

**Request for Proposals – Construction and Operation of
Public Improvements, Kingsbury Industrial Park (KIP)
LaPorte County, IN**

Issued by:

**LaPorte County Office of
Economic Development
555 Michigan Ave
LaPorte, IN
www.laportecountyod.org**

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**LAPORTE COUNTY REDEVELOPMENT COMMISSION
REQUEST FOR PROPOSALS – CONSTRUCTION and OPERATION**

INTRODUCTION AND PURPOSE OF RFP

This Request for Proposals (the “RFP”) is issued by the LaPorte County Redevelopment Commission (the “RDC”), for and on behalf of LaPorte County, Indiana (the “County”), for the purpose of seeking a railroad operator to enter into an agreement with the RDC for the construction of as estimated 9,000 feet of new rail lines (as more fully defined herein, the “Construction”) and operation of the RDC’s existing rail lines approximately 7,000 feet for freight rail service in the Kingsbury Industrial Park in LaPorte County, Indiana (the “RDC Rail Lines”) (the Construction and RDC Rail Lines, together the “BOT Project”). The RDC invites proposals from experienced railroad operators capable of providing the specialized, professional services required for construction and operation of the BOT Project.

The RDC desires to obtain first-class, high-quality services that meet the needs of the railroad customers on the rail lines of the BOT Project. The intent of this RFP is to engage an operator that is deemed most responsive in providing such services as a contractor of the RDC. Specifically, the RDC seeks an operator that will:

- design, construct, operate and maintain new and existing RDC Rail Lines;
- the cost of the Construction shall be partially or entirely the responsibility of the operator;
- the County shall lease the BOT Project and real property owned by the County (existing) and any new rail lines of the BOT Project to the operator for a predetermined period;
- the agreement must provide for ownership of all improvements by the County.
- the agreement must identify which costs are to be the responsibility of the operator and which costs are to be the responsibility of the governmental body.
- operate the BOT Project in a manner so as to enhance rail revenues while ensuring that the BOT Project remain economically competitive;
- work cooperatively with all land owners in the KIP to facilitate expansion and operations when agreed to new and expanding businesses;
- properly maintain and safeguard the County’s investment in its railroad properties through the exercise of highest standards of maintenance in accordance with RDC requirements and, where approved by the RDC, recommend or undertake capital improvements to improve the rail lines;
- maximize the economic impact to LaPorte County and in the utilization of rail in the region;
- implement appropriate marketing activities to attract new customers to be served by BOT Project;
- accomplish all objectives required of the operator in a professional manner, in compliance with best railroad industry practices and applicable laws and ordinances; and
- Work in cooperation with adjacent class one rail carriers CSX, specifically as well as other private operators for access.

In order to satisfy the RDC’s requirements and meet the RDC’s goals mentioned above, proposers must agree to provide all of the services sought by the RDC under this RFP. At the conclusion of the RFP process, and upon the execution of a Build Operate Transfer Agreement (the “BOT Agreement”) between the

selected proposer and the RDC, the selected proposer will have responsibility for the operation of the BOT Project for rail freight services. This process is governed by IC 5-23.

(1) The design, construction, operation, management, maintenance, or financing of the cost of the Construction shall be partially or entirely the responsibility of the operator.

(2) The County shall lease the BOT Project, real property owned and easements granted to the governmental body upon which the BOT Project is to be located to the operator for a predetermined period. The BOT Agreement must provide for ownership of all improvements by the County, unless the County elects to provide for ownership of the BOT Project by the operator during the term of the BOT Agreement. In this case, ownership reverts back to the County upon the termination of the BOT Agreement.

(3) The BOT Agreement must identify which costs are to be the responsibility of the operator and which costs are to be the responsibility of the County.

(4) The operator may be authorized to retain a mutually agreed upon percentage of the revenues received in the operation and management of the BOT Project, or the operator may be paid an amount established by the County, which shall be applied as follows:

(A) Capital outlay costs for the BOT Project and public service plus interest and principal repayment for any debt incurred.

(B) Costs associated with the operation, management, and maintenance of the BOT Project.

(C) Payment to the governmental body for reimbursement of the costs of maintenance, law enforcement, and other services if the services are performed by the governmental body under the BOT Agreement.

(D) An agreed upon return on investment to the operator.

(5) The operator may pay the governmental body either a lease payment or a percentage of gross revenue per month for the operator's operation and use of the BOT Project.

