

REQUEST FOR PROPOSALS

BID OPENING LOCATION: Eureka Springs City Hall
44 S. Main Street
Eureka Springs, AR 72632
Thursday, June 17, 2010 at 2:00 pm CST

DELIVERY/MAIL: Eureka Springs City Hall
44 S. Main Street
Eureka Springs, AR 72632

Sealed Proposals, subject to the Conditions on Page 3 of this bid invitation and to the Federal Clauses starting on Page 9, will be received by the City of Eureka Springs Transit System (ESTS) at 44 S. Main Street, Eureka Springs, AR until **2:00 pm CST on Thursday, June 17, 2010** for the design and fabrication of at least ten (10) passenger shelters. The final number of shelters to be purchased will be dependent on cost and the grant approval process. For this purchase, the City of Eureka Springs Transit System has been granted \$55,000 under the American Reinvestment and Recovery Act of 2009 (ARRA). ESTS is looking for unique designs that complement our transit vehicles, that are compatible with our history as America's Victorian Village and that provide shelter from the elements without intruding upon or unnecessarily obstructing the natural and architectural features of this community. (Representative photos taken from around the community are attached)

Proposals must be submitted on this form (along with as many additional sheets as may be necessary to fully describe the proposal) or they will be rejected. Late proposals and unsigned proposals will not be considered. **The words “PASSENGER SHELTER PROPOSAL” shall be marked clearly on the envelope.**

The award to be let under this solicitation is subject to a financial assistance arrangement between the City of Eureka Springs and the Arkansas Highway and Transportation Department, along with the Federal Transit Administration. The successful contractor will be required to comply with all applicable equal opportunity and disadvantaged business enterprise regulations and will be required to certify that it is not ineligible for a federally assisted contract.

NOTICE OF NONDISCRIMINATION: The **EUREKA SPRINGS TRANSIT SYSTEM (ESTS)** complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, **ESTS** does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in the admission, access to and treatment in **ESTS's** programs and activities, as well as **ESTS's** hiring or employment practices. Complaints of alleged

discrimination and inquiries regarding the **ESTS** nondiscrimination policies may be directed to **Lamont Richie, Transit Director, 137 W. Van Buren, Eureka Springs, AR 72632, telephone 479-253-9572, or to the following email address: lrichie@cityofeurekasprings.org.**

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

In compliance with this RFP and subject to all the Conditions thereof, the undersigned offers and agrees to furnish any and all items upon which prices are quoted, at the price set opposite each item.

Company Name: _____

Name (Type or Print): _____

Address: _____

Title: _____

Phone: _____ Fax: _____

City: _____ State: _____ Zip (plus 4) : _____

E-Mail: _____

Federal Tax ID or Social Security No.: _____

Signature: _____

DUNS number: _____

CCR Number (and expiration date): _____

Headquarters (if different from above): _____

Contact Person and address (with Zip+4): _____

Signature must be legible, original (not photocopied) and in ink.

CONDITIONS

1. **ACCEPTANCE AND REJECTION:** The Eureka Springs Transit System (ETST) reserves the right to reject any or all proposals, to accept proposals in whole or in part (unless otherwise indicated by Proposer, to waive any informalities in proposals received, to accept proposals on materials or equipment with variations from specifications where efficient of operation will not be impaired, and to select a proposal that will best serve the interest of ESTS and the City of Eureka Springs.
2. **PRICES:** Unless otherwise stated in this RFP, the following will apply: (1) the unit price shall be bid, (2) the price should be stated in units of quantity specified (feet, each, lbs., etc.), (3) the price must be F.O.B. destination specified in bid, (4) price must be firm and not subject to escalation, (5) bid must be firm for acceptance for 60 days from bid opening date. Discounts from bid price will not be considered in making awards.
3. **TERM OF PURCHASE AGREEMENT:** The bid award prices subsequent to this bid shall be for the purchase of up to ten (10) units for a period commencing with the date of award through December 31, 2012. The final number of shelters to be purchased will be dependent on cost and the grant approval process.
4. **BID BONDS AND PERFORMANCE BONDS:** None required.
5. **TAXES:** ESTS is not exempt from Arkansas State Sales and Use Taxes, or local option city/county sales taxes, when applicable, and bidders are responsible to the State Revenue Department for such taxes. These taxes should not be included in bid prices, but where required by law, will be paid by ESTS as an addition thereto, and should be added to the billing to ESTS.
6. **“ALL OR NONE” BIDS:** Not applicable to this request for bids.
7. **BRAND NAME REFERENCES:** All brand name references in bid specifications refer to that commodity or its equivalent, unless otherwise stated in Bid Invitation. Bidder should state brand or trade name of item being bid, if such name exists.
8. **FREIGHT:** All freight charges should be included in bid price. Any change in common carrier rates authorized by the Interstate Commerce Commission will be adjusted if such change occurs after the bid opening date. Receipted common carrier bills that reflect ICC authorized rate changes must be furnished.
9. **SAMPLES, LITERATURE, DEMONSTRATIONS:** Samples and technical literature must be provided free of any charge within 14 days of ESTS request, and free demonstrations within 30 days, unless ESTS extends time. Failure to provide as requested within this

