





## **Part I**

### **Purchase Description**

To provide design and engineering services, including preparation of general specifications and bid ready documents, for general construction bidding for the replacement and improvements to the HVAC units at the Town of Amherst Police Department located at 111 Main Street, Amherst, Massachusetts.

#### **SCOPE OF SERVICES:**

- An optional pre-bid conference will be held on **Wednesday, January 25, 2023 at 11:00 AM** at the Amherst Police Department located at 111 Main Street, Amherst, MA 01002. This is not a mandatory meeting, but interested bidders are encouraged to attend.
- Prepare bid ready drawings and specifications as required to meet all Federal, State and local building codes.
- Provide cost estimates for all work.
- Upon approval by the Town Manger, conduct the required general bid advertisements, review bids for compliance and assist the Town in selection of a qualified general contractor.
- Upon signing of a consent to work contract with the general contractor, the architect/engineer will coordinate job meetings as required, and provide contract administration during the construction, which will include periodic inspections but shall not include full time or daily inspections.
- The Amherst Town Council has committed the town to a goal of carbon neutrality by 2050. The Energy and Climate Action Committee's 2021 Climate Action, Adaptation and Resilience Plan offers guidance on meeting this goal in the sectors of Buildings, Renewable Energy, Land Use and Natural Systems, Transportation and Infrastructure. Projects that replace equipment due to end-of-life or major repair or overhaul, must adhere to meeting the stated goal of carbon neutrality by replacing fossil fuel systems and technology with applicable and available renewable, clean energy, or strategic electrification technologies in combination with appropriate energy efficiency measures.
- The final construction bid documents must be ready to distribute by the end of March 2023.

## **Part II**

### **EVALUATION CRITERIA**

All applications will be reviewed and ranked by the following criteria:

#### **Experience:**

- All individuals proposed for the project must have prior similar public bidding experience on at least 3 projects under M.G.L. c. 149 in the past 3 years. The projects should have a minimum total cost of \$200,000 and preferably one over \$400,000.
- A listing of such projects, with the individuals who worked on them, shall be included in the proposal along with the owner's contact names and phone numbers for which the work was done. All previous contracts will be considered.

#### **Quality of Work:**

- The owners of other projects with which your firm has worked will be contacted and asked to evaluate your firm's performance as a designer on quality and accuracy; meeting established program requirements within budget; and coordination and management with subconsultants.

#### **Public sector knowledge:**

- The firm must demonstrate that they are familiar with Massachusetts Public Construction Laws and Procedures.

#### **Professional Registrations:**

- Appropriate, up-to-date, professional licenses are required for this project and copies must be included in the submittal.

#### **Subconsultants:**

- The qualifications of key subconsultants who may be employed by the designer will also be reviewed and rated in accordance with this evaluation criteria.

#### **Capacity:**

- Your firm must demonstrate that it has the financial stability and capacity to undertake this project in a timely manner, based on the size, the number and volume of current projects.

### **Part III**

#### **Contract terms**

There is a not-to-exceed fee limit of **\$45,000**

Fees will be negotiated with the top ranked qualifying bidder. If agreement can not be reached then negotiations will begin with the next highest ranked qualifying bidder.

#### **Payment schedule**

Completion of preliminary documents, draft reports	15%
Final acceptable contract documents ready	40%
Bid complete and acceptable vendor chosen, final contract execution	25%
Construction supervision phase	10%
Final project completion and acceptance	10%

The Town Manager retains the right, at his or her sole discretion, either to proceed with the construction phase or to terminate the services under this contract. Payment will be made under the contract to the extent of work completed.

# Required Certifications

(Must be signed and included with submittal)

# CERTIFICATE OF TAX COMPLIANCE

No contract or other agreement for the purposes of providing goods, services or real estate space to any of the foregoing agencies shall be entered into, renewed or extended with any person unless such person certifies in writing, under penalties of perjury, that he had complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Social Security or Federal I.D. number

\_\_\_\_\_  
Signature: Individual or Corporate Officer

\_\_\_\_\_  
Date

## PLEASE PRINT

Corporate Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

# CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person, business, partnership, corporation, union committee, club or other organization, entity or group of individuals.

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Signature of individual submitting bid or proposal

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Name of Business



## CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the

\_\_\_\_\_ held on \_\_\_\_\_  
(Name of Corporation) (Date)

At which all the Directors were present or waived notice, it was voted that,

\_\_\_\_\_ (Name) \_\_\_\_\_ (Officer)

of this company, be appointed and is hereby authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or obligation in this company's name on its behalf by said officer, under seal of the company, shall be valid and binding upon this company.

A TRUE COPY,

ATTEST: \_\_\_\_\_  
(Clerk)

Place of Business: \_\_\_\_\_

DATE OF THIS CONTRACT: \_\_\_\_\_

I hereby certify that I am the Clerk of the \_\_\_\_\_

that \_\_\_\_\_ is the duly elected \_\_\_\_\_

of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

\_\_\_\_\_  
(Clerk) (Corporate Seal)

# Sample Contract

**TOWN OF AMHERST  
MASSACHUSETTS**

**CONTRACT NUMBER:** \_\_\_\_\_  
**VENDOR NUMBER:** \_\_\_\_\_

**SAMPLE** CONTRACT FOR DESIGNER SERVICES

**THIS AGREEMENT, executed this \_\_\_\_\_ by and between:**

Name  
Address  
Contact

Hereinafter called "Designer" and the Town of Amherst, a municipal corporation in the County of Hampshire, Commonwealth of Massachusetts, hereinafter called "The Town".