(6) The BOT Agreement must provide for the payment of contractors and subcontractors under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is applicable. The BOT Agreement must provide for payment and performance bonds as follows:

(1) For a payment bond, an amount not less than one hundred percent (100%) of the cost to design and construct the public facility.

(2) For a performance bond, an amount not less than fifty percent (50%) of the cost to design and construct the public facility.

As added by P.L.49-1997, SEC.34. Amended by P.L.239-2019, SEC.4; P.L.208-2019, SEC.1; P.L.211-2019, SEC.6.

KINGSBURY INDUSTRIAL PARK (KIP)

The Kingsbury Industrial Park has access to all major markets. The 627 acres of shovel ready property is located 2.5 miles from US 35 and US 6. It is 18 miles from I80/90. Additionally the park was a former US military facility and as such as additional acreage for development is available. Attached is the link to site map, zoning and marketing materials for the property.

GOALS AND INTENT

On August 8, 2012, the RDC adopted a comprehensive five-year strategic plan (the “Strategic Plan”). This is a very detailed document containing significant information about the RDC and its railroad properties. The Strategic Plan included a review and evaluation of the RDC’s public/private partnership model and identified goals and potential action to be taken by the RDC, many of which involve rail operations on the rail lines of the BOT Project. Specifically, the following are a few objectives relating to rail freight operations that will be pursued by the RDC as part of the Strategic Plan:

- Expand and maintain the RDC’s strong rail system preservation and maintenance program through its successful public-private partnership (P3) business model.
- Construct additional public rail for continued and expansion of public access and demonstrate financial viability for proposed cost.
- Proactively identify new industrial properties to facilitate new rail freight service dependent upon industrial development opportunities.
- Develop and maintain an effective continuity of operations program to effectively sustain rail service in LaPorte County.
- The Build Operate Transfer (BOT) agreement may require a performance bond and provide for the payment of contractors and subcontractors under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is applicable.
- Switching Defined:
 - The successful respondent (respondent) will move inbound rail cars from the interchange track (outside of Kingsbury Industrial park to respondent’s lease track (County owned) and return same to interchange as part of the line haul switching. Switching of railcars shall be done as directed by the respondent and charged to Industry at Railroad’s then prevailing tariff for local switching or as directed by the County. County shall have no liability to respondent for delays in switching or transfer. The respondent shall also be free to allocate the scheduling of switches among its industry customer without being deemed in breach of the Agreement. Respondent may also store cars on County tracks subject to the terms of the Build Operate Transfer Agreement. In addition to switching, respondent will be responsible for track maintenance, provide insurance.
- Construction defined:
 - The successful respondent (respondent) will clean, clear and construct no less than 9,000 liner feet of new trackage in the Kingsbury Industrial Park (KIP) The new trackage shall be located on County owned and or County accessible easements within the KIP. The trackage shall be constructed to required federal standards and shall at all times be acceptable to any Class I rail carrier.

RDC RAIL PROPERTIES SUBJECT TO THIS RFP

The County owns railroad properties in the KIP. The railroad properties which are the subject of this RFP are as follows:

KIP Legal Description County Rail Land
Map of RFP Rail/KIP ROW

MAPS OF LINES/RAIL LINE DATA AND INFRASTRUCTURE CONSTRUCTION/INVESTMENTS

The successful respondent (respondent) will clean, clear and construct no less than 9,000 liner feet of new trackage in the Kingsbury Industrial Park (KIP) The new trackage shall be located on County owned and or County accessible easements within the KIP. The trackage shall be constructed to required federal standards and shall at all times be acceptable to any Class I rail carrier.

- **INTERCHANGES**

Class 1 potential interchanges are at this time are:
Norfolk Southern (NS)
CSX

The Indiana Economic Development Corporation has provided grant funding which may or may not be available for the BOT Project. The County and the RDC will provide no funding for the BOT Project.

PROPOSED BUILD OPERATE TRANSFER (BOT) AGREEMENT

At the conclusion of the RFP process, the RDC and the selected proposer will enter into a BOT Agreement for the BOT Project. The general terms of a BOT Agreement are listed below.

