to be material and not adequately addressed in previously provided documents on:

http://ok.gov/odot/Programs_and_Projects/Rail_Programs/Cowboy_Sub_Sale/index.html

ODOT's responses will be in writing and will be provided to all Proposers, however the source of each question will not be revealed. ODOT may rephrase questions as it deems appropriate and may consolidate similar questions. ODOT may also create and answer questions, or supply additional information it deems relevant, independent of those questions submitted by third parties.



Any questions or clarifications that are marked by Proposers as confidential and/or proprietary and deemed as such by the Department will not be posted on the web link. ODOT will keep such information confidential to the extent permitted under the Oklahoma Open Records Act, 51 O.S. 24A.1, et seq.

All responses (including for confidential and proprietary questions and clarifications) will be sent by e-mail to the Proposers' e-mail addresses on file.

3.4 Binding Proposals

After the Department has determined the shortlist of eligible Proposers, additional requirements will be necessary to evaluate Binding Proposals. The Department will determine the requirements for Binding Proposals at a later time and will provide these requirements in a RFP addendum that will be provided to shortlisted Proposers during Phase II.

The Binding Proposal evaluation will include, at a minimum, the following additional requirements:

1. Final Offer Price.
2. Proposals must include bid security of \$500 thousand to be applied towards the purchase price at closing, if the Binding Proposal is selected.
3. A description of the proposed funding approach and committed financing structure (debt, equity, etc.) to acquire the Cowboy Sub.
4. Confirmation and supporting documentation (letter from capital providers, etc.) that anticipated funding can be raised in the proposed timeline for financial close.

4. Conditions of Sale

The Department recognizes that the Cowboy Sub is a segment of the valuable railroad transportation corridors in the State. Subject to the Department's right to reject any and all offers, the sale of the Cowboy Sub will be awarded to the Proposer that best meets the interests of the State.

The following terms and conditions, in part or in whole, are anticipated to be included in any agreement of sale. Proposers should note any concerns with these terms in its Non-Binding Proposal.

1. The sale will be subject to the Track Lease. The Department will assign its rights and obligations under the Track Lease to the Purchaser. Any early termination of the Track Lease shall be a matter of private negotiation between the Purchaser and Stillwater Central Railroad, and shall not be the responsibility of the Department.
2. The Cowboy Sub sale shall be considered "AS IS, WHERE IS", as allowed by law.
 - a. The Purchaser will maintain all rail facilities on the Cowboy Sub which are necessary to operate the facility at FRA Class standards no less than those which are provided in a Proposer's final-binding offer. The rail facilities include, but are not limited to, all tracks, communication lines, bridges, embankments, culverts, ditches, road crossings, signal systems and maintenance roadways, and maintain a continuous line of railroad; and perform general maintenance and weed cutting on the Premises.
 - b. The sale includes all rail facilities and rights-of-way as described in preceding subparagraph (additional details of assets will be included in the public data room) that were purchased by the State from BNSF.
3. Purchaser will not hold the State liable for, and will indemnify the State for claims related to, any



incidents that might occur on the Cowboy Sub after closing.

4. Purchaser understands that the Department will require negotiations on a first right of refusal clause for the Department to purchase the line if Purchaser intends to abandon or discontinue service. Purchaser shall not be permitted to salvage any track (unless replaced by track of the same or better quality) unless it receives abandonment authority and the Department does not exercise its right to purchase.
5. The Purchaser should anticipate providing commercially reasonable procedures for allowing access to the line as per the Track Lease.
6. Other conditions of sale are contemplated in the draft indicative Term Sheet as provided in Attachment 6.

5. Forms

Form A

Proposer Eligibility

The form has to be submitted to rfprail@odot.org email address prior to the participation in the RFP process. This form must be prepared for each entity that is part of a Proposer team.