period may cause bid to be rejected. Samples, literature and demonstrations must be substantially the same as the item(s) being bid, unless otherwise agreed to by ESTS. Samples that are not destroyed will be returned upon request at bidder's expense. Samples from successful bidders may be retained for comparison with items actually furnished.

10. **GUARANTY:** Unless otherwise indicated in Bid Invitation, it is understood and agreed that any item offered or shipped on this bid shall be newly manufactured, latest model and design, and in first class condition; and that all containers shall be new, suitable for storage or shipment and in compliance with all applicable laws relating to construction, packaging, labeling and registration.
11. **BACKORDERS OR DELAY IN DELIVERY:** Backorders or failure to deliver within the time required may constitute default. Vendor must give written notice to ESTS, as soon as possible, of the reason for any delay and the expected delivery date. ESTS has the right to extend delivery if reasons appear valid. If reason or delivery date is not acceptable, vendor is in default.
12. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance by ESTS after delivery. Default in promised delivery or failure to meet specifications authorizes ESTS to cancel award or any portion of same, to reasonably purchase commodities or services elsewhere and to charge full increase, if any, in cost and handling to defaulting vendor. Applicable bonds may be forfeited.
13. **ETHICS:** "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a public contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business." (Arkansas Code, Annotated, Section 19-11-708).

REQUEST FOR PROPOSALS

Federal Transit Administration Grant Program

The Eureka Springs Transit System (ESTS) is seeking proposals to design, fabricate and deliver up to ten (10) passenger shelters. It is looking for unique designs that complement our transit vehicles, that are compatible with our history as America's Victorian Village and that provide shelter from the elements without intruding upon the natural and architectural features of this community. All submissions must take the following general conditions into consideration:

1. The primary goal of the passenger shelter program is to augment and improve the quality and appearance of street furniture on City streets. The passenger shelters must coordinate with and be complementary to the ESTS's transit vehicles and transit stop signage (See Attachments).
2. All components of the passenger shelters must be fabricated of high quality, durable and vandal-resistant materials. To the maximum extent possible, all surfaces of the passenger shelters that are accessible to the public must be graffiti resistant. ESTS shall be responsible for installation, benches and signage.
3. ESTS encourages the proposer to submit several design variations for consideration.
4. All shelters, when installed shall comply with the accessibility requirements of the Americans with Disabilities Act (ADA).
5. Each shelter shall be guaranteed against faulty workmanship and material for at least one (1) year from the date of delivery. During the guarantee period, the Vendor shall repair or replace any defective item at no cost to ESTS. Similarly, the finish shall be warranted for a minimum of three (3) years against, lifting, peeling or flaking.

6. **Shelter Specifications:**

a. The requirement and specifications below are meant to establish a minimum level of construction, materials and finish quality. Alternate materials and methods are acceptable if they meet or exceed the minimum requirements. All proposals shall be supported by detailed drawings and specifications, clearly showing dimensions, joining details, alloy, temper, finish and thickness of all members and components.

b. Vendor must adhere to all applicable requirements, including the Americans with Disabilities Act (ADA) along with all applicable federal, state, county, local and any other governing laws, regulations, ordinances, codes or

standards regarding amenities design.

c. General Dimensions

Shelters should generally have the following dimensions

Roof Length	6' to 8'
Roof Width	4' - 5'
Clear height inside	7'

d. Material and Design

The shelters shall be constructed of an aluminum frame assembly with a powder-coated finish. Finish color will be chosen from a standard color offering chart. It is important to ESTS that the design not obscure or obstruct the natural and environmental beauty of the community, the inclusion of side or rear walls is not important.

e. Framing

All structural frame connections shall be concealed. Fasteners shall be stainless steel bolts and lock washers. Self tapping connectors will not be accepted. Exposed fasteners shall match shelter finish.

f. Roof

The roof shall be gasketed and sealed to prevent water from leaking into the shelter. The roof shall be capable of supporting 40 pounds per square foot. While ESTS would prefer a hip roof with a standing seam, it is open to suggestions for other roof styles depending on the overall design and cost.