The term of the BOT Agreement shall be five years, with a possible renewal term of five years. Under the BOT Agreement, the selected proposer will have exclusive use of the BOT Project for rail freight services in exchange for payment of an operating fee, which will be determined as part of the RFP process, and fulfillment of other requirements set forth in the BOT Agreement. Thus, the BOT Agreement contains all duties and responsibilities expected to be observed and performed by the selected proposer in its day-to-day operations of the BOT Project. By way of example and not limitation, the BOT Agreement requires the operator to do the following:

- make various reports to the RDC, including reports relating to financial performance, operations, marketing, and maintenance of way on a biannual basis;
- maintain the BOT Project in accordance with the RDC's track maintenance standards and asset guidelines which shall be in compliance with class 1 rail carrier usage standards
- furnish all required management, supervision, and other services required in the performance of rail operations;

- meet certain customer service standards and operator and maintenance expenditure thresholds as determined by an independent RDC consultant;
- cooperate with the RDC in carrying out its mission of preserving rail freight service and fostering economic development and job creation in the region through the improvement and expansion of rail infrastructure;
- provide and maintain required insurance for its operations in accordance with industry standards.
- indemnify the RDC and the County for liabilities arising from the rail operations.

OVERVIEW OF RFP PROCESS:

The RDC desires to ensure that first-class rail operations are provided on the County's rail lines. The intent of this RFP is, therefore, to ensure that an appropriate level of review of proposals is undertaken in order to select a rail operator that the RDC deems best suited to provide rail freight service operations on the County's rail lines.

The RDC will assess each proposer's approach to operations, qualifications and experience, financial capability and other areas described below. There will be no restriction to the number of proposers that may submit proposals.

GENERAL INSTRUCTIONS FOR ALL PROPOSALS

This section explains the procedure that will be followed by all proposers. Proposers should carefully read and follow the procedures required by this section. Material deviations from these requirements may cause rejection of proposals.

Each proposer must submit one (1) original signed proposal and a cover letter, each signed in ink, and six (6) unbound hard copies to the RDC at the following address:

LaPorte RDC
555 Michigan Ave
LaPorte, IN

In addition, all proposers must submit an electronic .pdf copy of their proposal. The .pdf must be a single document and not broken into multiple files. If the file size of the .pdf exceeds 12 MB, the proposer must contact the RDC to get instructions for FTP or Dropbox file transfers. Such communications shall be directed to CONTACT

Timely submission of proposals is the sole responsibility of the proposer. **Late proposals after the deadline will not be considered.** The RDC reserves the right to determine the timeliness of all submissions.

Proposers should be clear, concise and direct in their submissions. Elaborate or lengthy proposals beyond those needed to provide a clear response to all requirements are not encouraged. Unclear, incomplete, or inaccurate documentation may not be considered. Falsification of any information may result in disqualification from the selection process, or in termination of the BOT Agreement if later discovered that the award of the agreement was made as a result of false information submitted in response to this RFP.

Submitted materials will not be returned to the sender after the proposals have been opened.

To be responsive, a proposal must be submitted in writing. All applicable documents, including attachments and exhibits, must be included with the proposal. Each page of the proposal should be numbered sequentially at the bottom of the page. Proposals must be submitted in the English language and must be at least 12 point font size, have at least one inch margins on all sides, and be on plain white paper.

Each proposal must be accompanied by a cover letter limited to one page that references the title of this RFP and includes the following information:

- (1) Full legal name of the proposer;
- (2) Legal business status (individual, partnership, corporation, limited liability company, etc.), address, telephone number, fax number, and email address of the authorized representative(s) of the proposer;
- (3) State in which, in the case of an individual, the individual is domiciled, or in the case of an entity, the entity is organized or incorporated.
- (4) Name, title, email address, telephone number and mailing address of the person(s) authorized to be the primary contact and represent the proposer in the RFP process.

The RDC reserves the right to seek additional information or clarifications from any proposers. The RDC may elect to interview any or all of the proposers.

All costs of preparation of a proposal shall be borne by the proposer. The RDC shall not be liable for any expenses incurred by proposers in the preparation and/or submission of proposals.

Proposals may be withdrawn by written request of the authorized representative of the proposer on letterhead at any time prior to the submission deadline **August 18th 4:00 CST**.

SPECIFIC INFORMATION REQUIRED FROM PROPOSERS

The RDC will accept submissions up to **August 21th 4:00 PM CST**. Initial responses shall be in narrative form and shall include the information required in this section. Failure to adhere to these requirements may be cause for rejection of the proposal as non-responsive.