Requested Information	Description
Entity Name	Please provide entity name
Entity Type (corporation, co-partnership, association etc.)	Please indicate the Proposer entity type
Operating railroad and/or railroad line ownership	Please describe the existing ownership in one or more operating railroads or railroad lines operated by a third party
Minimum number of years of experience	Please state the number of years of experience operating a common carrier railroad authorized by, and subject to the jurisdiction of the Surface Transportation Board or its predecessor the Interstate Commerce Commission.
Proposer Contact Details	



Form B
Proposer Economic Data and Analysis Information

I. Proposer Information

Presence in the State of Oklahoma (“State”)

State-wide Employment

State-wide employment: _____
 State-wide payroll value: _____

Summary of Existing Rail Activity in the State

Number of Rail Miles: _____
 Communities Served: _____
 Other information: _____

II. Summary of Proposal

Business Operations Summary

Summary of Proposed Use of Cowboy Sub: _____

 New development opportunities (industrial parks, new rail services, etc.): _____

IV. Proposal Employment Summary

	2017	2018	2019	2020	2021	2022-2027 (Avg.)
Total Employment						
Payroll Value						

V. Impact to Rail and Freight Activity Summary

Additional number of rail miles: _____

New communities served: _____

New customers: _____

Other information: _____

Projected Annual Rail Volume by cargo types:

Rail Volumes	2017	2018	2019	2020	2021	2022-2027 (Avg.)
Total						

VI. Financial Summary

Projected revenues

Revenues	2017	2018	2019	2020	2021	2022-2027

Projected Payroll / Labor costs

Costs	2017	2018	2019	2020	2021	2022-2027

6. Data and Attachments

The following is located at the following web link:

http://ok.gov/odot/Programs_and_Projects/Rail_Programs/Cowboy_Sub_Sale/index.html

1. Agreement for Sale of Certain Assets, Rights and Obligations of BNFS to State of Oklahoma
2. Oklahoma Statute Title 66, Section 304
3. Right of Way Map
4. Right of Way Measurements
5. Stillwater Central Railroad Inc. Track Lease and Operating Agreement signed in 2013.
6. Draft Term Sheet



Attachment 6

INDICATIVE KEY COMMERCIAL TERMS OF PURCHASE AND SALE AGREEMENT FOR COWBOY SUBDIVISION RAILROAD SALE

CONFIDENTIAL SUMMARY OF KEY PRINCIPAL COMMERCIAL TERMS

This Key Commercial Terms of Cowboy Subdivision Rail Line Purchase and Sale Agreement is the “Term Sheet” for the sale of a 22-mile segment of railroad between Pawnee Junction, Oklahoma and Stillwater, Oklahoma (referred to as the “Cowboy Sub”).

Seller: OKLAHOMA DEPARTMENT OF TRANSPORTATION (“SELLER”)

Buyer: TBD (“Buyer”)

Transaction: Seller shall sell and Buyer shall purchase:

- (i) the land generally described as that portion of the Cowboy Sub between Milepost 8.46 in Pawnee Junction, Oklahoma and Milepost 30.79 in Stillwater, Oklahoma, a distance of 22 miles (the “Land”).
- (ii) all rail and other track materials, including without limitation fastenings, switches and frogs complete, ties, ballast and signals located on the Land (the “Track”); and
- (iii) all appurtenances to the Track and other personal property on the Land (the “Track Supporting Structures,” and together with the Land and the Track, the “Premises”).

The Premises are being sold and transferred in their AS IS, WHERE IS, WITH ALL FAULTS” condition, without any warranties by Seller, express or implied, as to title or to their fitness for any particular purpose or its quality.

Price and Payment: The purchase price for the Premises is (\$XXX) (the “Purchase Price”).

The bid bond requested during the RFP stage will be converted to a non-interest bearing deposit in the amount of [\$500,000] (the “Deposit”) and will be delivered by the Buyer to an escrow agent selected by Seller after consultation with Buyer (“Escrow Agent”) following the acceptance of the Binding Offer.

The balance of the Purchase Price shall be paid in full at Closing.

All payments shall be made in cash, by Federal wire transfer of immediately available funds, or by other readily available method of transferring funds acceptable to Seller.

Conveyance of Premises:

The transfer of the Land shall be by quitclaim deed (the “Deed”).

The Deed shall convey all of Seller’s right, title and interest in the Land, and shall be expressly subject to all exceptions and reservations as specified in the



Deed, including without limitation: all existing roads, fiber optic facilities, public utilities; all matters of record; any applicable zoning ordinances and subdivision regulations and laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance and which Buyer assumes and agrees to pay; all existing occupancies, encroachments, ways and servitudes, howsoever created and whether recorded or not. The conveyance shall also be subject to any rights reserved by BNSF when the property was transferred by BNSF to Seller.

Seller shall convey the Track and Track Supporting Structures to Buyer by quitclaim bill of sale ("Bill of Sale").

The Deed and Bill of Sale will contain a provision for reversion to the State ("Reversionary Rights") for failure to improve the line in accordance with Buyer's post-closing covenants [to be established through the bid process].

