



**REQUEST FOR PROPOSAL  
#201003  
Naming Rights to the Amherst Ice Center  
(formerly the Amherst Pepsi Center)  
Town of Amherst, New York**

Vendor proposals will be accepted until:

Thursday, March 11, 2010 at 2:00 P.M.

Seven (7)-sealed copies of the proposal are to be submitted to:

Town of Amherst  
Purchasing Department  
Attention: Lawrence K. Graner  
5583 Main Street  
Williamsville, New York 14221

Mark on lower left-hand corner of envelope:

RFP #201003

Due Date: 03/11/2010 BY 2:00 P.M.

For: Naming Rights to the Amherst Ice Center (formerly the Amherst Pepsi Center)

Submitted by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Following EXHIBITS are attached to and made a part of the bid specifications, and part of any agreement entered into pursuant to this Request for Proposal:

- EXHIBIT "A" - Assignment of Public Contracts
- EXHIBIT "D" - Bid Bond (Formal Bid) **5%**
- EXHIBIT "F" - Agreement Addendum
- EXHIBIT "G" - Non-Collusive Bidding Certification
- EXHIBIT "P" & EXHIBIT "PBI" - Performance Bond **100%**

Lawrence K. Graner  
Director of Purchasing

**NOTICE TO BIDDERS**

**Town of Amherst  
Purchasing Department  
RFP #201003 – NAMING RIGHTS to the Amherst Ice Center**

Sealed proposals for the above-mentioned project in the Town of Amherst will be received by the Director of Purchasing at his office on or before 2:00 PM local time on the 11th of March, 2010.

Specifications may be obtained or examined at the Purchasing office of the Town of Amherst between the hours of 9:00 AM and 5:00 PM, excluding Saturdays, Sundays and Holidays.

Seven (7) copies of the Proposal and other required documents must be submitted, sealed in an opaque envelope clearly marked with the name and number of the Proposal and the name and address of the Proposer. One electronic version containing all documents, attachments and brochures must be submitted on a CD or flash drive in the sealed envelope. Proposals must be received no later than **2:00 PM on March 11, 2010**, at the following address:

Lawrence K. Graner, Purchasing Director  
Town of Amherst Municipal Building  
5583 Main Street, 2<sup>nd</sup> Floor Purchasing Dept  
Williamsville, New York 14221

By the Order of the Town Board of  
Amherst, Erie County, New York

Date: February 10, 2010

The Town of Amherst desires to obtain a vendor to perform duties involved as outlined below.

Your response should include the following:

1. Firms qualifications to perform the service.
2. Expertise in the area requested.
3. Past experience with the Town of Amherst and/or affiliates.
4. Total cost or rates for providing the service.
5. Disclosure of any present employees who were former Town of Amherst employees one year prior to the date of this RFP. Include the following:
  - The name of the person
  - The title that person held
  - The department for which they worked.

An acceptable Certificate of Insurance must be submitted within 14 days of notice of award. Instructions are enclosed (see Agreement Addendum).

## **RFP Specifications**

### **SECTION 1: PURPOSE:**

#### **1.1. Town Overview**

Located in Erie County in Western New York, the Town of Amherst is a first-ring suburb of the City of Buffalo. Growing from a “bedroom” suburb of Buffalo, Amherst now enjoys status as a premier residential community and employment center in Western New York.

Amherst is favorably located at a crossroads of interstate highways and near the hub of air transportation for Western New York. The interstate highways that traverse Amherst provide excellent accessibility to the Western New York region, Canada, Upstate New York, and the eastern United States via Interstate 90 and points south west and south via the I-90 and US Route 219.

Although the region has experienced a population decline in the past three decades, the Town has continued to grow. The Town’s present population is approximately 117,000, accounting for over 12% of Erie County’s total population. Projections prepared as part of the Comprehensive Plan indicated the community will grow by 11,000 to 22,000 people over the next 20 years. The Town’s population is diverse, well-educated, and with a median household income of \$55,427, earns significantly higher than the county average.

Amherst has a variety of high-quality neighborhoods and housing types, from traditional neighborhoods near the City of Buffalo to newer suburban areas such as East Amherst to the still largely rural North Amherst. There are over 49,000 housing units in the Town. While largely single-family homes, Amherst has recently seen growth in multi-family housing, including senior and student housing.

Over the past two decades, Amherst has emerged as the regional leader in high-technology employment – manufacturing, business services, and research and development firms – and has become a major regional employment center. Amherst has led Western New York in job growth since 1980, accounting for 75% of the jobs created in the region. There are currently over 94,000 jobs in the Town, and it is projected that another 14,000 jobs will be added in the next twenty years.