WITNESSETH, that for the consideration hereinafter mentioned, the Town and the Designer shall agree to the terms and conditions contained in this contract, enumerated as follows:

THE TOWN shall pay the Designer for the performance of this contract in the sum of;  
Not-to-exceed \$45,000 dollars in accordance with the terms of this contract.

This contract shall not be altered in any particular without the consent of all parties to this contract. All alterations to this contract must be in writing and authorized as such by the Town Manager and all parties signing this contract. If the Designer is a Corporation the certification authorizing the person signing for the Designer must be attached to this contract or such signature is void.

Final payment on this contract shall release and discharge the Town of Amherst from any and all claims against the Town on account of any work performed hereunder, or any alteration hereto.

This contract shall so be governed by Chapter 7 as amended, and Chapter 149 as amended, of the General Laws of the Commonwealth of Massachusetts.

This contract shall be deemed to be a Massachusetts contract and its interpretation and construction shall be governed by the laws of Massachusetts and the Town of Amherst By-Laws.

The Town of Amherst is not bound by this contract until approved by the Town Manager.

## ARTICLE 1: DEFINITION OF TERMS

1. GENERAL LAWS - the General laws of the Commonwealth as amended including any rules, regulations and administrative procedures implementing said laws.
2. OFFICE - Shall mean the Office, Department, Board or Commission that is responsible for the successful completion of this project. The Office for this project is \_\_\_\_\_.
3. DIRECTOR - Shall mean the head of the Office, Department, Board or Commission that is responsible for the successful completion of this project. The Director for this project is \_\_\_\_\_ or his/her successor.
4. PROJECT - the project which may involve one or several construction contracts which is numbered and entitled, and the location of which is described on Page One.
5. DESIGNER - the person or firm performing professional services under this agreement.
6. PRINCIPALS - the registered Architects or Engineers listed in ARTICLE 18.
7. APPROVAL OF THE DIRECTOR - a written communication from the Town of Amherst to the Designer expressing the approval of services or plans prepared by the Designer which in no way relieves the Designer from responsibilities, the review notwithstanding.
8. NOTICE TO PROCEED - a written communication by the Town, customarily a letter, which constitutes an essential condition of this contract, authorizing the Designer to perform the services for the project phase to which such Notice shall relate. The Notice to Proceed shall include the basis for compensation, the fixed limit construction cost, and may include the time for submittal. Subsequent written communications amending the Notice to proceed are required to change either a submittal date or the fixed limit construction cost.
9. SUBMITTAL DATES - those dates referred to in the Notice to Proceed or any subsequent amendment thereto.
10. FIXED LIMIT CONSTRUCTION COST - the maximum cost of construction established by the Town as set forth in the Notice to Proceed, and any amendments thereto.
11. CONSTRUCTION CONTRACT - contract for construction of a whole or part of the project including all change orders.
12. TOTAL CONSTRUCTION COST - the sum of (1) the actual construction contract award price, and (2) each authorized change order which revises the construction contract award price.

ARTICLE 2: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNMENTS

1. The Designer shall not employ consultants, sublet, assign or transfer any part of his services or obligations under this agreement without the prior approval of and written consent of the Town. The Town shall not unreasonably withhold such approval. The written consent shall not in any way relieve the Designer from his responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.
2. Except as otherwise provided in this contract or authorized by the Town, the Designer shall employ within the basic fee for this project the following consultants where their specific services are required: Structural Engineer, Electrical Engineer, Mechanical Engineer, Civil Engineer, Sanitary Engineer, Architect, Landscape Architects, Cost Estimators, Consultants must be registered in their respective disciplines if registration is required under the applicable General Laws.
3. When the Designer receives payment from the Town, the Designer shall promptly make payment to each consultant whose work was included in the work for which such payment was received from the Town. The Town shall have the contractual right to investigate any breach of a consultant contract and to initiate or condone corrective measures necessary for the best interest of the Town.

ARTICLE 3: SURVEYS, BORINGS, TESTS, LABORATORIES, PHOTOGRAPHS

1. The OFFICE shall furnish to the Designer available surveys of the project's building site, or sites, showing the grades and lines of streets, pavements and adjoining properties; the rights, restriction, easements, boundaries and contours of the site, or sites; reports from any borings, test pits, chemical, mechanical or other tests, any photographs and information as to water, sewer, electricity, steam, gas, telephone and other services.
2. The OFFICE does not guarantee the accuracy of information furnished and the Designer must satisfy himself as to the correctness of data, except in instances where written exception to the contrary is specifically indicated by the Director. If the above data is not available or is in the opinion of the Designer insufficient, the Designer, upon request, will be given authorization to obtain the services of a consultant or perform the work with his own employees. In no case shall the Designer commence such work without prior written authorization of the Director.
3. During the construction phase of this contract, the Designer shall retain the services of a photographer, a qualified testing laboratory, and special field inspectors, when required by the project, subject to the prior approval of the Director.
4. If a consultant's services estimated to cost more than \$25,000 are required, including the services of a qualified testing laboratory functioning under the jurisdiction of both a Massachusetts registered engineer and licensed inspectors, a detailed description of the

proposed services shall be prepared by the Designer and approved by the OFFICE. Consultant fee proposals shall be received by the Designer and accompanied with recommendations of approval submitted to the Director before any work is authorized. Such Consultants shall carry adequate Liability Insurance. When a consultant's services are estimated to cost \$25,000 or less, the Designer shall use established standard rates for such services.

