



New South Wales Government

Ministry of Transport

# EXPRESSION OF INTEREST INVITATION

## OPERATION OF BRANCHLINE TRAIN SERVICES



NSW MINISTRY OF TRANSPORT

Closing Date: 24 November 2008 – 4pm

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## 1 INTRODUCTION

### 1.1 The Ministry of Transport

The Ministry of Transport (**Ministry**) was established in 2003 and is the lead public transport agency of the NSW Government. The Ministry is responsible for providing policy advice and managing a budget allocation to support rail, bus, ferry and taxi services in NSW. Following the formation of the Ministry, the NSW Government reviewed the major areas of the transport sector, laying the foundation for the implementation of new initiatives with a focus on service improvement and better coordination to meet growing community needs. In collaboration with other transport agencies, the Ministry is progressively implementing key service initiatives to deliver a more capable, safe and reliable transport network across metropolitan, regional and rural NSW.

### 1.2 Background

Prior to the sale of Freight Rail Corporation an agreement, known as the **Works Deed (Grain)**, was made between the NSW Department of Transport (now known as the Ministry of Transport) and Freight Rail Corporation in October 2001. The Works Deed (Grain) contained obligations that were inherited by the new operator Pacific National, some of which were not discharged at the expiry of the Works Deed (Grain) in November 2007.

In order to resolve these outstanding matters a new agreement was reached between the parties. This new agreement replaces the Works Deed (Grain) and is known as the **New Works Deed** dated 30 June 2008.

Under the New Works Deed agreed between the Director General of the Ministry of Transport on behalf of the Crown in right of New South Wales (**Director General**) and Pacific National, certain rollingstock assets will be transferred to a nominee of the Director-General on 30 June 2009 (or such other date as agreed between the parties or as directed by the Director General).

### 1.3 Invitation for Expressions of Interest

The Director General is seeking expressions of interest from suitably qualified organisations that can provide grain haulage services on the NSW branchlines (**NSW Branchline Network**) for a minimum period of 5 years commencing on 1 July 2009 (or such other date as agreed between the parties or as directed by the Director General) (**Operating Period**). The Director General proposes to procure the transfer of control of certain rollingstock (**Assets**) to the successful applicant (**Branchline Operator**), provided that priority for use of the Assets is given to transporting grain on the NSW Branchline Network for the entire Operating Period.

The Director General invites private sector parties to submit, in accordance with the requirements of this document, an Expression of Interest (**EOI**) in providing the branchline train operation services (**Branchline Train Operation Services**). The Branchline Train Operation Services will be provided pursuant to a contract (**New Contract**) to be negotiated with the Director General. The New Contract is proposed to be effective for the Operating Period.

#### 1.4 Director General's Objectives

The primary objectives of the Director General in seeking innovative private sector involvement in the provision of Branchline Train Operation Services are to:

- a. Secure the future of branchline grain haulage by rail and ensure, as far as possible, that a long term sustainable operator can be secured to provide ongoing surety to the industry;
- b. Ensure that goals are achieved at no cost to the Director General following the expiry of the New Works Deed - the Director General will not provide for either ongoing "above rail" subsidies, or funding for any upgrade of the Assets required; and
- c. Enable the Government to divest itself from ownership of the above rail Assets acquired under the New Works Deed and avoid the Government re-entering the freight rail market, either as an above rail operator or asset owner.

#### 1.5 Director General's Expectation

In releasing this call for expressions of interest, the Director General is principally looking to provide NSW grain farmers, and their local communities, with confidence that branchline train services will be sustained over the longer term to transport grain to market at competitive freight rates. The Director General is doing it's part by offering the rollingstock at no charge and subsidising branchline maintenance. The Director General wants the private sector to take ongoing responsibility for providing the service.

The Branchline Operator will be a significant stakeholder in the NSW grain business and the Director General is looking particularly for assurance that any respondents (**Respondents**) have properly evaluated the commercial risks involved, and have the resources, skills and experience required to establish a commercial business that will be there for many years to come. To provide that assurance, Respondents should explain in their responses **how** they intend to provide the required services and manage the commercial risk.

## 2 BRANCHLINE TRAIN OPERATION SERVICES REQUIREMENT

### 2.1 Operating Period

The Branchline Operator will be expected to be ready to commence grain haulage operations on 1 July 2009 (or such other date as agreed between the parties or as directed by the Director General) and to offer grain haulage services on the NSW Branchline Network for the Operating Period. The Director General will view favourably any proposals that continue services beyond the defined Operating Period.

### 2.2 NSW Branchline Network

The Branchline Operator will be expected to provide commercial grain haulage services on the NSW Branchline Network, using the mainline network only where necessary to reach the most convenient hub (**Hub**) for the deposit of grain or to reposition Assets.