The University of New York at Buffalo’s North Campus is centrally located in Amherst. In addition, the University’s South Campus is located in the City of Buffalo at its municipal boundary with Amherst. The University is a major economic engine for the Town and the region as a whole as an institution of higher learning, employer, source of high-technology research, and a cultural amenity. The University at Buffalo has approximately 24,000 students, a faculty of 5,600, 5,000 full-time, and an additional 1,350 part-time employees.

Amherst has excellent community facilities and services, which are rated by residents and businesses as a major contributor to the Town’s high quality of life and its desirability as an employment center. Amherst is consistently rated as one of the top three safest communities with a population over 100,000 in the country. The Town’s three major school districts regularly rank in the top ten of area schools by a local business publication, with the Williamsville School District, the largest district in the Town and the largest suburban district in the region, currently ranked first among all districts in Western New York. Four libraries are located within the Town, including the Audubon Library, which has the highest circulation of any library in the Erie County Library system. Approximately 4,000 acres, or 12% of Amherst’s land area, is designated for recreation and open space uses, including parks, recreational facilities, conservation areas, bikeways, trailways, and golf courses. In addition, the Town provides both Senior and Youth Services at a number of facilities.

1.2 The Town of Amherst is seeking proposals for **Naming Rights to the Amherst Ice Center.**

1.3 The AIC began operations in September 1998. The AIC is owned & managed by the Town Amherst and has seating capacity of approximately 3,000 between all four of the rinks. The AIC foot traffic is as follows:

- 2005 – 1,400,000
- 2006 – 1,400,000
- 2007 – 1,700,000
- 2008 – 1,900,000

1.4 Website Hits

- The main homepage receives approximately 89,000 hits annually or an average of 7,417 per month.
- Individual page hits for facility information, ice rink, directions, etc. range from 18,500 to 2,500 hits annually or 1,542 to 208 per month.
- The Recreation department home page receives approximately 5,200 hits annually or an average of 433 per month.

1.5 Traffic Volumes – the latest traffic volumes provided by the Greater Buffalo Niagara Regional Traffic Council. Traffic counts are average daily (24 hour) counts

1.5.1 Maple Road:

- a. Sweet Home to Millersport 27,400 (2005)
- b. Millersport to N Forest Rd 25,600 (2007)
- c. N Forest Rd to Hopkins 25,800 (2005)

1.5.2 Millersport:

- a. 290 to Maple 33,300 (2006)
- b. Maple to UB Access 17,700 (2006)
- c. UB Access to Coventry 20,200 (2001)
- d. Coventry to N Forest 17,800 (2003)

1.7 Media Hits

1.71 Projected Annual Gross Impressions

The Amherst Pepsi Center generates significant media impressions, any business that paid for this level of media buy could expect to pay upwards of \$300k. (Based on \$2 CPM – cost per thousand impression).

<u>Communication Category</u>	<u>Impressions</u>
Amherst Pepsi Center Signage	1,400,000
Amherst Pepsi Center Advertising	924,000
Media Mentions	184,144,000
<b><u>Total Projected Annual Impressions</u></b>	<b><u>186,468,000</u></b>

1.72 Gross Impressions Ice Center Signage

<b>Communication Category</b>	<b>Impressions</b>
Pepsi Center Marquis	700,000.00
Pepsi Center West Entrance	700,000.00
<b>Total Ice Center Impressions</b>	<b>1,400,000.00</b>

1.73 Gross Impressions Ice Center Advertising

<b>Communication Category</b>	<b>Impressions</b>
<b>Amherst Bee</b>	<b>924,000</b>

1.74 Gross Impressions Ice Center Mentions –

<b>Communication Category</b>	<b>Period</b>	<b>Impressions</b>
WGRZ NBC affiliate 6 & 11pm news	4 months	1,776,000
WIVB CBS affiliate 6 & 11pm news	4 months	1,776,000
WKBW ABC affiliate 6 & 11 pm news	4 months	888,000
Amherst BEE	all of 2009	4,004,000
Buffalo News	all of 2009	175,700,000
<b>Total Media Mentions</b>		<b>184,144,000</b>

1.75 Gross Impressions Methodology & Data

- 1.75.1 Gross annual impressions are represented by the total number of times that the Pepsi Center is seen or heard in paid and unpaid market communications, public relations and news.
- 1.75.2 While there is no one source for gross impressions, a fair and reasonable projection of gross impressions may be established.
- 1.75.3 Data was supplied by the media outlet itself or industry resources.
- 1.75.4 The results of this activity may be utilized to project the gross impressions created by any promoter-driven events held in the facility.
- 1.75.5 Buffalo DMA rank is 52 out of 210 representing 631,120 TV Households or .0551% of US.
- 1.75.6 Buffalo News has daily circulation of 175,000, Sunday circulation of 255,000.
- 1.75.7 All final numbers used in our calculations were always the lower and conservative data points.