5. Drawings and/or specifications needed to obtain survey or subsoil information, and any other soils engineering shall be prepared by the Designer within the basic fee. The Designer shall then analyze and evaluate such surveys and tests and make his design conform to the results of such evaluation.
6. The OFFICE will reimburse the Designer as provided in Article 10, for the cost of consultant services performed under this Article. For responsibility, coordination, inspection, analysis and evaluation of consultant's services retained under this Article, the Designer shall be compensated as provided in Article 10.

#### ARTICLE 4: TIME AND RECORDS AND LAWS

The Designer shall cause to be maintained complete, accurate and detailed records of all time devoted to the project by the Designer and each consultant or subcontractor employed by the Designer. The Commonwealth may at all reasonable times audit such records. On contracts where the total design fee exceeds \$10,000 or which are for the design of a building for which the budgeted or estimated construction cost exceeds \$100,000, the Designer shall comply with General Laws Chapter 30, Section 39R, which requires the Designer to:

- a. maintain accurate and detailed accounts for a six-year period after the final payment (b) (1)
- b. file regular statements of management concerning internal auditing controls (c)
- c. file an annual audited financial statement (d)
- d. submit a statement from an independent certified public accountant that such CPA has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements in (b) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to designer's financial statements (c) (4) (1) - (2).

The Designer shall perform the work required under this contract in conformity with requirements and standards of the OFFICE and all applicable laws of the Commonwealth of Massachusetts, its political subdivisions and the Federal Government. The Designer, including all approved consultants and subcontractors, shall comply with all applicable provisions of the rules and regulations of the President's Committee on Equal Employment Opportunity and Procedures promulgated by the Governor of Massachusetts or his designees insuring Equal Opportunity.

ARTICLE 5: PROFESSIONAL RESPONSIBILITY AND SERVICES TO BE PERFORMED

1. The Designer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates and other work furnished by him or his consultants and subcontractors. The Designer shall staff his office with sufficient personnel to complete the services required under this contract in a prompt and continuous manner, and shall meet the approval schedule and submittal dates established during the course of this contract.
2. The Designer shall furnish appropriate competent professional services for each of the phases to the point where detail checking or reviewing by the OFFICE will not be necessary. Any changes, corrections, additions or deletions made by the OFFICE shall be incorporated into the Design of the Project unless detailed objections thereto are received from the Designer and approved by the OFFICE. Because of the fixed limit construction cost called for in this agreement, the Designer with the written approval of the Director in performing services hereunder, shall be permitted to determine materials, equipment, component systems and types of construction to be included in the design of the Project. The decision of the Director shall be final in matters pertaining to this paragraph.
3. The Designer shall thoroughly acquaint his employees and consultants with the provisions of General Laws Chapter 30, Section 39M, which provides in part: "for each item of material the specifications shall provide for either a minimum of three named brands of material or description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said named or described materials." Refer to the law and the OFFICE for procedure regarding proprietary items.
4. Neither the OFFICE review, approval or acceptance of, nor payment for, any of the services furnished shall be construed to operate as a waiver of any rights under the contract or any cause of action arising out of the performance of the contract.
5. STUDIES, PROGRAMS, MASTER PLANS, REPORTS

Upon receipt of a Notice to Proceed from the Director acceptable to the Designer, the Designer shall meet as necessary with agents of the OFFICE and shall prepare and submit programs, preliminary reports, master plans, studies, sketches, space utilization criteria and estimates in accordance with the Scope of Services attached to, and hereby made a part of, this contract. Monthly progress reports shall be submitted by the Designer to the OFFICE. The Designer shall prepare and submit concept sketches of various design ideas to determine a workable plan solution in terms of the programs, funds available, and as complete an overall design concept as possible including cost estimates. The Designer shall furnish to the Director eight (8) copies of the report for final approval on or before the date set forth in the Notice to Proceed or any supplement thereto.

## 6. DESIGN AND CONSTRUCTION

### PHASE 1. - SCHEMATICS

In accordance with the Scope of Services attached to, and hereby made a part of this contract and upon receipt of a Notice to Proceed from the Director acceptable to the Designer, the Designer shall meet as necessary with agents of the OFFICE and shall prepare and submit to the Director single line schematic drawings including floor plans, elevations and space criteria to establish basic design ideas and respective cost estimates. The Designer shall submit to the Director for approval six (6) copies of said schematic plans, outline specifications and cost estimates, on or before the date or time for submission specified in the Notice to Proceed or any supplement thereto, unless the Designer shall have obtained from the Director an extension of time in writing.