7. Evaluation and Award

a. Proposals will be evaluated using the following criteria:

Passenger shelter design

Describe your firms structural design specifications that you consider able to meet this RFP.

Passenger shelter maintainability and durability

Describe the details of how your shelters would be properly maintained. Describe the warranty(s) for your passenger shelters.

Number of Passenger shelters provided for \$55,000

Indicate the number of shelters that will be designed and fabricated for \$55,00

Ease of assembly and installation (ESTS is responsible for both assembly and installation)

Describe the assembly and installation process and the information will be provided to ESTS.

Experience and past performance

Provide information about your firms experience and provide three references within the last five years that can attest to your ability to accomplish the required tasks.

b. Review Committee

A committee comprised of the Mayor, the Chief of Police, the Transit Director, the Public Works Director and the City's Preservation Officer shall review all proposals and shall prioritize them in order from first to third. All proposals shall be judged on the criteria set forth above in 7(a). At that point, the recommendation of the Review Committee shall be submitted to the City's Historic District Commission (HDC) for its review and approval; and subject thereto, a recommendation shall be made to AHTD. No award will be made until approval has been received from both HDC and AHTD.

Contact Agent for Specifications

**Lamont Richie, Transit Director
Eureka Springs Transit System
137 W. Van Buren
Eureka Springs, AR 72632**

479-253-9572

479-253-8272 (fax)

lrchie@cityofeurekasprings.org

BID QUOTATION SHEET

Passenger Shelters

(All bid pricing shall be rounded to the nearest dollar (\$).)

QTY.	ITEM DESCRIPTION	UNIT PRICE	PRICE TOTAL
___	Passenger Shelters	\$	\$
	Subtotal	\$	\$
	Sales Tax	\$	\$
	Freight	\$	\$
	TOTAL	\$	\$

Best Delivery time* from receipt of order (number of calendar days): _____

*Delivery time will be considered when awarding this Bid.

Commodity Information: (You may attach additional sheets if necessary)

Manufacturer _____

Warranty _____

Aftermarket support _____

PLEASE NOTE: EACH PAGE SETTING FORTH THE REQUIRED FEDERAL CERTIFICATIONS AND CONTRACTUAL PROVISIONS MUST BE INITIALED. THERE WILL BE NO EXCEPTIONS. ANY PROPOSAL THAT DOES NOT COMPLY WITH THE REQUIREMENT WILL BE DISREGARDED.

**Federal Transit Administration Grant
REQUIRED FEDERAL CERTIFICATIONS
AND CONTRACTUAL PROVISIONS**

(For contracts for the procurement of goods other than rolling stock)

The Bidder shall comply with the following requirements. The term "System" shall mean the Eureka Springs Transit System. The term "Department" shall mean the Arkansas State Highway and Transportation Department.

Conflict of Interest: The Bidder hereby certifies that no employee, officer, or agent of the grantee shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: a) The employee, officer, or agent; b) Any member of his immediate family; c) His or her partner; or d) An organization which employs, or is about to employ, has a financial or other interest in the firm selected for award. The Agency's officers, employees or agents shall neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from Bidders, potential Bidders, or parties to sub-agreements.

Prohibited Interest: The Bidder hereby certifies that no member, officer, employee of the Agency during his or her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any bid award or the proceeds therefrom.

Fly America Requirements: The Bidder agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Bidders are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Bidder shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Bidder agrees to include the requirements of this section in all subcontracts that may involve international air transportation

Buy America: For any contract exceeding \$100,000, the Bidder agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Initials

Cargo Preference - Use of United States-Flag Vessels: The Bidder agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Bidder in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Energy Conservation: The Bidder agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Clean Water: For any contract exceeding \$100,000, the Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Bidder agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Lobbying: Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - **Bidders who apply or bid for an award of \$100,000 or more** shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

The undersigned [Bidder] certifies, to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an

employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)] (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Access to Records: The following access to records requirements apply to this Contract: Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Bidder agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Bidder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Bidder also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Bidder access to Bidder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. 2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Bidder agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Bidder, access to the Bidder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000. 3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Bidder agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Bidder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. 4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Bidder shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. 5. The Bidder agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. 6. The Bidder agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Bidder agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or

exceptions related thereto. Reference 49 CFR 18.39(i)(11). 7. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes: Bidder shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Bidder's failure to so comply shall constitute a material breach of this contract.