For the purposes of this EOI invitation, the NSW Branchline Network is deemed to consist of lines that service silos at the following locations:

Silo location	Most Likely Hub (see also section 2.5)
Boree Creek	Junee
Henty West	Junee
Koorawatha	Junee
Lockhart	Junee
Milbrulong	Junee
Albert	Parkes
Armatree	Parkes
Balladoran	Parkes
Combara	Parkes
Coonamble	Parkes
Curban	Parkes
Eumungerie	Parkes
Gilgandra	Parkes
Gular	Parkes
Tottenham	Parkes
Trundle	Parkes
Warren Garner	Parkes
Cowra	Temora
Goolgowi	Temora
Greenethorpe	Temora

Silo location	Most Likely Hub (see also section 2.5)
Hillston	Temora
Kikoira	Temora
Koorawatha	Temora
Lake Cargelligo	Temora
Maimaru	Temora
Merriwagga	Temora
Naradhan	Temora
Noonbinna	Temora
Tabbita	Temora
Tullibigeal	Temora
Ungarie	Temora
Youngareen	Temora
Crooble	Werris Creek
Croppa Creek	Werris Creek
Garah	Werris Creek
Milguy	Werris Creek
North Star	Werris Creek
Weemelah	Werris Creek
Burren Junction	Werris Creek
Cryon	Werris Creek
Merah North	Werris Creek
Merrywinebone	Werris Creek
Walgett	Werris Creek
Wee Waa	Werris Creek
Culgoora	Werris Creek

### 2.3 Services Outside the NSW Branchline Network

The Branchline Operator may also be required to service grain silos located outside the NSW Branchline Network if the lines servicing those grain silos become unsuitable for 81 Class locomotives. Throughout the Operating Period new or re-opened sites across the branchline network may arise, to which the Branchline Operator should have the ability to service.

### 2.4 No Guarantee on Track Condition

The NSW Government does not guarantee to maintain the condition of the NSW Branchline Network at the current standard or to keep all of the existing NSW Branchline Network open

for the duration of the Operating Period. Further information about the NSW Mainline and Branchline Network is available at <http://www.ric.nsw.gov.au>

Whilst Government would view operation of all available branchlines favourably, respondents may wish to indicate selected lines (or sites) to which it is prepared to offer services. In such circumstances, respondents should indicate the proportion of the asset base available from Government that would be required for the task.

## 2.5 Hubs

The Branchline Operator will be free to select Hubs that best meet the business purpose provided only that Hubs are suitable places for transferring grain from the NSW Branchline Network to trains servicing the mainlines. It should be noted that the Hubs presented above are GrainCorp sub-terminal points but a Hub can be anywhere other than Newcastle and Port Kembla ports where:

- a. it is possible to tip grain for re-loading; or
- b. wagons can be transferred between branchline and mainline operators.

The Branchline Operator will be expected to enter into commercial arrangements with the owners of grain dumping facilities or to make alternative arrangements for cycling wagons at Hubs.

## 2.6 Track Access

The Branchline Operator will be expected to negotiate track access agreements with the track owner. The rate of access charges and conditions of access are listed at <http://www.artc.com.au>

## 2.7 No Guarantee of Supply

While the average yield of the NSW harvest is 5-6 million tonnes, the NSW Government cannot guarantee the supply of grain that will be available for transport at any particular location on the NSW Branchline Network, or at any particular time, or to offer any compensation if the supply of grain for transport does not meet the Branchline Operator's expectations. The Branchline Operator will be expected to assume the commercial risk associated with an under-supply or over-supply of grain.

## 2.8 No Support from Director General

The Director General will not provide any financial support, or business guarantees, or any form of preferential treatment to the Branchline Operator.

## 2.9 Rail Safety Accreditation

The Branchline Operator must be accredited by the NSW Independent Safety and Reliability Regulator to operate trains in NSW before the commencement of services.

## 2.10 Performance Guarantee

The Branchline Operator will be expected to agree legally enforceable performance guarantee(s) with the Director General, NSW Ministry of Transport before transfer of control over the Assets.

The Branchline Operator should propose some performance guarantees for the Director General to consider.

### **3 THE ASSETS**

#### **3.1 Locomotives and Grain Wagons**

On 1 July 2009 (or such other date as agreed between the parties or as directed by the Director General) the Director General intends to procure the transfer of control of 18 x 48 Class locomotives and 180 grain wagons at no cost to the Branchline Operator.

#### **3.2 Consist and Location of the Assets**

The Director General will deliver:

- a. 2 x branchline trains, each consisting of 4 x 48 Class locomotives and 40 grain wagons, to an appropriate railway facility at Werris Creek by 20 June 2009;
- b. 2 x branchline trains, each consisting of 4 x 48 Class locomotives and 40 grain wagons, to an appropriate railway facility at Parkes by 20 June 2009; and
- c. a further 2 x 48 Class locomotives and 20 grain wagons to a location on the NSW Branchline Network agreed between the parties by 20 June 2009.