Estimated construction cost and fee as set forth in the original Notice to Proceed will not be changed by the OFFICE without the agreement of the Designer.

### PHASE 2. - DESIGN DEVELOPMENT

Upon receipt of a Notice to Proceed the Designer shall prepare from the approved Phase 1 documents complete preliminary plans and outline specifications in accordance with the Scope of Services mentioned in Phase 1 and a cost estimate, to enable the OFFICE to study and understand the progress and development of the Project. Such plans, outline specifications and cost estimate shall be subject to the written approval of the Director. The Designer shall submit to the Director for approval six (6) copies of said preliminary plans, specifications and cost estimates, on or before the date or time for submission specified in the Notice to Proceed or any supplement thereto, unless the Designer shall have obtained from the Director written extension of time.

### PHASE 3. - CONSTRUCTION DOCUMENTS

Upon receipt of a Notice to Proceed from the Director for Phase 3 of the project, the Designer shall meet as necessary with agents of the OFFICE and in accordance with the Scope of Services mentioned in Phase 1 shall prepare and submit to the Director on or before the date of time specified in the Notice to Proceed or any other supplement thereto, complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the project, and a detailed cost estimate. Said plans and specifications shall be based on the design development, outline specifications and construction cost estimate approved in Phase 2 of the Project, the Notice to Proceed with Phase 3, or any subsequent modification thereto. The detailed estimate of the cost of the Project shall include quantities of all materials and unit prices of labor and materials as well as a cost estimate for each item of work. Such working plans and specifications and cost estimates shall be subject to the written approval of the Director. The Designer shall furnish to the Director for approval six (6) sets of the said plans, specifications and construction cost estimates. From the approved working plans and specifications, with changes incorporated as so endorsed, the Designer shall prepare and



transmit to the Director a set of reproducible plans on cloth or mylar, (4 mil.) and original specifications on high quality white bond paper properly packaged, suitable for blueprinting, (other suitable methods are subject to the prior approval of the Director), which shall become the property of the Town.

One (1) set of prints, blue or blackline, and specifications shall be submitted with the reproducibles. The OFFICE will prepare the contract documents, including advertisements, for receipt of proposals from construction contractors, and execution of a construction contract or contracts unless such preparation is part of the Scope of Services mentioned in Phase 1. If requested by the OFFICE the Designer shall prepare all addenda. The Designer shall conduct a qualification review of the low bidder and shall transmit its recommendation as to the award of the construction contract to the OFFICE.

If within six months after approval of Construction Documents in final form the bids of the lowest responsible and eligible bidders exceed the fixed limit construction cost, the Designer shall, if so instructed in writing by the Director, provide such revised working plans and specifications, and construction cost estimates as the Director shall require for the purpose of bringing the cost within the fixed limit construction cost; provided the Designer may in connection with such revision make reasonable adjustments in the scope of the Project subject to the written approval of the Director which approval shall not be unreasonably withheld. The Designer shall not be paid additional compensation for such services.

#### PHASE 4 - DESIGNERS' SERVICES DURING CONSTRUCTION

Upon the award of the construction contract the Designer and his consultants shall, for the purpose of protecting the Town against defects and deficiencies in the work of the Project: (1) be charged with general administration of the construction contract; (2) furnish the General Contractor with information for establishing lines and grades and such large scale drawings and full sized detailed drawings as the Director may require; (3) promptly check and approve samples, schedules, shop drawings and other submissions by the General Contractor; (4) visit the site or sites of the Project weekly, and more often if reasonably required by the Director to inspect the progress and quality of construction of the Project; (5) conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the OFFICE; (6) require each consultant employed in accordance with Article 2 above to make visits weekly, and more often if requested by the Director, for the same purposes during the progress of that portion of the said construction to which the consultant's services relate and to report in writing thereon to the Designer; (7) report to the OFFICE weekly in writing on the progress of construction including whether or not the contractor is keeping record drawings; (8) recommend condemnation of all project work observed by the Designer which fails to conform to the Contract Documents; (9) decide all questions regarding interpretation of or compliance with the Contract Documents, except as the Director may in writing otherwise determine; (10) review and act on all requests for change in plans, specifications, or contracts for the Project; (11) upon written instructions from the Director, furnish working plans and specifications for any such change; and (12)

assist the OFFICE in any change order appeal hearing requested under General Laws, Chapter 30, Section 39Q, except as provided in Article 9.1 (7).

The Designer shall be familiar with "M.G.L. Ch. 30, S. 39K" which sets forth the procedure for payment to Contractors and shall submit to the OFFICE all requisitions for payment submitted by the General Contractor. With respect to each such requisition, he or she shall certify to the best of the Designer's knowledge that the percentage of work included in the requisition is accurate and the work performed conforms to the contract documents. In the event the Designer does not approve the requisition exactly as submitted by the General Contractor, said Designer shall forward it for payment to the OFFICE dated but unsigned with an accompanying letter of explanation setting forth objections and recommended changes. Timely payment of Contractors is required by General Laws, Chapter 30, Section 39K; therefore the Designer shall establish office procedures assuring either immediate mail or messenger delivery of the requisition for payment to the OFFICE, and shall process requisition for payment within forty-eight hours of receipt.