To ensure a uniform review process and to ensure an appropriate level of comparability, initial responses by proposers must be organized as follows:

1. *Approach to Operations*. In this section, each proposer should include the following:
 - a preliminary statement or summary of its overall approach or philosophy concerning the construction of new connections and operation of Industrial Switching Operations railroads, including strategies or business practices that address the scope of services sought by this RFP;
 - a list of all proposed railroad improvements, including cost, timeline and growth potential (land areas or structures served);
 - a description of its existing marketing activities employed in its rail operations to attract rail customers and otherwise market the proposer's business;

- a description of the proposer's policies and procedures for operating its business, including policies and procedures relating to customer service, employee matters, risk management, and accounting and financial management;
- a description of the proposer's approach to maintenance of rail lines;
- a summary of track inspections conducted by the Federal Railroad Administration (FRA) on any rail lines owned or operated by the proposer and a list of any violations or fines imposed by the FRA concerning same; and

2. *Qualifications and Experience.* In this section, each proposer should include the following:

- a statement of its qualifications and experience with rail construction and number of years managing and operating Industrial Switching Operations railroads;
- a minimum of five customer references, including name, mailing address, email address, and telephone number of the reference;
- if the proposer is a business entity (e.g., corporation, limited liability company, partnership), the proposer should detail the experience and qualifications of the proposer's management team; and
- a description of any operations specifically involving a public-private partnership, including an identification of the entities involved.

3. *Financial Capability.* In this section, each proposer should include the following:

- audited financial statements for the prior three years prepared in accordance with generally accepted accounting principles, including notes to financial statements;
- balance sheets for the prior three years;
- statements of income and expenses for the prior three years;
- corporate/partnership federal income tax returns for the last completed tax year;

4. *Effect of Other Operations on RDC Lines.* In this section, each proposer should include the following:

- a description of any facts bearing upon any possible interests, direct or indirect, that the proposer believes any member, director, officer, employee or agent of the RDC presently has, or will have, in the performance by the proposer; and
- a statement concerning whether proposer presently has or may in the future have an interest, direct or indirect, which would conflict in any manner with the performance of its obligations that is adverse or potentially adverse to the RDC (e.g., operation of other rail lines that may adversely affect rail operations of the BOT Project).

SELECTION CRITERIA TO BE USED BY THE RDC

The RDC BOT Agreement Committee will review and evaluate the information received. Each response will first be reviewed and analyzed to determine overall responsiveness and completeness. Failure to comply with the instructions above may result in the proposal being deemed non-responsive and may, at the discretion of the RDC, be eliminated from further consideration.

The RDC will enter into a BOT Agreement with an operator for the acquisition, planning, design, development, construction, reconstruction, repair, maintenance, or financing of the BOT Project on behalf of the County.

The scoring system is as follows: Each proposer will receive a single score of between zero (0) and twenty (20) points (twenty being the highest score) in the following categories:

- *Approach to Operations*
- *Qualifications and Experience*
- *Financial Capability*
- *Price*

SELECTION PROCESS FOR AWARD OF CONTRACT

Each proposal will first be reviewed and analyzed to determine overall responsiveness and completeness. Failure to comply with the instructions of this RFP may result in the proposal being deemed non-responsive and may, at the discretion of the RDC, be eliminated from further consideration.

Proposers consent to such additional investigation may include the following:

- an inspection of other rail lines operated by proposer by RDC staff and consultants, including a review of track inspection reports by State agencies and the Federal Railroad Administration for such lines;
- a survey conducted by RDC of the proposer's customers of other lines operated by the proposer.
- an interview of proposer's current Class I connecting railroads and state and federal regulatory agencies concerning proposer's performance; and
- a review of safety records and track inspection reports for proposer.

The RDC Rail Committee will then rank each proposal through the use of another scoring system.

The scoring system shall be as follows: Each proposer will receive a single score of between zero (0) and twenty (20) points (twenty being the highest score) in the following categories:

- *Commitment to construction of additional rail infrastructure*
- *Commitment to Track Maintenance*
- *Commitment to Safe Operations*
- *Soundness and Sustainability of Operating, Marketing, and Financial Plans*
- *Commitment to Public-Private Partnership*
- *Price*
- *Commitment to Economic Development*

The RDC reserves the right to reject any and all proposals, waive informalities and irregularities in proposals received and to accept any portion of any proposal if deemed in the best interests of the RDC.