#### **3.3 Condition of the Assets**

The Director General warrants only that the Assets will be delivered to the Branchline Operator in operational working order. [The Director General will provide short-listed applicants with serial numbers of the Assets to be transferred and the opportunity to inspect the Assets in situ before the transfer is finalised.]

#### **3.4 Maintenance, Upgrade and/or Replacement of the Assets**

The Branchline Operator will be responsible for all Asset maintenance costs after transfer. The Branchline Operator can upgrade or replace the Assets within the Operating Period at their own expense.

#### **3.5 Retention of the Assets**

The Branchline Operator may not transfer control (or dispose) of any or all of the Assets within the Operating Period without agreement of the Director General. In general, agreement will be conditional on the proceeds from disposal being reinvested in replacement Assets of equivalent or improved capacity.

#### **4 ALTERNATIVE PROPOSAL**

Respondents may submit an alternative proposal for the delivery of Branchline Train Operation Services if the alternative proposal:

- a. Provides increased surety that the Director General's objectives will be achieved; and/or
- b. Provides better value for the Director General.

## 5 PROPOSED PROCUREMENT PROCESS AND EOI PROCESS

This document provides a general outline of each phase of the procurement process (**Procurement Process**) for the provision of Branchline Train Operation Services and sets out the process by which organisations may apply during the EOI phase of the Procurement Process (**EOI Process**).

A more detailed overview of the proposed Procurement Process and each phase of that process is set out in sections 5.2 and 5.3 of this document.

### 5.1 No Process Contract

- a. This document, the receipt and assessment of an EOI submitted pursuant to this document and any other conduct or statement of the Director General or any of its employees, agents or officers in the course of the Procurement Process:
  - (i) does not constitute an offer to contact or an invitation to offer in respect of the provision of Branchline Train Operation Services;
  - (ii) other than as expressly set out in this section 5, is not intended to create:
    - a. a binding undertaking of any kind by the Director General (including without limitation, any quasi-contractual rights, promissory estoppel or rights with a similar legal basis) in respect of the provision of Branchline Train Operation Services or the Procurement Process; or
    - b. any other legal relationship between the Director General and any person considering submitting an EOI or any Respondent; and
  - (iii) notwithstanding paragraph (b) below, does not necessarily indicate an intention by the Director General to enter into any contract for the provision of Branchline Train Operation Services.
- b. Each person considering submitting an EOI and each Respondent acknowledges that no legal relationship can arise (at law or in equity) in respect of the provision of Branchline Train Operation Services unless and until formal contractual arrangements with the Director General have been executed and all necessary Ministerial consents have been obtained.

### 5.2 Phases Of Procurement Process

The Procurement Process will be divided into the following phases as outlined below:

#### 5.2.1 Phase 1: EOI Process.

EOIs will be assessed based on the evaluation criteria outlined in section 5.4 of this document (**Evaluation Criteria**). The Ministry may also undertake structured interviews, following the lodgement of EOIs, but is not obliged to do so.

The Ministry will short list Respondents based on its assessment of their respective EOIs.

All Respondents who submit an EOI will be advised in writing of the outcome of their submission and whether or not they have been short-listed. Short listed Respondents may be asked to proceed to Phase 2 of the Procurement Process.

#### 5.2.2 Phase 2: RFT or Negotiation Process

Depending on the industry response to Phase 1, the Ministry intends to invite shortlisted Respondents to submit a response to a Request For Tender process (RFT) or to open negotiations directly with shortlisted organisations.

Further details regarding the RFT Process and the evaluation criteria applying to it will be provided in the brief to be issued by the Director General to the short-listed Respondents.

#### 5.2.3 Phase 3: Evaluation, Clarification and Contract Finalisation

Based on its evaluation of the submissions received in Phase 2, the Director General intends to award an organisation (**Preferred Respondent**) with "preferred respondent status" and proceed to the negotiation of the New Contract with the Preferred Respondent.

If the Director General determines, in the course of negotiations with the Preferred Respondent, that those negotiations are not likely to result in the execution of a New Contract between the Director General and the Preferred Respondent, the Director General reserves the right at that time to:

- a. cease negotiations with the Preferred Respondent and award preferred respondent status to an alternative respondent to the RFT and proceed to negotiate the terms of a New Contract with that alternative respondent as the Preferred Respondent; or
- b. terminate the process.

The New Contract is proposed to be for an initial period of 5 years which may be extended by the Director General at its discretion for further periods. However, the total period of the New Contract, as extended, may not exceed 7 years.

The Director General will notify each unsuccessful Respondent in the RFT Process of the execution of the New Contract and Respondents will be given an opportunity to request a briefing in relation to the Procurement Process.