Clean Air: For any contract exceeding \$100,000, (1) the Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Bidder agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Recycled Products - Recovered Materials: For any contract exceeding \$10,000, the Bidder agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Obligation by the Federal Government: (1) The Purchaser and Bidder acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Bidder, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The Bidder agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts: (1) The Bidder acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Bidder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Bidder further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Bidder to the extent the Federal Government deems appropriate. (2) The Bidder also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Bidder, to the extent the Federal Government deems appropriate. (3) The Bidder agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination: **a. Termination for Convenience (General Provision)** For any contract exceeding \$10,000, the Eureka Springs Transit System may terminate this contract, in whole or in part, at any time by written notice to the Bidder when it is in the Government's best interest. The Bidder shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Bidder shall promptly submit its termination claim to Eureka Springs Transit System to be paid the Bidder. If the Bidder has any property in its possession belonging to the Eureka Springs Transit System, the Bidder will account for the same, and dispose of it in the manner the Eureka Springs Transit System directs. **b. Termination for Default [Breach or Cause] (General Provision)** If the Bidder does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Bidder fails to perform in the manner called for in the contract, or if the Bidder fails to comply with any other provisions of the contract, the Eureka Springs Transit System may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Bidder setting forth the manner in which the Bidder is in default. The Bidder will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Eureka Springs Transit System that the Bidder had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Bidder, the Eureka Springs Transit System, after setting up a new delivery of performance schedule, may allow the Bidder to continue work, or treat the termination as a termination for convenience. **c. Opportunity to Cure (General Provision)** The Eureka Springs Transit System in its sole discretion may, in the case of a termination for breach or default, allow the Bidder ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Bidder fails to remedy to Eureka Springs Transit System's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Bidder of written notice from Eureka Springs Transit System setting forth the nature of said breach or default, Eureka Springs Transit System shall have the right to terminate the Contract without any further obligation to Bidder. Any such termination for default shall not in any way operate to preclude Eureka Springs Transit System from also pursuing all available remedies against Bidder and its sureties for said breach or default. **d. Waiver of Remedies for any Breach** In the event that Eureka Springs Transit System elects to waive its remedies for any breach by Bidder of any covenant, term or condition of this Contract, such waiver by Eureka Springs Transit System shall not limit Eureka Springs Transit System's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract. **e. Termination for Convenience (Professional or Transit Service Contracts)** The Eureka Springs Transit System, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination. **f. Termination for Default (Supplies and Service)** If the Bidder fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Bidder fails to comply with any other provisions of this contract, the Eureka Springs Transit System may terminate this contract for default. The Eureka Springs Transit System shall terminate by delivering to the Bidder a Notice of Termination specifying the nature of the default. The Bidder will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Bidder was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient. **g. Termination for Default (Transportation Services)** If the Bidder fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Bidder fails to comply with any other provisions of this contract, the Eureka Springs Transit System may terminate this contract for default. The Eureka Springs Transit System shall terminate by delivering to the Bidder a Notice of Termination specifying the nature of default. The Bidder will only be paid the contract price for services performed in accordance with the

manner of performance set forth in this contract. If this contract is terminated while the Bidder has possession of Recipient goods, the Bidder shall, upon direction of the Eureka Springs Transit System, protect and preserve the goods until surrendered to the Recipient or its agent. The Bidder and Eureka Springs Transit System shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Bidder was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Eureka Springs Transit System. **h. Termination for Default (Construction)** If the Bidder refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Bidder fails to comply with any other provisions of this contract, the Eureka Springs Transit System may terminate this contract for default. The Eureka Springs Transit System shall terminate by delivering to the Bidder a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Bidder and its sureties shall be liable for any damage to the Recipient resulting from the Bidder's refusal or failure to complete the work within specified time, whether or not the Bidder's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work. The Bidder's right to proceed shall not be terminated nor the Bidder charged with damages under this clause if - 1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Bidder. Examples of such causes include: acts of God, acts of the Recipient, acts of another Bidder in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. the Bidder, within [10] days from the beginning of any delay, notifies the Eureka Springs Transit System in writing of the causes of delay. If in the judgment of the Eureka Springs Transit System, the delay is excusable, the time for completing the work shall be extended. The judgment of the Eureka Springs Transit System shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of the Bidder's right to proceed, it is determined that the Bidder was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient. **i. Termination for Convenience or Default (Architect and Engineering)** The Eureka Springs Transit System may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Bidder to fulfill the contract obligations. The Eureka Springs Transit System shall terminate by delivering to the Bidder a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Bidder shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Bidder to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Bidder shall be liable for any additional cost incurred by the Recipient. If, after termination for failure to fulfill contract obligations, it is determined that the Bidder was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient. **j. Termination for Convenience of Default (Cost-Type Contracts)** The Eureka Springs Transit System may terminate this contract, or any portion of it, by serving a notice or termination on the Bidder. The notice shall state whether the termination is for convenience of the Eureka Springs Transit System or for the default of the Bidder. If the termination is for default, the notice shall state the manner in which the Bidder has failed to perform the requirements of the contract. The Bidder shall account for any property in its possession paid for from funds received from the Eureka Springs Transit System, or property supplied to the Bidder by the Eureka Springs Transit System. If the termination is for default, the Eureka Springs Transit System may fix the

