



**South Dakota Department of Transportation**

**Invitation for Proposals to Purchase State-owned  
Rail Lines**

**August 26, 2019**

## **Disclaimer**

This Invitation for Proposals (“IFP”) is available to parties that are interested in participating in a competitive process for the proposed sale of railroad lines currently owned by the South Dakota Department of Transportation.

The South Dakota Department of Transportation (“the Department”) has prepared this IFP to provide information to interested parties (“Proposers”) who wish to submit a response to the IFP. The Department 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 Department 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 IFP does not constitute an offer to sell or negotiate. The Department, the South Dakota State Railroad Board (“the Board”), and the Governor of South Dakota reserve their rights to reject any proposals submitted in response to this IFP.

The Department, the Board and the State of South Dakota will have no obligation to pay or reimburse any interested party for costs incurred in reviewing and responding to this IFP. No Proposer is entitled to any compensation pursuant to this IFP.

By accepting this IFP, the recipient agrees to be bound by the foregoing limitations.

## **Department’s Rights**

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

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

The Department, the Board and the Governor of South Dakota reserve the right to reject any submitted proposal or Proposer related to this IFP.

## **Ownership of Submitted Materials**

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

Proposers should be prepared to support their proposals and answer questions in open session before the Board. If certain components of the proposals are proprietary or trade secret information as those terms are defined in South Dakota Codified Law (“SDCL”) 1-27-28, and if Proposers desire to treat that information as confidential, then Proposers must clearly identify the information as confidential. The Department and the Board will treat the designated information as confidential if the information qualifies as proprietary or trade secret information as defined in SDCL 1-27-28. Regardless of whether a Proposer identifies information as confidential, the Department and the Board reserve the right to treat proprietary or trade secret information as confidential.

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# 1. Introduction

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## 1.1 Overview

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Because of the Milwaukee Road embargo in 1980, South Dakota was confronted with the loss of over fifty percent of its total operating rail mileage. The Department analyzed each line individually and identified the essential rail lines vital to the economy of South Dakota. Some of the embargoed essential lines were purchased by other railroads and service was restored. The remaining essential lines for which a private solution could not be found were purchased by the State of South Dakota. Since the Department's acquisition of the Lines, service has been restored to most of the lines. Most of the state-owned lines also enjoy access to major rail carriers, including overhead trackage/haulage rights and/or interchange rights depending on the rail line.

## 1.2 State-owned Lines

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The Department invites Proposers to submit responses ("Proposals") to this IFP for the purchase of all, or part of, any one or more of the following railroad lines ("the Lines"):

### **Mitchell to Rapid City, SD ("MRC Line")**

- Total Mileage: approximately 285.1
- Mitchell to Kadoka segment leased to MRC Regional Railroad Authority (through 2031)
- Operator: Dakota Southern Railway (through 2031 via sublease)
- Overhead trackage/haulage rights on Burlington Northern Sante Fe, LLC ("BNSF") Railway's lines to multiple interchange points for traffic originating/terminating on the MRC Line; trackage rights over BNSF line to access CHS Inc.'s grain elevator shuttle facility at Mitchell, SD; interchange rights with BNSF at Mitchell, SD
- Dakota Southern Railway Company holds a right of first refusal
- Class I and Class II purchasers require consent of BNSF Railway to maintain trackage/haulage/interchange rights
- Segments from Kadoka to Caputa and Caputa to Rapid City are railbanked.
- Maple Street Yard in Rapid City leased to American Colloid Company for car storage (through July 26, 2026)
- Data summary included as **Attachment A - MRC**

### **Aberdeen, SD to Geneseo Junction Connection, ND and Jarrett Junction to Britton, SD ("Britton Line")**

- Total Mileage: approximately 76.6
- Leased to Marshall Regional Railroad Authority (through 2025)
- Operator: Dakota Missouri Valley & Western Railroad, Inc. ("DMVW") (through 2025 via sublease)
- Interchange rights on BNSF-owned track in Aberdeen with Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E")
- DMVW holds right of first refusal
- Data summary included as **Attachment B - Britton**

### **Napa Junction to Platte, SD ("Napa-Platte Line")**

- Total Mileage: approximately 83.3
- Segment from Napa Junction to Ravinia (approximately 54.5 miles) leased to operator, Dakota Southern Railway Company (through Nov. 30, 2026)
- Overhead trackage/haulage rights on BNSF's lines to multiple interchange points for traffic originating/terminating on the Napa-Platte Line; interchange rights with BNSF at Napa, SD
- Class I and Class II purchasers require consent of BNSF Railway to maintain trackage/haulage/interchange rights
- Segment from Ravinia to Platte is railbanked (approximately 28.8 miles)
- Data summary included as **Attachment C - Napa**