### 5.3 Timetable

The indicative timetable for the Procurement Process is as follows:

APPROXIMATE DATE	APPROXIMATE TIMING/ DATES
<b>PHASE 1</b>  <b>3 November 2008</b>  <b>13 November 2008</b>  <b>24 November 2008</b>  <b>8 December 2008</b>	Release of this document  Briefing Session  Closing date for submission of EOI  Notification of short listed Respondents
<b>PHASE 2</b>  <b>17 December 2008</b>	Release of RFT or Start of Negotiations
<b>PHASE 3</b>  <b>13 February 2009</b>	Award of New Contract

The above timetable:

- a. is an estimate of the approximate dates for each phase of the Procurement Process;
- b. does not create an obligation on the part of the Director General to take any action on any relevant date and does not constitute a representation that any action will be taken on any date; and
- c. may be varied by the Director General at any time at its discretion and the Director General may notify affected Respondents of a variation to the timetable but is not obliged to provide any reasons for the variation.

### 5.4 Evaluation Criteria

The Evaluation Criteria are provided to assist prospective Respondents in assessing the suitability of their EOIs and in preparing their EOIs in accordance with the Director General's requirements. Respondents should note particularly that the Director General has defined the service requirement without saying **how** those services should be delivered. The Director General will evaluate each response in terms of the confidence the Respondent can provide that the required services will actually be delivered. Respondents should provide sufficient detail in their response to allow the Director General to make that judgement.

All EOI responses submitted in response to this document will be assessed and evaluated using the following 4 stage process:

Stage	Evaluation Criteria and Explanation
<b>Stage 1</b>	<p><b>Did the Respondent meet the information requirements?</b></p> <p>The Director General will review the EOI (including supporting documentation) to confirm that the Respondent has provided the documents or material referred to in the checklist in Appendix A Information Requirements and Checklist.</p> <p>If a Respondent does not provide the information in the format required or the information provided is incomplete in any way, the Respondent's EOI response may be rejected in the Director General 's absolute discretion.</p>
<b>Stage 2</b>	<p><b>Did the Respondent meet the Compliance and Disclosure Requirements?</b></p> <p>The Director General will review each EOI to ensure that the Respondents have met the Compliance and Disclosure Requirements listed in section 5.5.</p> <p>Stage 2 test will be a “requirements met – yes/no” test.</p> <p>If a Respondent does not satisfy all the Compliance and Disclosure Requirements, the Respondent's EOI may be rejected in the Director General's absolute discretion.</p>
<b>Stage 3</b>	<p><b>Rank EOI Responses based on Qualitative Requirements</b></p> <p>Using the Qualitative Requirements listed in section 5.6, the Director General will assess and rank all EOIs that have satisfied stages 1 and 2 of the EOI Process and determine a short list of Respondents.</p>
<b>Stage 4</b>	<p><b>Notification of short listed Respondents</b></p> <p>The Director General will notify each Respondent of the outcome of its EOI, that is, whether the Respondent has been short listed or whether the Respondent has been unsuccessful.</p>

## 5.5 Compliance and Disclosure Requirements

The information required in relation to each Compliance and Disclosure Requirement is set out in **Appendix B**.

The Compliance and Disclosure Requirements are as follows.

Compliance and Disclosure Requirements	Explanation
<b>Rail Safety Accreditation</b>	Accreditation as a Railway Transport Operator is required to deliver the Branchline Train Operation Services.

## 5.6 Qualitative Requirements

Respondents must demonstrate their capabilities in respect of each of the Qualitative Requirements described in this section. The information required in relation to each Qualitative Requirement is set out in **Appendix C**.

Qualitative Requirements	Explanation
<b>Operational Management</b>	Operational Management provides the Director General with confidence that the Respondent understands the Director General's objectives, the risks and obligations associated with the provision of Branchline Train Operation Services, and has a robust business plan that provides the Director General with confidence that the Respondent can deliver the required Branchline Train Operation Services for the required operating period.
<b>Organisational Capacity</b>	Organisational Capacity provides the Director General with confidence that the Respondent has the skills and resources required to provide Branchline Train Operation Services for five years.
<b>Previous Experience</b>	Previous experience provides the Director General with confidence that the Respondent understands the business of transport logistics and above rail operations and has the experience required to effectively deliver Branchline Train Operation Services.

## 5.7 Briefing Session

Respondents are invited to attend a briefing session (**Briefing Session**) to be held between 10:00 am and 12:00 pm on 13 November at the Ministry of Transport, Level 21, 227 Elizabeth Street, Sydney.

Respondents must register their intention to attend and the number of persons attending by 6 November 2008 by contacting the person specified in section 5.12.

## 5.8 Lodgement and Closing Time

Respondents must lodge at least three bound copies of their EOI and all pages of the EOI must be numbered sequentially. One copy must be signed by an officer of the Respondent (**Master Copy**). The Master Copy will prevail if there are discrepancies between the copies.