The conveyances shall also be subject to a reservation of Seller to the exclusive right to grant or amend easements for public highway crossings, provided that such crossings will not materially interfere with freight services being provided on or over the Premises.

The conveyances shall also be subject to the Current Lease which will be assigned by Seller at Closing in a form of assignment and assumption to be agreed upon.

Seller represents and warrants that the Premises are subject to leases, licenses, easements, occupancies, limitations, and/or other agreements (which may or may not be of record) which are being managed by the Lessee under the Current Lease ("Use Agreements"). Copies of the Use Agreements will be provided by Seller to Buyer prior to Closing. Except as permitted under the Current Lease, Seller shall not, and shall not allow Lessee or any other party, to amend or modify any Use Agreement, or enter into any new Use Agreements, between the date of this Agreement and Closing.

The transfer of the Premises includes the assignment and assumption of Seller's interests and obligations in and under the Use Agreements.

**Title, Insurance,
Inspections:**

Buyer has the option of arranging and paying for an examination of title or title insurance on the Land as Buyer may desire, at Buyer's sole cost.

Seller shall have no obligation to cure any title exceptions whether or not caused by Seller, including but not limited to any liens on the Premises, or any existing tenancies or rights to possession of the Premises.

Seller shall allow Buyer to enter the Premises on reasonable notice from time to time, and upon coordination with the current operator and execution of the operator's standard release, for an inspection of the environmental condition, and of the physical condition, of the Premises. Any such inspections shall be at the sole cost and expense of Buyer. Buyer shall promptly provide Seller with the results of any such inspections.

Seller has no obligations to cure any violations of applicable environmental laws or releases of hazardous substances existing on or affecting the Premises

whether or not caused by Seller.

Contingencies:

The obligations of the parties to complete the Closing on the Closing Date are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

- (a) Regulatory Approvals. Should the acquisition by Buyer contemplated herein require the prior approval or authorization of the Surface Transportation Board (the "STB") or any other regulatory agency for its implementation, modification or termination, in whole or in part, Buyer, at its own cost and expense, shall promptly initiate and diligently pursue an appropriate application, petition or notice of exemption ("Application") to obtain that regulatory approval or authorization or exemption therefrom, without the imposition of any unreasonable costs, restrictions or requirements. Buyer agrees to accept any labor protection imposed by the STB, and any such protection will not be considered an unreasonable cost, restriction or requirement. Seller will support efforts by Buyer to secure any necessary regulatory approvals. Buyer will provide Seller with, and an opportunity to comment on, a draft of any STB or other governmental filings.
- (b) Representations and Warranties. The representations and warranties of each of the Buyer and Seller shall be true and correct at and as of the Effective Date and at and as of the Closing Date as if made at and as of the Closing Date.
- (c) Agreements and Covenants. Each of the Buyer and Seller shall have performed or complied in all material respects with all agreements and covenants required by the Purchase and Sale Agreement to be performed or complied with by it on or prior to the Closing Date.
- (d) Litigation. There shall be no injunctions, orders or other rulings issued by any court or regulatory agency with jurisdiction that would interfere with or prohibit the transaction from closing.

Transaction Financing:

The Seller shall be responsible and bear the sole risk for arranging and entering into any financing arrangements necessary to allow for the Transaction to occur. The sale shall not include a financing contingency.

Closing:

The Closing hereunder shall be held on or before [TBD], or twenty (20) business days after the contingencies described above are satisfied at such time and place as Seller and Buyer shall mutually agree (the "Closing Date").

At the Closing:

- (a) Seller shall deliver to Buyer executed copies of:
 - (i) the Deed in sufficient original counterparts to be recorded in each county in which the Land is located,
 - (ii) the Bill of Sale,
 - (iii) Assignment and Assumption Agreements for the Current Lease and for the Use Agreements, and
 - (iv) any other documents reasonably required to complete the transactions hereunder.
 - (v) Seller shall deliver to an Escrow Agent [to be identified in the Sale Agreement], an executed copy of a release of Reversionary Rights, as defined below.



(b) Buyer shall deliver to Seller:

- (i) the Purchase Price, less the Deposit, and an executed copy of
- (ii) the Bill of Sale,
- (iii) Assignment and Assumption Agreements,
- (iv) the Letter of Credit¹ and
- (v) any other documents reasonably required to complete the transactions hereunder. Buyer shall deliver an executed copy of the Passenger Service Easement, as defined below, to the Escrow Agent.