### **Elk Point to Canton, SD and Beresford SD to Hawarden, IA (“Sioux Valley Line)**

- Total Mileage: approximately 68.0
- Leased to Sioux Valley Regional Railroad Authority (through March 21, 2034)
- Operator: D&I Railroad Co. (through March 21, 2024, via sublease)
- Overhead trackage rights over BNSF for aggregates from Hawarden, IA via Canton, SD to Wolsey, SD
- Overhead trackage rights over BNSF to Sioux City, IA for interchange with UP and CN
- Class I and Class II purchasers require consent of BNSF to maintain trackage rights
- Sioux Valley Regional Railroad Authority holds an option to purchase, which may be assigned to D&I Railroad Co. upon approval of the Board
- Data summary included as **Attachment D – Sioux Valley**

### **Huron to Yale, SD (“Yale Line”)**

- Total Mileage: approximately 15.3
- Leased to East Central Regional Railroad Authority (through September 23, 2020, with automatic one-year renewal)
- Operator: RCP&E (through September 23, 2020 with automatic one-year renewal)
- Data summary included as **Attachment E - Yale**

### **Wolsey, SD Interchange (“Wolsey Interchange”)**

- Total Mileage: approximately 4.2
- Leased to RCP&E (through June 11, 2026)
- Operator: RCP&E
- Subject to Track Improvement Memorandum between the Department and BNSF
- Data summary included as **Attachment F - Wolsey**

Proposers may propose to purchase a single Line, a portion of a Line, or any combination of the Lines. The sale(s) will consist of all track structures, associated rights-of-way, all appurtenances and including but not necessarily limited to rail and fastenings, switches and frogs, ties, ballast, roadbed, embankment, other structures, or other track materials necessary for support of operations.

Maps and track charts relating to the Lines are included as **Attachment G – Maps and Track Charts**.

## **1.3 IFP Objectives**

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The Department is considering the sale of the Lines to meet the following goals and objectives:

1. Support economic growth and development throughout the State of South Dakota through increased rail traffic volume, tax revenues and job creation;
2. Ensure connectivity for critical industries and sustain rail access to the communities and surrounding areas served by the Lines;
3. Enhance customer service, development opportunities and new customer creation;
4. Improve railroad safety, security and resiliency; and
5. Return state-owned assets to private sector ownership, operation and development.

## **1.4 IFP Authority**

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The Department’s issuance of this IFP and any ensuing sale of the Lines will be governed by SDCL 1-44-20. Any sale will require approval by the South Dakota State Railroad Board (“the Board”) and the consent of the Governor of South Dakota. The sales process set out in SDCL ch. 5-2 does not apply.

## 2. IFP Process and Schedule

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### 2.1 Description of the IFP Process and Anticipated Timetable

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The IFP process and anticipated timetable are as follows:

1. The Department will advertise the IFP on the Department's website on August 26, 2019.
2. The Department will respond to Proposer inquiries from August 26, 2019 to 10:00 a.m. Central Standard time (CST) on November 15, 2019.
3. The Department will conduct tours of each of the Lines for interested Proposers. The dates and times of the tours will be identified in an addendum to this IFP which will be posted on the Department's website by September 20, 2019.
4. Proposal submission deadline: Complete Proposals must be submitted to the South Dakota electronic bidding system by 10:00 a.m. CST on November 21, 2019.
5. The Board will review copies of all Proposals submitted by the Proposal Submission Deadline. The Board will consider the Proposals at a special meeting on December 4, 2019. At this meeting, Proposers will be afforded an opportunity to address the Board concerning timely submitted Proposals and to answer questions from the Board in open session.
6. On or after December 18, 2019, during an open session, the Board may select one or more preferred Proposals for further negotiation based on the Board's assessment of the best interests of the State of South Dakota. The Department will conduct one-on-one meetings with the Proposers who submitted the preferred Proposals. The purpose of these meetings will be to discuss confidential and proprietary information and to advance negotiation exchanges regarding the details of the proposed sale.
7. Following negotiations, the Proposer will provide any final Proposals to the Board. The Department may make recommendations to the Board regarding the sale of all or part of the Lines. The Board's action on any final Proposal will take place in an open session. The Board may approve final Proposals with no contingencies, approve final Proposals with contingencies, or reject final Proposals.
8. Any party with a right of first refusal or purchase option will be afforded an opportunity to exercise those rights.
9. Final Proposals that have been approved by the Board, with or without contingencies, will be submitted to the Governor for consent. The Governor may consent to or reject any final Proposal.
10. If a final Proposal is approved by the Board and consented to by the Governor, and if rights of first refusal or purchase options are not exercised or do not apply, then the Proposer and the Department will enter into an agreement for sale consistent with the terms of the final Proposal. The Department and the Proposer will complete the closing of the sale following execution of the sales agreement.