The EOI copies, and any supporting documentation, must be contained in a sealed envelope marked "Confidential – EOI for the Operation of Branchline Train Operation Services" and lodged by 4:00 pm Eastern Standard Summer Time ESST on Monday, **24 November 2008 (Response Closing Time)** at the following address:

Tender Box  
NSW Ministry of Transport  
Level 21,  
227 Elizabeth Street  
SYDNEY NSW 2000

## 5.9 Grounds for Exclusion

Any EOI which:

- a. is not submitted before the Response Closing Time; or
- b. is incomplete at the Response Closing Time;

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the EOI.

## 5.10 Extension of Response Closing Time

The deadline set for lodgment of Responses (the Response Closing Time) may be extended only by written notice by the relevant contact person.

Any extension notice will be given only to those persons who have been given a copy of this EOI document by the Director General.

## 5.11 Validity Period

Responses will, subject to the processes described below, remain open and be irrevocable until 120 days after the Response Closing Time (or, if extended, the date on which that period of extension expires), or until such other time as may be indicated by the relevant contact person in writing (**Validity Period for Responses**).

## 5.12 Enquiries

All enquiries and communications concerning this document or the EOI Process must be made in writing by no later than 9.00 am Eastern Standard Summer Time ESST on Monday 17 November 2008 and addressed to:

Grain Asset EOI Contact Officer  
[graineoi@transport.nsw.gov.au](mailto:graineoi@transport.nsw.gov.au)

Contact must not be made with any other officers of the Director General in connection with the Procurement Process.

### 5.13 Further Information To Be Provided By The Respondents

The Director General reserves the right, in its absolute discretion, to seek clarification of EOIs by making a written request and/or by conducting structured interviews. However, Respondents should submit EOIs that are sufficiently detailed to enable provisional short-listing by the Director General without further reference to the Respondent. Respondents should not rely on being invited to structured interviews, or further clarifications, to present the relevant information.

In compiling their EOI, Respondents should assume that the Director General knows nothing about them or, if the Respondent is a consortium, any of their consortium members.

The Director General reserves the right to reassess an EOI following an interview with the relevant Respondent and to alter the respective ranking of EOIs as a result of that reassessment.

### 5.14 Addenda

At any time during the period which precedes 5 business days before the Response Closing Time, the Director General may issue addenda to this EOI, modify or clarify it in any manner, including as a response to any question from a potential Respondent (**Potential Respondent**).

The Director General may also issue addenda at a later time, subject to the Response Closing Time being extended by an appropriate period.

Any addenda will be in writing and consecutively numbered, and will be sent to each Potential Respondent to which this EOI has been issued, provided that person has not advised that it will not be lodging a response.

Such addenda will become part of this EOI document and must be recorded by a Respondent in its Declaration.

No explanation or interpretation of this EOI may be relied upon by a Respondent as an amendment to this document unless given in the form of an addendum.

## 6 GENERAL TERMS AND CONDITIONS

### 6.1 Disclaimer

Each Respondent, by lodging an EOI in response to this document, acknowledges and agrees with the Director General that:

- a. the Director General and any of its officers, employees, consultants, contractors and agents make no representation or warranty as to the accuracy or completeness of information, statements and representations contained in this document, including any appendices, or other documents referred to in this document (**EOI Information**);
- b. there may be other documents and information of which the Director General and any of its officers, employees, consultants, contractors or agents are aware and which may be relevant to the provision of Branchline Train Operation Services, but which have not been provided or to which no reference has been made in, or in connection with, this document;
- c. the Director General and any of its officers, employees, consultants, contractors or agents will not be liable for any loss, cost or expense of any kind suffered or which may be suffered by the Respondent arising directly or indirectly from any inaccuracy or incompleteness of the EOI Information; and
- d. the Respondent has made, and relied on, its own independent assessment of the suitability of the EOI Information for the purpose of lodging its EOI and as to the attributes of, and risks associated with, participation in the Procurement Process and the provision of Branchline Train Operation Services.

### 6.2 NSW Government Guidelines

Potential Respondents and Respondents must comply with the **Code of Practice: NSW Government Procurement** and the **Code of Tendering: NSW Government Procurement (Guidelines)**. Lodgement of a Response will itself be an acknowledgment and representation by the Respondent that it:

- a. is aware of the requirements that the Guidelines impose on it;
- b. will comply with the Guidelines; and
- c. agrees to provide periodic evidence, where required, of compliance with the Guidelines and access to all relevant information to demonstrate compliance for the duration of any subsequent transaction documents that may be negotiated.

### 6.3 Acceptance and Rejection of EOI and Short Listing

The Director General has no obligation to accept, and may reject, any or all EOIs received and Respondents have no right of appeal against any decision of the Director General in the

EOI process including in assessing EOIs and short listing Respondents. The acceptance of an EOI does not oblige the Director General to proceed to issuing an RFT.

#### 6.4 Freedom of Information

Responses and any other information provided by Respondents may be subject to the provisions of the Freedom of Information Act 1989 (NSW) (**FOI Act**). The FOI Act gives to members of the public rights of access to documents of the NSW Government and its agencies.