fee, if the contract provides for a fee, to be paid the Bidder in proportion to the value, if any, of work performed up to the time of termination. The Bidder shall promptly submit its termination claim to the Eureka Springs Transit System and the parties shall negotiate the termination settlement to be paid the Bidder. If the termination is for the convenience of the Eureka Springs Transit System, the Bidder shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the Eureka Springs Transit System determines that the Bidder has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Bidder, the Eureka Springs Transit System, after setting up a new work schedule, may allow the Bidder to continue work, or treat the termination as a termination for convenience.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Bidder is required to verify that none of the Bidder, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Bidder is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Eureka Springs Transit System. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Eureka Springs Transit System, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Federal Privacy Act Requirements: The following requirements apply to the Bidder and its employees that administer any system of records on behalf of the Federal Government under any contract: (1) The Bidder agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Bidder agrees to obtain the express consent of the Federal Government before the Bidder or its employees operate a system of records on behalf of the Federal Government. The Bidder understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Bidder also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights: The following requirements apply to the underlying contract: (1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Bidder agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Bidder agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. (2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract: (a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Bidder agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No.

11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue. (b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Bidder agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue. (c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Bidder agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Bidder agrees to comply with any implementing requirements FTA may issue. (3) The Bidder also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Free Competitive Bidding Affidavit: Bidder has not, either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the bid submitted herein.

Non-Collusion Certification: The Bidder attests that he or she is the person responsible within its firm for the final decision as to the price of this bid and further attest that: 1) The price of this bid has been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition with any other Vendor, Bidder or potential Bidder. 2) Neither the price nor the amount of this bid has been disclosed to any other firm or person who is a Bidder or potential Bidder on this project, and will not be so disclosed prior to bid opening. 3) No attempt has been made or will be made to solicit, cause or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complimentary bid. 4) The bid of its firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complimentary bid. 5) Its firm has not offered or entered a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash of anything of value to any firm or person, in consideration for an agreement or promise by any firm or person or person to refrain from bidding or to submit a complementary bid on this project. 6) Its firm has not offered or promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value to any firm or person, whether in connection to any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project. 7) The Bidder has made a diligent inquiry of all members, officers, employees, and agents of its firm with responsibilities relating to the preparation, approval, or submission of its firm's bid and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

Breaches and Dispute Resolution: All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where Bidders violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. **Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Arkansas State Highway and Transportation Department's (ASHTD) Chief Legal Counsel. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Bidder mails or otherwise furnishes a written appeal to the Department's Chief Legal Counsel. In connection with any such appeal, the Bidder shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department's Chief Legal Counsel shall be binding upon the Bidder and the Bidder shall abide by the decision. **Performance During Dispute** - Unless otherwise directed by Agency, the Bidder shall continue performance under this Contract while matters in dispute are being resolved. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Bidder arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Bidder shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprises: a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. **The agency's overall goal for DBE participation is 4.62%.** b. The Bidder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Bidder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Bidder to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **Eureka Springs Transit System** deems appropriate. Each subcontract the Bidder signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)). The successful Bidder/Offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. d. The Bidder is required to pay its subcontractor performing work related to this contract for satisfactory performance of that work no later than 30 days after the Bidder's receipt of payment for that work from the **Eureka Springs Transit System**. In addition, **the Bidder may not hold retainage from its subcontractor's** e. The Bidder must promptly notify the **Eureka Springs Transit System** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Bidder may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **Eureka Springs Transit System**.

Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Bidder shall not perform any act, fail to perform any act, or

refuse to comply with any ESTS requests which would cause ESTS to be in violation of the FTA terms and conditions.

These required Federal certifications and contractual provisions for procurement must be completed, signed, and notarized in order that the bid shall be considered complete. In signing this document, I declare under penalties of perjury that the certifications and assurances, and any other statements made by me, are true and correct.

Printed Name of Company/Organization _____

Printed Name of Bidder/Authorized Agent _____

Signature of Bidder/Authorized Agent _____

Title of Bidder/Authorized Agent _____

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public: _____

My commission expires:_____

All information is required

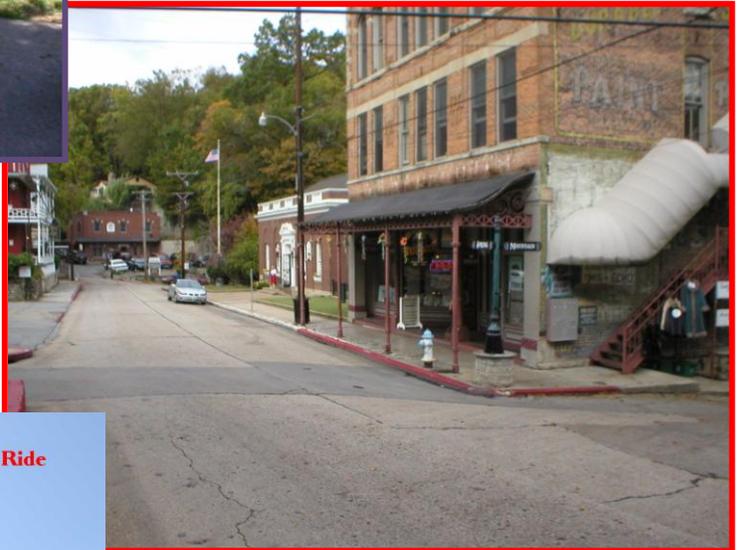
**and must be submitted on this form
or the bid will be rejected.**

PLEASE NOTE: EACH PAGE SETTING FORTH THE REQUIREID FEDERAL CERTIFICATIONS AND CONTRACTUAL PROVISIONS MUST BE INITIALED. THERE WILL BE NO EXCEPTIONS. ANY PROPOSAL THAT DOES NOT COMPLY WITH THE REQUIREMENT WILL BE DISREGARDED.

The photographs provided below are intended to give you a sense of the diversity of sights and settings in Eureka Springs. By no means do they cover all areas but we hope that they will help you to understand better the underlying mission in the RFP - to propose a passenger shelter that will fit into a variety of settings without seeming out of place.



Trolley stop with sign, bench



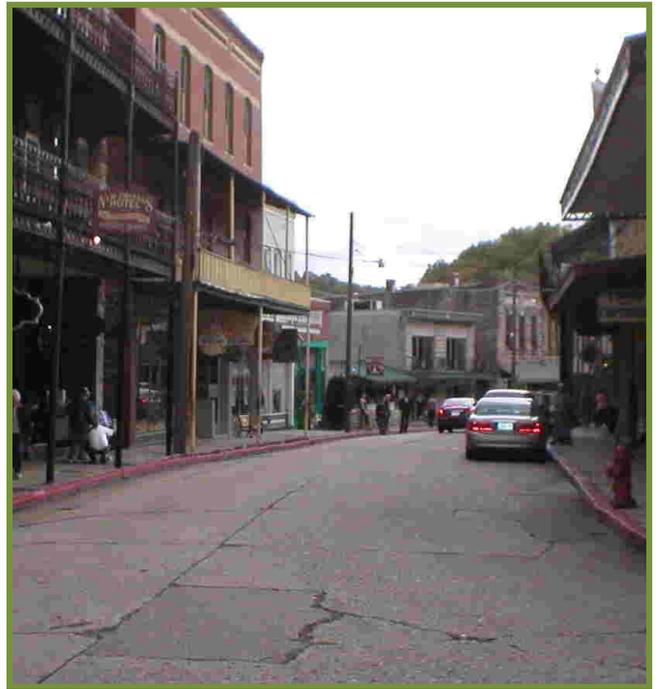
Downtown street scene



Park & Ride lot with covered shelter

Example of local

architecture



Downtown street scene



Representative transit vehicle



Historic Hotel - built in 1886