The Department, the Board, and the Governor are not bound by the above timetable and they reserve the right to extend any dates set out in the timetable.

### 2.2 Access to IFP Information

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Proposers must access an official version of the IFP, IFP attachments, addenda, question & answer ("Q&A") forum, and link to the South Dakota electronic bidding system and required forms by visiting the following Department website address (the "Website") and clicking on the item entitled "November 21, 2019, Proposal to Purchase RR Lines":

<https://apps.sd.gov/HC65BidLetting/ebslettings1.aspx>

It is the Proposer's responsibility to review all information in the IFP, IFP attachments, addenda, and the Q&A forum.

## 2.3 Proposer Communication Protocol

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All Proposers will adhere to the communication protocol outlined below to guide interactions between the Department and Proposers.

### Point of Contact

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Questions about the South Dakota electronic bidding system may be directed to Becky Hoffman, the Department's Bid Letting Engineer, at (605) 773-8386 or [Becky.Hoffman@state.sd.us](mailto:Becky.Hoffman@state.sd.us). The Department will not accept any other telephone or oral requests. All other Proposer questions, comments, and requests for additional information should be submitted in writing to the Department's Q&A forum.

### Planned Interactive Communication Opportunities

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

- **Tours.** Proposers will be allowed the opportunity to physically tour the Lines while receiving verbal briefings about the Lines from the Department. The dates, times and locations of the Line tours will be posted by addendum by September 20, 2019. The Department may, in its sole discretion, respond to appropriate questions posed during the tours. The Department will post any such questions and answers to the Q&A forum.
- **Q&A.** A Q&A forum will be available to Proposers. Proposers may submit written questions, comments and requests for additional information to the Q&A forum. Questions, comments and requests are permitted from the time the IFP is advertised on August 26, 2019, to 10:00 a.m. CST on November 15, 2019. All information posted to the Q&A forum will be accessible to all Proposers. If the Department elects, in its sole discretion, to respond to questions, comments or requests, the response will be posted to the Q&A forum. The source of the question, comment or request will not be revealed. The Department may post information to the Q&A forum until 10:00 a.m. CST November 19, 2019, at which time the Q&A forum will be considered final and locked from further editing. It is the Proposer's responsibility to review all information in the Q&A forum. By submitting a Proposal, a Proposer is deemed to have accounted for all information posted to the final Q&A forum regardless of when the Proposer submits a Proposal.

## 2.4 IFP Addenda

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The Department may issue addenda to the IFP as deemed appropriate by the Department in its sole discretion. The Department may post addenda to the Website at any time before the Proposal submission deadline. It is the Proposer's responsibility to review all information in the addenda. By submitting a Proposal, a Proposer is deemed to have accounted for any addenda issued prior to the Proposal submission deadline.

## 2.5 Proposal Submittal

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Complete Proposals are due to the Department at 10:00 a.m. CST on November 21, 2019. Proposals must be submitted to the South Dakota electronic bidding system in Portable Document Format (.pdf). No other form or method of submittal will be accepted. Only one Proposal will be accepted from each Proposer. Proposers may propose to purchase a single Line, a portion of a Line, or any combination of the Lines. Proposers may submit, withdraw or replace a Proposal any time prior to the Proposal submission deadline.

Proposers must complete the following steps to use the South Dakota electronic bidding system:

1. Request a company identification and company password by selecting "SDEBS Log In" at the Website and choosing to "Register As A New User."
2. Designate one or more persons as bidding administrator by completing and submitting a Bidding Administrator Authorization Form for Rail Proposers. This form is available on the Website.

3. After the Department issues a bidder identification and bidder password to the designated bidder administrator(s), follow the steps laid out in the SDEBS User Manual for Rail Proposers. The manual is available on the Website.