#### ARTICLE 6: INTENTIONALLY DELETED

#### ARTICLE 7: RECORD DRAWINGS, REPORTS, CALCULATIONS

1. Before examining the requisition for final payment submitted to the OFFICE by the General Contractor and making any certification in response thereto, the Designer shall obtain from the General Contractor record drawings showing the actual installation of the plumbing, heating, ventilating and electrical work under the Construction Contract and all variations, if any. The Designer shall ascertain by his review that changes authorized by Change Orders are shown on the Contractor's record drawings and on the applicable original reproducibles and shall submit the OFFICE the complete set as revised, which reproducibles shall become the property of the Town.
2. At the conclusion of the construction contract the Designer shall submit to the Director a confidential evaluation report relating to the overall performance of the General Contractor and his subcontractors, in the form prescribed by the OFFICE.
3. Two suitably bound legible copies of all original design and quantity calculations including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the OFFICE at the conclusion of the construction contract and prior to the expiration of the construction period.

#### ARTICLE 8: DESIGNER'S BASIC FEE

For the performance of all services required in this contract and excluding those services specified under Articles 9, 10 and 11, the Designer shall be compensated by the OFFICE in accordance with the lump sum fee as designated in the Notice to Proceed and determined in

accordance with: (a) a negotiated lump sum fee or (b) a lump sum fee established by the Town prior to the designer selection process.

If there is a material change in the scope of services provided in this contract, the Designer and the OFFICE will mutually agree to an adjustment in the Designer's Basic Fee. Delay of one year or more by the Town plus a significant change in the estimated construction cost of the project will be considered a change in scope of services.

Payment of the design fee shall be made in accordance with Article 12.

1. Designer's Basic Fee -
2. Special Conditions -

#### ARTICLE 9: EXTRA COMPENSATION

1. With the formal written approval of the Director, the Designer shall perform all or any of the following services in addition to the services performed pursuant to Article 5 above: (1) making measured drawings of existing construction facilities when required for planning additions, or alterations thereto, (2) revising previously approved drawings, specification or other documents to accomplish changes authorized by the Director, (3) preparing documents for alternate bids requested by the Director except alternates prepared by the Designer to adjust the fixed limit construction cost, (4) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Article 5 as may be required in connection with the replacement of such work, (5) providing professional services made necessary by the default of the contractor in the performance of the construction contract, (6) providing services after final payment to the contractor, (7) assisting the OFFICE in change order appeal hearings under General Laws, Chapter 30, section 39Q, by preparing special documents or appearing as a witness, (8) for preparing change orders and supporting data, except as set forth in Article 11, (9) revising working plans and specifications submitted in their final and complete form for which bids were not received within six months after submission, (10) making studies other than those normally required and preparing applications and reports to assist the OFFICE in obtaining federal aid, (11) preparing operating and maintenance manuals, (12) observing the balancing of air and water circulation systems and reporting the results thereof, (13) observing and setting and adjusting automatic controls and reporting the results thereof, (14) assisting the Town in litigation arising out of the construction contract, (15) performing services for interior design, and (16) performing any other professional services not otherwise required under this contract.
2. For services provided pursuant to Paragraph 1 of this Article the Designer will be compensated by the Town at the rates listed below.

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3. Upon submission by the Designer of satisfactory evidence that additional expenses are being incurred beyond the amount realized on a fee basis, the Director may authorize extra compensation on the basis of actual cost plus overhead, but not profit and without a 2 1/2 times markup for additional services rendered under Phase 4, after the original scheduled construction completion time as extended by authorized additional work change orders has been exceeded by more than twenty-five percent (25%) through no fault of the Designer. This shall only be applicable when the Designer shall have submitted under Article 5 Phase 3 a detailed analysis or description of how the Designer arrived at the estimated number of calendar days for completion of construction.
  4. The Designer and his consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of the bid documents, as reasonably determined by the Director.

#### ARTICLE 10: REIMBURSEMENT

The Designer shall be reimbursed by the Town:

- (1) The actual cost to the Designer of consultants hired to obtain any data in accordance with Article 3 above, provided, however that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been approved in writing by the Director. The Director may approve a lump sum fee.
- (2) The actual cost to the Designer of special consultants not specified in Article 2 and approved in writing by the Director, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been approved in writing by the Director. The Director may approve a lump sum fee.
- (3) Any other specially authorized reimbursement, including special printing.
- (4) For document copies in excess of numbers specified in the contract if requested by the OFFICE.

The OFFICE shall not reimburse the Designer for travel expenses under this contract, provided, however, that in special circumstances and with the prior approval of the Director, the Designer

may be reimbursed for out-of-state travel expenses consistent with the Rules and Regulations promulgated under Section 38, Chapter 7 of the General Laws.

The OFFICE shall not reimburse the Designer for any telephone or other out-of-pocket expenses unless specifically authorized under this Article.