All or part of the information contained in any responses may be disclosed to third parties, if there is a requirement to do so under the provisions of the FOI Act.

Any information given to the Director General by a Respondent that is commercially sensitive or confidential should be clearly marked "Commercial and Confidential".

That notation must not be used unless the information is genuinely confidential. Marking information as "Commercial and Confidential" will not necessarily prevent disclosure of the information in accordance with the FOI Act.

Any decision to release information will be determined by the requirements of the FOI Act. Respondents will not be entitled to make any claim in relation to any actions taken in relation to, or under, the FOI Act.

#### 6.5 Costs Borne By Respondents

All costs and expenses incurred by the Respondent in any way associated with its EOI and its participation in the EOI Process or any subsequent phase of the Procurement Process, including (but not limited to) attendance at meetings, discussions, interviews, etc, and providing any additional information required by the Director General, will be borne entirely and exclusively by the Respondent.

#### 6.6 Ownership of Documents and Material

EOIs and any other documents or material submitted by a Respondent in connection with the EOI Process become the property of the Director General on submission.

The Director General will not be required to return any documents, materials, articles and information lodged by the Respondent as part of, or in support of, its EOI at the conclusion of the EOI evaluation process.

The Director General reserves the right to copy, adapt, modify, disclose (including without limitation for the purposes of an audit, governmental and Parliamentary reporting requirements and provision to Parliament or a Parliamentary Committee or to otherwise utilise any EOI or other documents and materials submitted by any Respondent and, by submitting an EOI, Respondents are deemed to consent to this usage.

Such intellectual property rights as may exist in information contained in this document or any other documents issued by or on behalf of the Director General for the purposes of the EOI Process will remain the property of the Director General, but the Director General

licenses Respondents to use any such information for the purpose only of compiling their EOIs.

### 6.7 Canvassing Director General's or NSW Government's Employees

If a Respondent, whether personally or by an employee or agent, approaches the Director General or any of its officers, employees, consultants, contractors and agents (or any officers, employees, consultants, contractors and agents of the NSW Government) in relation to the Procurement Process with a view to influencing the acceptance of the Respondent's EOI, or its assessment and ranking, then the Director General may in its discretion reject the EOI from consideration regardless of whether such approach has any influence on the acceptance and ranking or assessment of such EOI.

### 6.8 Change in Identity or Circumstance of the Respondent

The identity of the Respondent is fundamental to the Director General. The Respondent must be the person, persons, corporation or corporations named as the Respondent.

The Director General may reject any EOI, in the Director General's discretion, if:

- a. anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the Corporations Act 2001 (Cth) (**Corporations Act**);
- b. in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members or change of management or change in control of a consortium member as referred to above; or
- c. the Respondent or, where the Respondent is a consortium, any consortium member, becomes, or is deemed to be insolvent.

For the purposes of paragraph (c) above, the circumstances in which an Respondent or consortium member will be deemed to be insolvent includes where an administrator, receiver or other controller is appointed to all or any of its assets or undertaking or where an application, order or resolution is made or passed for its winding up, administration or dissolution.

### 6.9 Director General's Rights to Amend Process, Exclude EOIs, etc

Without limiting its rights at law or otherwise and in addition to any other rights of the Director General as set out in this section or elsewhere in this document, the Director General reserves the right at any time and from time to time, at its discretion, to:

- a. consider all possible options with regard to the provision of Branchline Train Operation Services and to elect to cancel, vary, supplement, supersede or replace the Procurement Process (in whole or in part) by notice in writing to Respondents and if the Director General cancels, varies (including by deciding not to conduct a further phase or varying the information requirements, timing, structure, or any other

- matter), supplements, supersedes or replaces the Procurement Process then no Respondent has any recourse against the Director General including for claims for any costs or expenses incurred;
- b. require additional information or clarification from any Respondent or anyone else or provide additional information or clarification in relation to any matter;
  - c. evaluate and rank all EOIs as the Director General sees appropriate in the context of the Director General's requirements for Branchline Train Operation Services, including determining the weighting or significance to be attached to each Qualitative Requirement;
  - d. reassess any EOI following any interview with the relevant Respondent and to alter the respective ranking of EOIs and short list of Respondents as a result of its reassessment;
  - e. call for new EOIs and/or allow persons to tender in any subsequent phase of the Procurement Process who were not short listed as Respondents pursuant to the EOI Process;
  - f. consider and accept or reject any EOI that does not comply with this document;
  - g. reject a Respondent's EOI where the Respondent has failed to comply with the Requirements of the EOI Process;
  - h. in connection with the preparation or lodgement of an EOI or otherwise in the course of the Procurement Process, reject a Respondent's EOI that otherwise complies with the requirements of this document where that Respondent, its consortium members or any of their officers, employees, agents or advisers:
    - (i) engage in any collusive tendering, anti competitive conduct or any other similar conduct with any other Respondent;
    - (ii) make false or misleading claims; or
    - (iii) breach any applicable laws regarding the offering of inducements,
  - i. negotiate a contract with any Respondent and/or waive, vary or negotiate any obligation of any Respondent under any consequent contract;
  - j. allow or not allow a "related body corporate" within the meaning of the Corporations Act to substitute the original Respondent in the EOI and subsequent phase of the Procurement Process; and
  - k. publish the names of Respondents, including those who are invited to participate in any future phase of the Procurement Process, if any.