Proposers are encouraged to complete Steps 1 and 2 as soon as possible. For further information about the South Dakota electronic bidding system, Proposers may contact Becky Hoffman, the Department's Bid Letting Engineer, at (605) 773-8386 or [Becky.Hoffman@state.sd.us](mailto:Becky.Hoffman@state.sd.us).

### **3. Proposal Requirements**

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The Department reserves the right in its sole discretion to modify the proposal submission requirements. The Board may request additional information or clarifications from any Proposer.

All information in Sections 3 of this IFP is required to be considered a complete Proposal. Proposals must respond to and reference each item in Section 3 of this IFP. Proposers should submit their best Proposal by the Proposal submission deadline.

#### **3.1 Proposer Information**

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Proposals must include detailed information on the Proposer. At a minimum, each Proposal must contain the following:

1. Proposer's lead contact information, including the e-mail address for official correspondence;
2. History and background information about the Proposer and the Proposer's railroad industry experience.
3. Proposer's leadership personnel and command structure;
4. A description of any parental relationships and any guarantor relationships that apply;
5. Details of any prior bankruptcies or operational issues experienced by the Proposer or any guarantor within the last five years;
6. Details of any instances where the Proposer has been fined or assessed a civil penalty by federal, state or municipal agencies within the last five years;
7. Business goals in relation to the purchase of the Lines, and company-wide goals; and
8. Anticipated successes and challenges in achieving business goals and company-wide goals.

#### **3.2 Lines to be Purchased**

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Proposals should clearly identify the Line(s) or portions of Line(s) that are proposed for purchase.

#### **3.3 Purchase Price**

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Proposals must include the purchase price, payment method (lump sum or installment payments) and the anticipated date for closing the transaction. If a Proposer submits a Proposal to purchase more than one Line or segment of Line, the Proposer must allocate the purchase price among the Lines or Line segments. Proposers will not be permitted to reduce the purchase price during negotiations without the consent of the Board.

#### **3.4 Service Protections**

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Proposals must address how current levels of rail service will be sustained or improved. Proposals must include detailed operational plans, including:

1. Expected operational improvements or methods;
2. Capital investment commitments or a capital investment plan;
3. Potential railroad expansion options;
4. Projected industry developments for current and future shippers;
5. Identification of management headquarters, projected employee needs, and job creation estimates;
6. Marketing plan for rail customers and users;

7. Rate or service modifications to better serve customers (Proposer should provide estimates of potential fees and rates, including any comparison to similar local, regional and State services operated by the Proposer);
8. Expected impact to existing shippers and other rail users;
9. Expected impact to communities located along or near the Line(s);
10. Experience operating short line railroads or experience working in concert with or hiring short line railroad operators for business purposes;
11. Projected economic impact of the Proposal (Proposers should be as detailed as possible without incurring excessive expenses to produce economic studies); and
12. Long-term maintenance plan to meet or exceed current applicable rail standards.

### **3.5 Trackage Rights, Haulage Rights, and Interchange Rights**

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A settlement agreement between the Department and BNSF Railway Company (“BNSF”) addresses trackage rights, haulage rights, and interchange rights on some of the Lines. The Department will make redacted copies of the settlement agreement and certain related documents available to Proposers in **Attachment H – BNSF Settlement**. Any requests for unredacted copies of the settlement agreement and related documents must be posted to the Q&A forum and are subject to approval by the Department, the parties to the agreements, and the Proposer’s execution of Department-approved agreements to protect the confidentiality of the unredacted material. Proposals must contain an assurance to protect any applicable rights secured as a result of the settlement agreement and related documents.

### **3.6 Current Grant Commitments**

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Due to the receipt of federal rail rehabilitation funding, some segments of the MRC Line are required to be maintained at FRA Class 2 standards and are subject to reporting and other grant requirements. A segment of the Sioux Valley Line is also subject to a grant agreement. Proposers are responsible for familiarizing themselves with the grant requirements that apply to these Lines. Proposals must contain a plan for complying with all reporting and other requirements associated with the grants for these Lines. Copies of the grant agreements are available to Proposers in **Attachment I – Grant Agreements**.

### **3.7 Future Grant Commitments**

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During the period Proposals are being submitted or considered, the Department may submit federal grant applications for improvements to the Lines. Proposals relating to the affected Lines must contain a plan for complying with all reporting and other grant requirements in the event a grant is awarded. Copies of submitted grant applications will be promptly made available to Proposers.