PROPOSAL ACCEPTANCE

Each proposal is submitted with the understanding that the RDC's written acceptance of the offer of proposer to provide the services described herein, shall be the foundation for the BOT Agreement between the proposer and the RDC. Submission of a proposal shall therefore bind the proposer to furnish and deliver the services and related components in accordance with conditions of the proposal.

PROPOSAL OWNERSHIP AND CONFIDENTIALITY

All proposals, including attachments, supplementary material, addenda, etc., shall become the property of the RDC and will not be returned to the sender. The RDC has the right to use any or all ideas presented in the proposal without limitation. All proposals will be considered public documents, subject to review and inspection by the public at the RDC's discretion.

Proposers acknowledge and understand that the RDC is subject to the Indiana Access to Public Records Law (IC 5-14-3) (the "Public Records Law"). Proposers must therefore specifically identify the pages of a response or proposal that contain confidential information and provide a statement that such information is considered confidential by proposer and disclosure of such information would cause substantial injury to proposer, and identify an applicable exception to the disclosure requirements of the Public Records Law.

GENERAL CONDITIONS, RESERVATIONS, AND DISCLAIMERS

In addition to any other conditions, reservations, or disclaimers set forth in this RFP, the following section sets forth general conditions, reservations, and disclaimers which apply to this RFP.

- The RDC reserves the right to extend any submission deadline should doing so be in the interest of the RDC. Proposers shall have the right to revise their proposals in the event that a deadline is extended. In the event a deadline is extended, the RDC shall provide notice of same on its website at laportecountyoe.org
- The RDC reserves the right to withdraw this RFP at any time without prior notice. The RDC makes no representation that a BOT Agreement will be awarded to any proposer responding to this RFP. The RDC reserves the right to reject any or all proposals.
- If an inadequate number of proposals are received or the proposals received are deemed to be non-responsive, the RDC may, in its sole discretion, reissue the RFP or execute a sole-source agreement for rail freight operations with any individual or entity.
- The RDC will review and rate submitted proposals as described in this RFP. Proposers may not make any changes or additions after the deadline for receipt of proposals. The RDC reserves the right to request additional information or documentation from proposers as it deems necessary or appropriate.
- The RDC reserves the right to verify information in any response or proposal. If the information cannot be verified, the RDC reserves the right to reduce the score awarded to the response or proposal.
- The RDC may require interviews with any proposer.

- The RDC reserves the right to waive minor defects in any response or proposal.
- This RFP does not represent a commitment or offer by the RDC to enter into an agreement with a proposer or to pay any costs incurred in the preparation of a response or proposal. The proposer assumes all costs associated with responding to this RFP.
- The RDC reserves the right to seek new proposals when such a request is in the best interest of the RDC and to reasonably request such additional information or clarification of information provided in a proposal without changing the RFP.
- This RFP and a proposer's response to the RFP may become a part of the BOT Agreement between the selected proposer and the RDC resulting from this RFP process.
- No proposer shall offer any favor or anything of pecuniary value to any RDC Board member, staff member, consultant or any other individual with an interest in this RFP process for the purposes of influencing the outcome of the RFP selection process.
- Should any question arise as to the proper interpretation of the terms and conditions contained in this RFP, the RDC's decision shall be final.
- The RDC reserves the right not to award the BOT Agreement or to award a BOT Agreement to one or more proposers as it deems to be in the best interest of the RDC.

QUESTIONS AND COMMUNICATIONS PROTOCOL

The following communications protocol shall apply throughout the RFP process.

- All discussions by proposers with RDC consultants and RDC Board members during the RFP process are prohibited.
- There will be one individual at the RDC with whom proposers may communicate or direct questions. The point of contact for proposers is: Matthew Reardon, Office of Community and Economic Development, LaPorte County. Matt.reardon@mcrpartnersltd.com
- Each proposer shall receive the same information concerning the RFP at substantially the same time as all other proposers.
- To ensure fair and consistent distribution of information, all proposer questions will be answered in a "Q&A" format in a document to be provided to all proposers. No individual answers will be given.

TIMELINE

The tentative timeline for the RFP submissions, review, selection and BOT Agreement award will be available on the RDC's website at laportecountyod.org. This timeline is subject to change by the RDC, in its sole discretion.