For coordination and responsibility of services authorized under (1) and (2) the Designer shall be reimbursed the actual expense plus 10% where the estimated cost of the specific service is estimated not-to-exceed \$50,000.00. The aforementioned percentage will be negotiated to a lesser factor in those instances when the not-to-exceed cost is projected to exceed \$50,000.00.

The exemption number assigned to the OFFICE as an exempt purchaser under the Sales Act, C14 of the Acts of 1966 to the extent that materials and supplies are used or incorporated in the performance of this contract for the Town of Amherst is 046-001-406.

#### ARTICLE 11: DESIGN FEES AND RESPONSIBILITY FOR MODIFICATIONS AND CHANGE ORDERS

The Designer shall be compensated in accordance with the rates specified in Article 9, for the service of its employees or any Consultant listed in Article 2 for the preparation of modifications, change orders and supporting data. The Designer or his consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of the bid documents, as reasonably determined by the Director. The Designer shall not be compensated for any services involved in preparing changes required to make unit price adjustments due to existing conditions. Changes for which the Designer receives no compensation under this Article shall be called "no fee modifications" or "no fee change orders." The fact that the Designer receives no fee shall not limit the Town's legal remedies regarding such changes.

Payments for modifications or change orders to the Designer shall be made upon completion of the contractor's work under such modifications or change orders.

#### ARTICLE 12: METHOD OF PAYMENT TO THE DESIGNER

The Designer will be compensated by the Town for Article 5 services according to a payment schedule attached to and hereby made a part of this contract.

#### ARTICLE 13: TERMINATION, NO AWARD

1. By written notice to the Designer, the Director may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, including proportionate payment for uncompleted portions of the work, shall be paid to the Designer by the Town. Such payment shall not exceed the fair value of the work, as the Director shall determine.

2. By written notice to the Director, the Designer may terminate this contract (1) if the Town, within sixty (60) days following written notice to the Director from the Designer of any default by the Town under the contract, shall have failed to remove such default or (2) if, after the Designer shall have performed all services required of the Designer in Phase 1, Phase 2, or Phase 3 of the Project, at least six (6) months shall have elapsed without receipt by the Designer of Notice to Proceed with the next phase of the project. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with the contract up to and including the date of termination shall be paid to the Designer by the Town.
3. If after receipt of the bids on the Construction Contract or approval of the final Plans and Specifications by the OFFICE, the Construction Contract is not awarded by the OFFICE, the Designer shall be paid seventy-five percent (75%) of the basic fee consistent with the provisions of Article 12.

#### ARTICLE 14: RELEASE AND DISCHARGE

The acceptance by the Designer of the last payment for services paid under the provisions of Article 12 or under Article 13 in the event of termination of the contract, shall in each instance, operate as and be a release to the Town, the OFFICE, and every member and agent thereof, from all claim and liability to the Designer for everything done or furnished for or relating to the work, or for any act or neglect of the OFFICE of any person relating to or affecting the work, except for those written claims submitted by the Designer to the OFFICE with the last payment requisition.

#### ARTICLE 15: NOTICES, APPROVALS, INVOICES

Any notice required under this contract to be given by the Town to the Designer, or by the Designer to the Town, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Director or the Designer.

Written approval by the Director for Article 9 Extra Compensation and Article 10 Reimbursement shall be in the form of a letter.

All invoices except for those made under the provisions of Article 11 may be submitted monthly and subject to contract terms and proper documentation will be promptly processed by the OFFICE or returned to the Designer. No invoice, however, shall be required to be submitted or processed when the net amount due is less than \$100.00. All invoices from the Designer shall be submitted to the OFFICE.

Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.

Invoices for services under Article 9, 10, and 11 shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours each day, hourly rate and extended amount.

Request for previously authorized expenses of any nature must be accompanied by a billing/receipt from the source of the expense.

Supporting back-up data shall be submitted in triplicate.

#### ARTICLE 16: INSURANCE

1. The Designer shall at his own expense obtain and maintain a Professional Liability Policy for errors, omissions or negligent acts arising out of the performance of this agreement in a minimum amount equal to ten percent (10%) of the Fixed Limit Construction Cost and in any event shall not be less than \$50,000.00. Insurance coverage in excess of one million dollars (\$1,000,000.00) shall not be required with exceptions to be negotiated or expressed in the original public notice to Designers. Subject to the prior approval of the OFFICE, the Designer may have a Professional Liability Policy with a deductible clause if in the judgment of the OFFICE, the Designer's financial resources are sufficient to directly absorb the possible Liability expenses without surety assistance.
2. The coverage shall be in force from the time of the agreement to the date when all construction work designed under the contract is completed and accepted by the OFFICE. Since this insurance is normally written on a year-to-year basis, the Designer shall notify the OFFICE should coverage become unavailable.
3. The Designer shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with General Laws, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract.
4. The Designer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data is turned over to the OFFICE.
5. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the contract. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the OFFICE at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice. The Designer shall indemnify, defend and save harmless the Town, the OFFICE and all of its or their officers, agents, and employees against all suits, claims of liability of every name and nature, for or on account of any injuries to persons or damage to property arising out of the negligence of the Designer in the performance of the work covered by this agreement and/or failure to comply with the terms and conditions of this agreement, whether by himself or his employees or subcontractors, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by this agreement.