## 6.10 Confidentiality

Each Respondent will be required to maintain confidentiality with respect to its own EOI, and must not seek details of competing EOIs.

The Respondents must not:

- a. disclose the contents of this document or any other information provided in connection with it; or
- b. make any public statement or announcement in connection with the provision of Branchline Train Operation Services or the Procurement Process without the prior written consent of the Director General.

## 6.11 Currency of Information

Each Respondent must promptly inform the Director General of any material change to any information provided by the Respondent in its EOI or of any event that would potentially have an impact on the financial position and capacity of the Respondent or of any member of the Respondent's consortium.

## 6.12 Conflicts of Interest

The Director General has protocols in place to deal with conflicts of interest in relation to the EOI Process and subsequent phases of the Procurement.

Respondents must notify Director General promptly upon becoming aware of any conflict of interest arising in respect of the Respondent, any of its consortium members or the employees, agents, consultants or contractors of the Respondent or any of its consortium members.

If Director General determines that a conflict of interest has arisen, or is likely to arise, in respect of any particular Respondent, any of its consortium members or the employees, agents, consultants or contractors of the Respondent or any of its consortium members, then the Respondent must take whatever action is required by the Director General to resolve or manage that conflict of interest.

If the Respondent is unable or unwilling to resolve or manage the conflict of interest to the reasonable satisfaction of the Director General, the Director General may reject the Respondent's EOI and exclude the Respondent from the EOI Process and the subsequent phase of the Procurement Process.

## 6.13 Applicable laws

The law applying in New South Wales applies to this document and the Procurement Process. Each Respondent must comply with applicable laws in preparing and lodging its EOI and taking part in the Procurement Process.

#### 6.14 Language of EOIs

EOIs (including all attachments and supporting material), must be written in English. Unless otherwise specified, monetary amounts must be specified in Australian dollars and must indicate whether they are inclusive or exclusive of GST.

## 7 DEFINED TERMS

In this document, the following terms have the meanings specified below.

**Assets** has the meaning given to it in section 1.3.

**Branchline Operator** has the meaning given to it in section 1.3.

**Branchline Train Operation Services** has the meaning given to it in section 1.3.

**Briefing Session** has the meaning given to it in section 5.7.

**Compliance and Disclosure Requirements** has the meaning given to it in section 5.5.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Director General** has the meaning given to it in section 1.2.

**EOI** has the meaning given to it in section 1.3.

**EOI Information** has the meaning given to it in section 6.1(a).

**EOI Process** has the meaning given to it in section 5.

**ESST** has the meaning given to it in section 5.8.

**Evaluation Criteria** has the meaning given to it in section 5.2.1.

**FOI Act** means the Freedom of Information Act 1989 (NSW).

**Guidelines** has the meaning given to it in section 6.2.

**Hub** has the meaning given to it in sections 2.2 and 2.5.

**Master Copy** has the meaning given to it in section 5.8.

**New Contract** has the meaning given to it in section 1.3.

**New Works Deed** has the meaning given to it in section 1.2.

**NSW Branchline Network** has the meaning given to it in sections 1.3 and 2.2.

**NSW Government** means the government of New South Wales.

**Operating Period** has the meaning given to it in section 1.3.

**Phase 1** has the meaning given to it in section 5.3.

**Phase 2** has the meaning given to it in section 5.3.

**Potential Respondent** has the meaning given to it in section 5.14.

**Preferred Respondent** has the meaning given to it in section 5.2.3.

**Procurement Process** has the meaning given to it in section 5.

**Qualitative Requirement** has the meaning given to it in section 5.6.

**Respondent** means any organisation responding to this EOI.

**Response Closing Time** has the meaning given to it in section 5.8.

**RFT Process** has the meaning given to it in section 5.2.2.

**Validity Period for Response** has the meaning given to it in section 5.11.

**Works Deed (Grain)** has the meaning given to it in section 1.2.

## 8 APPENDIX A - INFORMATION REQUIREMENTS AND CHECKLIST

### 8.1 EOI Format

Respondents are required to provide the information listed in Appendices B and C of this document.

Respondents should also note the following with respect to the required format of the EOI:

- a. EOI responses should be submitted in A4 format;
- b. EOI responses should be no more than 20 pages in total (excluding attachments to the EOI response).