### **3.8 Loan Commitments**

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Regional railroad authorities are eligible to receive loans from the Department’s railroad trust fund to complete rail-related improvement projects. Currently, loans are outstanding for improvements to or along some of the Lines. Proposals relating to these Lines must contain a plan for addressing repayment of unpaid loan obligations. Copies of the loan agreements and a list of unpaid loan balances are available to Proposers in **Attachment J – Loan Agreements**.

### **3.9 Other Financial Commitments**

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Pursuant to the operating lease and sublease of the MRC Line, shipments originating or terminating on the MRC Line are subject to a surcharge of Fifty Dollars (\$50.00) per car. This surcharge is intended to compensate the Mitchell-Rapid City Regional Railroad Authority and reimburse the Department for railroad trust funds totaling Five Million Seven Hundred Thirty-nine Thousand One Hundred Fifty Dollars (\$5,739,150.00) that were expended to rehabilitate the MRC Line. To date, the Department has collected One Million Three Hundred Ninety Thousand Five Hundred Fifty Dollars (\$1,390,550.00) as reimbursement for that public expenditure. The unpaid balance is Four Million Three Hundred Forty-eight Thousand Six Hundred Dollars (\$4,348,600.00). Proposals for the MRC Line should address how the unreimbursed portion of this public expenditure will be satisfied.

The Department has submitted a funding request to the Federal Emergency Management Agency (FEMA) to fund repairs to the Sioux Valley Line. That request is pending. The Department has also entered into an agreement that obligates D&I Railroad Co. to pay for any repairs that do not qualify for FEMA funding. A copy of the agreement between the Department and D&I Railroad Co. is available to Proposers in **Attachment K – Other Financial Commitments**.

### **3.10 Lease and Sub-lease Agreements**

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Any sale of the Lines will be subject to applicable operating leases and subleases. The Department will assign its rights and obligations under the operating leases and subleases to the purchasers of the Lines. Any early termination of the operating leases or subleases will be a matter of private negotiation between the Proposer and the lessees or sublessees and will not be the responsibility of the Department. Copies of operating leases and subleases are available to Proposers in **Attachment L – Leases and Subleases**.

### **3.11 Permits, Licenses, Excess Property Leases, and other Land Use Agreements**

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Sales will be subject to the permits, licenses, excess property leases, and other land use agreements that apply to the purchased Lines. Notwithstanding the foregoing, the Department reserves the right to exclude any excess property from the sale of the Lines at any time prior to execution of a Line purchase agreement.

### **3.12 Approval of Sale**

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Proposals must include a plan for obtaining any necessary approvals from the Surface Transportation Board (STB) and must include estimates of the required approval timelines.

### **3.13 Environmental Liabilities**

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Proposals must identify how any potential environmental liabilities or obligations will be addressed.

### **3.14 Conditions of Sale**

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Proposers must acknowledge the conditions of sale listed in Section 4 of this IFP. Proposers must be prepared to address any other contingencies required by the Board.

## **4. Conditions of Sale**

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The following terms and conditions, in whole or in part, are expected to be included in any agreement of sale:

1. The ability to re-purchase the Lines in an abandonment proceeding or if the purchaser were to discontinue service for any reason;
2. Preferred re-purchase rights if a sale is contemplated to another buyer;
3. A requirement that any assignee or successor to the purchaser abide by the terms of the sale agreement
4. A requirement that the sale of the line be considered “AS IS, WHERE IS”, as allowed by law;
5. A provision requiring the purchaser to indemnify the Department and hold the Department harmless for any claims related to any acts or omissions after the closing of the sale;
6. Provisions requiring the purchaser to fully protect any haulage, trackage and interchange rights that apply to the line as a result of the Department’s settlement agreement with BNSF, and to fully comply with any other obligations that apply to the purchaser pursuant to that settlement agreement;
7. The Department will retain mineral rights as required by South Dakota law;
8. The purchase will be subject to the right of highway authorities to maintain, construct, re-construct, sign, mark and repair all existing public highway crossings;
9. The Department will reserve a right to crossings that have not yet been constructed but are identified in

- the Department's current Statewide Transportation Improvement Plan; and.
10. The Lines will be conveyed by quit claim deed and the purchaser will waive any title defects.

## **5. Evaluation of Proposals**

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The Board will select Proposals that are in the best interests of the State of South Dakota. The Board will evaluate each Proposal based on the requirements set out in Sections 3 and 4 of this IFP and the Proposal's likelihood of meeting the IFP objectives set out in Section 1.3.