6. Upon request of the Designer, the Director reserves the authority to modify any conditions of this Article.
7. Designers providing services only under Part 5 of Article 5 shall be exempt from the provisions of this Article unless the request for proposals provides to the contrary.

#### ARTICLE 17: LEGAL REQUIREMENTS

##### 1. NONRESIDENT PROCESSING; SIGNATURES

Every Designer who is a nonresident of the Commonwealth of Massachusetts, or a nonresident co-partner of a Designer hereby appoints the Secretary of the Commonwealth of Massachusetts and his successor in office to be his true and lawful attorney in and for Massachusetts, upon whom all lawful processes in any action or proceeding arising out of this contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by the OFFICE or its lawful Attorney to said Designer or nonresident co-partner at the address set forth in the contract. Said Designer or said nonresident co-partner hereby stipulates and agrees that any lawful process against it which is served on said attorney shall of the same legal force and validity as if served on said Designer or on said co-partner. Such authority shall continue in force so long as any liability remains outstanding against said Designer or said co-partner.

##### 2. ACCESS TO CONTRACTOR'S RECORDS (EXECUTIVE ORDER #195)

The Governor or his designee, the Secretary of Administration and Finance, and the State Auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the contractor which pertain to the performance and requirements of this contract.

##### 3. TRUTH-IN-NEGOTIATIONS CERTIFICATE (GENERAL LAWS CHAPTER 7, SECTION 301)

If the designer's or construction manager's fee is negotiated, the designer or construction manager must file a truth-in-negotiations certificate prior to being awarded the contract by the deputy commissioner, which must be incorporated into the contract. The certificate must contain:

- a. a statement that the wage rates and other costs used to support the designer's compensation are accurate, complete, and current at the time of contracting; and
- b. an agreement that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amounts if the Director determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.



ARTICLE 18: DESIGNER'S CONTRACT SUPPLEMENTARY DATA

No changes are to be made in either Paragraphs 1, 2, or 3 of this Article at any time during the life of this contract without prior written notification to the Director and when required, receipt of written approval by the Director.

1. The Designer certifies under the penalties of perjury that the following names (Individual) (Partners) (Directors of Corporation) are registered by the Commonwealth as architects or professional engineers pursuant to the provisions of General Laws, Chapter 112 and further that the (Individual) and that the majority of the (Partners) (Directors of the Corporation) and all the Joint Ventures are so registered by the Commonwealth.

Name                      Title                      Mass. Registration No.

2. The Designer certifies under the penalties of perjury that the following names (Individual) (Partners) (Officers of Corporation) are the officers of the firm contracted for the above designated Amherst Project:

IF A CORPORATION: (Name Officers and Titles)

IF A PARTNERSHIP: (Names of all Partners)

IF AN INDIVIDUAL: (Name of Owner)

MASSACHUSETTS REGISTERED PRINCIPAL OF FIRM RESPONSIBLE FOR THIS PROJECT IS

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(Notify OFFICE of any changes.)

3. In accordance with Chapter 7, Section 30I (e), I further certify that the Designer or Construction Manager has not given offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services; no consultant to or subcontractor for the Designer or Construction Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Designer or Construction

Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer or Construction Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Designer or Construction Manager, has been retained or hired by the Designer or Construction Manager to solicit for or in any way assist the Designer or Construction Manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the Designer.

Signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Designer:

Name, please print:

SIGNATURES

IN WITNESS WHEREOF the Town caused this agreement to be signed and approved by the Town Manager and the said Designer has caused this agreement to be signed and its official seal to be hereto affixed by its officer or agent thereunto duly authorized (by the attached corporate resolution). This instrument shall take effect as a sealed instrument.

DESIGNER:

BY: \_\_\_\_\_ (SEAL)

Approved as to appropriation:

\_\_\_\_\_ Line Item:  
Town Accountant

In proper form and properly executed:

\_\_\_\_\_  
Town Counsel

Approved:

\_\_\_\_\_  
Town Manager

## **Legal Notice**

DAILY HAMPSHIRE GAZETTE – Wednesday, January 11, 2023

BODY OF AD: The Town of Amherst invites qualified designers to submit an application to provide design and engineering services, including preparation of general specifications and bid ready documents, for general construction bidding for the replacement and improvements to the HVAC units at the Town of Amherst Police Department located at 111 Main Street, Amherst, Massachusetts. The fee for services is not-to-exceed \$45,000 to include printing and advertising and the final construction bid documents must be ready to distribute by the end of March 2023. Requests for qualifications may be obtained at [www.amherstma.gov/bids](http://www.amherstma.gov/bids) .

Designer Application Forms with required certifications and registrations shall be submitted no later than 2:00 PM on Thursday, February 2, 2023, to the Town Accountant's Office at 4 Boltwood Ave, Amherst, MA 01002. An optional pre-bid conference will be held on Wednesday, January 25, 2023 at 11:00 AM at the Amherst Police Department located at 111 Main Street, Amherst, MA 01002.

The Town of Amherst reserves the right to reject any and all bids in whole or in part, and to waive informalities, when at its sole discretion is deemed to be in the best interests of the Town and to the extent permitted by law. In accordance with the Town of Amherst's M/WBE Program, minority and women-owned business are encouraged to submit proposals.