(c) The Escrow Agent shall release and pay the Deposit, if any, to Seller.

Representations and Warranties

Seller will represent:

- (i) Seller is an agency of the State of Oklahoma and has full statutory power and authority to enter into this Agreement and to carry out the obligations of Seller hereunder.
- (ii) Any Agreement, has been duly authorized and approved as required by Oklahoma law and does not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or government body.
- (iii) To the knowledge of Seller, as of the date hereof, there is no pending or threatened litigation or arbitration proceedings, or administrative proceeding or investigation, against or affecting the properties or assets comprising the Premises.
- (iv) To the extent authorized by Oklahoma law, all obligations of Seller set forth in this Agreement constitute legal, valid and binding obligations of Seller, which are enforceable against Seller in accordance with their terms, except as such validity, binding effect or enforceability may be limited to bankruptcy, insolvency or similar laws affecting creditor's rights generally or legal or equitable principles relating to the availability of remedies.

Buyer will represent:

- (i) it is a corporation duly organized, validly existing and in good standing under the law, and is lawfully authorized to do business in the State of Oklahoma. [If Buyer is an entity other than a corporation, appropriate adjustments will be made to the representations.]
- (ii) It has the corporate power and authority to enter into this Agreement, and to carry out its obligations under this Agreement.
- (iii) The execution and performance of this Agreement has been

¹ Letter of credit must be an irrevocable, automatically extended letter of credit issued by an institution acceptable to Seller. The Letter of Credit at Closing must be maintained with an institution of comparable credit rating as when the letter of credit is first issued. Letter of Credit shall remain in effect until all of the commitments have been satisfied. The Letter of Credit will be fully defined in the Purchase and Sale Agreement.



duly authorized and approved by all necessary corporate actions of Buyer.

- (iv) There is no provision in the Certificate of Incorporation or Bylaws of Buyer which prohibits the execution of this Agreement or the consummation of the transactions covered by this Agreement.
- (v) Buyer has had the opportunity to inspect the Premises and acknowledges that Seller has not made any representation concerning the state or condition of the Premises. Buyer is not relying on any statement or declarations of Seller, oral or in writing, as an inducement to entering into this Agreement, other than as stated in this Agreement.
- (vi) All obligations of Buyer set forth in this Agreement constitute legal, valid and binding obligations on Buyer, which are enforceable against Buyer in accordance with their terms, except as such validity, binding effect or enforceability may be limited to bankruptcy, insolvency and similar laws affecting creditor's rights generally or equitable principles relating to the availability of remedies.
- (vii) To the knowledge of Buyer there is no pending or threatened litigation or arbitration proceedings, or administrative proceeding or investigation, against or affecting the properties or assets comprising the Premises.

Post-Closing Covenants:

Buyer will make, or cause to be made, the following additional capital improvements related to its acquisition of the Premises in accordance with the schedule set forth for each such improvement:

[to be proposed by proposer and included as part of an appendix]

Buyer shall certify to Seller in writing when each of the capital improvements has been completed.

Failure to make the improvements on the agreed-upon schedule will trigger the Seller's Reversionary Rights.

Buyer will allow Lessee to maintain its service rights under the Current Lease terms, unless the Buyer and the Lessee mutually agree otherwise.

Once Buyer begins operations, it will agree to continue or improve current service levels, subject to shifts or changes in customers, commodities and traffic levels. Buyer will also provide access to other rail carriers in the same manner as provided by the Lessee, and will provide competitive rates and service options for railroad interchange partners.

Buyers' failure to meet service obligations during the first 5 years after Closing will trigger a Seller right to repurchase.

Annual Taxes, Rents, Liens, Charges:

Buyer shall be responsible for any and all annual or periodic taxes or assessments on the Premises, both general and special, including ad valorem taxes ("Taxes") that are applicable to the period after Closing.

Any rents and license fees under Use Agreement will be allocated as set forth in the Assignment and Assumption Agreement.



**Taxes on Transfer,
Closing Costs:**

Buyer shall pay all transfer taxes however styled or designated, all documentary stamps, recording costs or fees or any similar expense in connection with this Transaction, the conveyance of the Premises or necessary to record the Deed.