### 8.2 EOI Checklist

Section	Description of Required Response	Included Y/N
<b>B.1</b>	Compliance and Disclosure Requirements: Rail Safety Accreditation	
<b>C.1</b>	Qualitative Requirements: Management Philosophy	
<b>C.2</b>	Qualitative Requirements: Organisational Capacity	
<b>C.3</b>	Qualitative Requirements: Previous Experience	

**9 APPENDIX B – COMPLIANCE AND DISCLOSURE REQUIREMENTS**

9.1 B.1 – Compliance and Disclosure Requirements: Rail Safety Accreditation

<b>Compliance and Disclosure Requirements</b>	<b>Explanation</b>
<b>Rail Safety Accreditation</b>	Accreditation as a Railway Transport Operator is required to deliver the Branchline Train Operation Services.

To operate train services in NSW, an organisation must be accredited as a Railway Transport Operator by the NSW Independent Safety and Reliability Regulator or be accredited as a Railway Transport Operator in another Australian State. (For further information refer to [www.transportregulator.nsw.gov.au](http://www.transportregulator.nsw.gov.au)).

The Respondent must either:

- a. Provide evidence of accreditation as a Railway Transport Operator; or
- b. Undertake to gain accreditation as a Railway Transport Operator before 1 July 2009.

## 10 APPENDIX C - QUALITATIVE EVALUATION CRITERIA

### 10.1 C.1- Qualitative Requirement: Operational Management Philosophy

QUALITATIVE REQUIREMENT	EXPLANATION
<b>Operational Management</b>	Operational Management provides the Director General with confidence that the Respondent understands the Government objectives, the risks and obligations associated with the provision of Branchline Train Operation Services, and has a robust business plan that provides the Director General with confidence that the Respondent can deliver the required services for the required operating period.

The Ministry of Transport is seeking innovative private sector solutions to achieve the Government objectives. In not more than **10 pages**, each Respondent should provide sufficient information for the Director General adequately to assess the operational management philosophy of the Respondent in providing the Branchline Train Operation Services.

The Respondent should provide details of:

- a. An outline business plan for the Operating Period (**Business Plan**) that:
  - (i) Describes the proposed organisational structure and governance arrangements;
  - (ii) Identifies the key stakeholders;
  - (iii) Identifies the key customers and other contractual arrangements the Branchline Operator will have in place by 1 July 2009 (or such other date as agreed between the parties or as directed by the Director General);
  - (iv) Broadly identifies the Branchline Operator staff requirements and recruitment plan;
  - (v) Broadly describes the proposed rollingstock maintenance arrangements; and
  - (vi) Broadly describes the annual capital requirements.
- b. A brief description of any alternative approach the Respondent would be willing to offer that might provide the Director General with a better value outcome or greater certainty of achieving the Government's objectives.

- c. A description of how the respondent intends to provide surety of service delivery over the entire Operating Period (including the Respondent's preferred mechanism for providing the Director General with legal and financial guarantees);
- d. A commitment to service all of the listed Branchline Network sites or a list of sites that will not be serviced; and
- e. A description the key business risks and proposed mitigation strategies for each risk (including for any alternative approach that may be offered).

10.2 D.2 - Qualitative Requirement: Organisational Capacity

Qualitative Requirement	Explanation
<b>Organisational Capacity</b>	Organisational Capacity provides the Director General with confidence that the Respondent has the skills and resources required to provide Branchline Train Operation Services for 5 years.

Respondents should provide sufficient information for the Director General adequately to assess the operational capacity of the Respondent and their capability to deliver Branchline Train Operation Services in accordance with Director General's objectives.

The Respondent should provide the following information:

- a. Provide the identity of the Respondent including business and trading names, details of corporate structure, ABN/ACN, registered office, head office address, place of incorporation;
- b. Details of the Respondent's corporate and management structure (together with organisation chart) which the respondent proposes to put in place for the provision of Branchline Train Operation services;
- c. Full contact details for the person nominated by the Respondent as the point of contact for the purpose of the Procurement Process;
- d. Provide a declaration of any actual or potential conflict of interest;
- e. Provide information on their financial strength including:
  - (i) financial statements for the past three years (or other equivalent financial information);

- (ii) description of the ownership structure and associated entities; and
- (iii) description of the level and type of any parent support (e.g. parent company guarantees) expected to be provided to the Director General.

More detailed financial due diligence assessment of the preferred tenderer will be carried out during Phase 2 of the Procurement Process.

### 10.3 D.3 - Qualitative Requirement: Previous Experience

Qualitative Requirement	Explanation
<b>Previous Experience</b>	Previous experience provides the Director General with confidence that the Respondent understands the business of transport logistics and above rail operations and has the experience required to effectively deliver Branchline Train Operation Services.

In not more than **2 pages**, Respondents should provide sufficient information for the Director General adequately to assess the previous experience of the Respondent in providing similar services.

The Respondent should provide details of:

- a. Previous and current management of above rail operations (including type, profile, scope of services);
- b. Previous and current rollingstock fleet management (including location, scale and types); and
- c. Experience in transport logistics (including grain or other commodities).