# Designer Application

(Must complete and sign the attached application & return with the required certifications)



6. List **ONLY** Those Prime And Sub-Consultant Personnel Specifically Requested In The Advertisement. This Information Should Be Presented Below In The Form Of An Organizational Chart. Include Name Of Firm And Name Of The One Person In Charge Of The Discipline, With Mass. Registration Number, As Well As MBE/WBE Status, If Applicable:

**CITY / TOWN / AGENCY**

**Prime Consultant**  
Principal-In-Charge

**Project Manager for Study**

**Project Manager for Design**

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

7. Brief Resume of ONLY those Prime Applicant and Sub-Consultant personnel requested in the Advertisement. Include Resumes of Project Managers. Resumes should be consistent with the persons listed on the Organizational Chart in Question # 6. Additional sheets should be provided only as required for the number of Key Personnel requested in the Advertisement and they must be in the format provided. By including a Firm as a Sub-Consultant, the Prime Applicant certifies that the listed Firm has agreed to work on this Project, should the team be selected.	
a. Name and Title Within Firm:	a. Name and Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;">           MBE <input type="checkbox"/>            WBE <input type="checkbox"/>            SDVOBE <input type="checkbox"/>            VBE <input type="checkbox"/> </div>	c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;">           MBE <input type="checkbox"/>            WBE <input type="checkbox"/>            SDVOBE <input type="checkbox"/>            VBE <input type="checkbox"/> </div>
d. Years Experience: With This Firm: _____ With Other Firms: _____	d. Years Experience: With This Firm: _____ With Other Firms: _____
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s) /Year/Specialization
f. Active Registration: Year First Registered/Discipline/Mass Registration Number	f. Active Registration: Year First Registered/Discipline/Mass Registration Number
g. Current Work Assignments and Availability For This Project:	g. Current Work Assignments and Availability For This Project:
h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):

8a. Current and Relevant Work By Prime Applicant Or Joint-Venture Members. Include <b>ONLY</b> Work Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (List Up To But Not More Than 5 Projects).					
a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience)	c. Client's Name, Address And Phone Number (Include Name Of Contact Person)	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee for Work for Which Firm Was Responsible
(1)					
(2)					
(3)					
(4)					
(5)					



8b. List Current and Relevant Work By Sub-Consultants Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (Up To But Not More Than 5 Projects For Each Sub-Consultant). Use Additional Sheets Only As Required For The Number Of Sub-Consultants Requested In The Advertisement.

Sub-Consultant Name:

a. Project Name and Location Principal-In-Charge	b. Brief Description Of Project and Services (Include Reference To Relevant Experience	c. Client's Name, Address And Phone Number. Include Name Of Contact Person	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee For Work For Which Firm Was/Is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

9. List All Projects Within The Past 5 Years For Which Prime Applicant Has Performed, Or Has Entered Into A Contract To Perform, Any Design Services For All Public Agencies Within The Commonwealth.						
# of Total Projects:		# of Active Projects:		Total Construction Cost (In Thousands) of Active Projects (excluding studies):		
Role P, C, JV *	Phases St., Sch., D.D., C.D.,A.C.*	Project Name, Location and Principal-In-Charge		Awarding Authority (Include Contact Name and Phone Number)	Construction Costs (In Thousands) (Actual, Or Estimated If Not)	Completion Date (Actual or Estimated) (R)Renovation or (N)New
		1.				
		2.				
		3.				
		4.				
		5.				
		6.				
		7.				
		8.				
		9.				
		10.				
		11.				
		12.				

\* P = Principal; C = Consultant; JV = Joint Venture; St. = Study; Sch. = Schematic; D.D. = Design Development; C.D. = Construction Documents; A.C. = Administration of Contract

10. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Sub-Consultants For The Proposed Project. If Needed, Up To Three, Double-Sided 8 1/2" X 11" Supplementary Sheets Will Be Accepted. **APPLICANTS ARE ENCOURAGED TO RESPOND SPECIFICALLY IN THIS SECTION TO THE AREAS OF EXPERIENCE REQUESTED IN THE ADVERTISEMENT.**

**Be Specific – No Boiler Plate**

11. Professional Liability Insurance:

Name of Company	Aggregate Amount	Policy Number	Expiration Date
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12. Have monies been paid by you, or on your behalf, as a result of Professional Liability Claims (in any jurisdiction) occurring within the last 5 years and in excess of \$50,000 per incident? Answer **YES** or **NO**. If YES, please include the name(s) of the Project(s) and Client(s), and an explanation (attach separate sheet if necessary).

13. Name Of Sole Proprietor Or Names Of All Firm Partners and Officers:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

14. If Corporation, Provide Names Of All Members Of The Board Of Directors:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

15. Names Of All Owners (Stocks Or Other Ownership):

Name And Title	% Ownership	MA. Reg.#	Status/Discipline	Name And Title	% Ownership	MA. Reg.#	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7C, Section 44 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

Submitted by \_\_\_\_\_ Printed Name and Title \_\_\_\_\_ Date \_\_\_\_\_  
 (Signature)