If any state or local governmental authority requires, presently or in the future, the payment of any sales, use or similar tax upon the sale, acquisition, use or disposition of any portion of the Premises, (whether under statute, regulation or rule), Buyer assumes all responsibility for and shall pay the same, directly to said authority, and shall hold Seller harmless from such tax(es) and any interest or penalty thereon.

Buyer reserves the right to claim any applicable exemption or preemption, or to assert any applicable defense. Seller shall cooperate (at no expense to Seller) with Buyer in the prosecution of any claim for refund, rebate or abatement of said tax(es).

In the event Buyer finances any portion of the Purchase Price, Buyer shall pay all costs thereof, including recordation, intangible taxes, etc.

Indemnification:

Subject to the provisions pertaining to environmental matters, Buyer shall hold harmless and indemnify Seller, its officers, agents, servants, and employees, against any liability, loss, claim, or expense, including reasonable attorneys' fees, arising from or related to Buyer's ownership interest in the Premises after Closing, Buyer's activities or operations on and over the Premises after Closing, and Buyer's rights responsibilities and duties under the Sale Agreement, irrespective of the fault, failure or negligence (other than sole negligence) of Seller in the performance of Seller's rights, responsibilities and duties under this Term Sheet.

**Environmental
Matters:**

Seller makes no representations or warranties regarding the environmental condition of the Premises.

Buyer shall indemnify, defend, save and hold harmless Seller, its officers, agents, servants and employees against any claim or action in law or in equity for any loss, expenses, including reasonable attorneys' fees, or damages to property (including but not limited to property of or under control of Buyer or Seller), or for personal injury to or the death of any person resulting from any violation or requirement of any applicable environmental statute, ordinance, rule, regulation, order or decision (collectively, "Environmental Laws"), including the release of any hazardous substance or waste, that first arises or occurs after the Closing, or to the extent exacerbated after Closing. As between Buyer and Seller, Buyer shall be solely responsible for all contamination cleanup and disposal costs that may be incurred as a result of said violation or requirement.

Broker's Fees:

The Buyer and the Seller each represent and warrant to the other that neither has introduced into this transaction any person, firm or corporation who is entitled to compensation for services as a broker, agent or finder. The Buyer and the Seller each agree to indemnify the other against and hold the other harmless from any and all commissions, finder's fees, costs, expenses and other charges claimed by real estate brokers or sales persons by, through or under the indemnifying party. Seller shall be under no obligation to pay or be responsible for any broker's or finder's fees, commissions or charges in connection with handling this transaction, or Closing.

Default:

In the event of a Default (defined below) by Buyer prior to Closing, Seller may elect to terminate the Agreement by providing written notice to Buyer describing such Default. If the Default is not cured by Buyer within thirty (30) calendar



days from receipt of such notice, the Term Sheet shall automatically terminate upon the expiration of such thirty (30) day cure period. In such event, Seller shall retain the Deposit and any other money paid by Buyer to or for the account of Seller, as agreed-upon liquidated damages in full settlement of any and all claims arising under or in any way related to this Transaction.

In the event of a Default by Seller prior to Closing, Buyer may elect to terminate the Agreement by providing written notice to Seller describing such Default. If the Default is not cured by Seller within thirty (30) calendar days from receipt of such notice, the Sale Agreement shall automatically terminate upon the expiration of such thirty (30) day cure period. In such event, the Deposit shall be returned to Buyer in full settlement of any and all claims arising under or in any way related to this Agreement.

“Default” shall include the failure to fully and timely perform any material obligations or acts required of Buyer or Seller, or a representation by Buyer or Seller is materially untrue.

In no event shall either party be liable to the other for any punitive, indirect, special or consequential damages.

Right of First Refusal: In the event Buyer decides to abandon or discontinue operations on and over the Premises, Buyer will obtain authorization from the STB or other regulatory authority as may be appropriate.

If Buyer decides to abandon or discontinue operations on or over the Premises within five (5) years after Closing, prior to filing for STB authorization, Buyer shall give Seller one hundred twenty (120) calendar days’ written notice of its plan to seek such authorization, and Seller shall have the right at Seller’s sole discretion to purchase the Premises for net liquidation value determined under the STB’s standards at that time.

In the event Seller elects to purchase the Premises hereunder, Buyer shall cooperate with Seller in transferring Buyer’s operating authority to Seller’s designated operator, or seeking authority to discontinue operations.

Assignment: The Agreement will not be assignable by Buyer without the prior written consent of Seller, except to a wholly owned affiliate of Buyer or Buyer’s parent.