1.76 Gross Impressions Methodology Pepsi Center Media Mentions - Broadcast

- 1.76.1 WGRZ & WIVB are the two stations that consistently cover Buffalo Sabres practice at the Pepsi Center. On average during the season, the rink is mentioned 10 times per month on nightly news according to station executives.
- 1.76.2 Total impression per month is @440,000
- 1.76.3 Time frame used was a 4-month representation for the pro hockey season
- 1.76.4 Both stations are close in Neilson ratings we used the lower and the same rating point in our calculations for each station.
- 1.76.5 Includes both 6 & 11pm news broadcasts.
- 1.76.6 Used data supplied from One Domain Media Office an industry standard rating SW program
- 1.76.7 Does not include lead-in and other mentions prior to the newscasts.

1.76.8 Used only data as pertained to Sabres, did not include other news mentions.

1.77 Gross Impressions Methodology Pepsi Center Media Mentions - Print

1.77.1 Over 1000 Buffalo News articles in 2009 contained phrase or string “Amherst Pepsi Center”

1.77.2 Amherst BEE cited phrase or string “Amherst Pepsi Center” at least once every week for last 6 months.

1.77.3 Assumed Amherst BEE mentioned the “Amherst Pepsi Center” at least once every week for all of 2009.

1.77.4 The Amherst BEE is free weekly publication with 77,000 in weekly circulation.

1.77.5 ESS used only circulation numbers instead of Industry standard of using multiplication factor to determine readers.

1.77.6 Industry standards vary anywhere from 2-8 person’s view each copy it to determine impression data.

NOTE: Buffalo News website had over 9000 mentions of “Amherst Pepsi Center” their web traffic was not available for this report; these are also impressions that could be counted.

1.8 As a multi-purpose facility, the AIC has hosted a variety of events, including family shows and sporting events. (See Attachment A for detailed list of events & facility information)

1.9 The AIC is associated with Amherst Youth Hockey (AYH), Western New York Varsity Hockey Federation (Amherst, Sweet Home, Williamsville East, North & South), University at Buffalo Men’s & Women’s and the Amherst Skating Club.

1.10 The AIC has / will host major tournaments such as USA Hockey National Championships (2003, 2007, 2008 & 2010), USA Hockey Disabled Festival 2009 and the AYH Tournaments, Sectional and State Tournaments.

1.11 Many organizations use the AIC for dry floor events such as roller hockey, car shows and prom events.

1.12 **A PRE-PROPOSAL CONFERENCE WILL NOT BE HELD.** Proposers interested in submitting a response are *strongly encouraged* to contact the Director of Purchasing to schedule a tour of the facility

## **SECTION 2: RECEIPT OF PROPOSALS:**

2.1 Three (3) copies of the Proposal and other required documents must be submitted, sealed in an opaque envelope clearly marked with the name and number of the Proposal and the name and address of the Proposer. Proposals must be received no later than **2:00 P.M. on Thursday, March 11, 2010**, at the following address:

Lawrence K. Graner  
Town of Amherst Purchasing Director  
5583 Main Street, Second Floor  
Williamsville, New York 14221

2.2 The Proposal submitted by the individual Proposer(s) is the document upon which the Town of Amherst will make its initial judgment regarding the Proposer's qualifications, understanding of the Town's scope and objectives, methodology, and ability to complete services under the contract.

2.3 Those submitting Proposals do so entirely at their own expense. There is no express or implied obligation by the Town of Amherst to reimburse any firm or individual for any costs incurred in preparing or submitting Proposals, preparing or submitting additional information requested by the Town, or for participating in any selection interviews.

2.4 Submission of any Proposal indicates acceptance of the conditions contained in the RFP, unless clearly and specifically noted otherwise in the Proposal.

2.5 The Town of Amherst reserves the right to reject any and all Proposals, in whole or in part, submitted in response to its RFP.

2.6 The Town of Amherst reserves the right to waive any and all informalities and to disregard all non-conforming, non-responsive or conditional Proposals.

2.7 The Town of Amherst may, at any time by written notification to all Proposers, change any portion of the RFP described and detailed herein.

2.8 Proposals will be examined and evaluated by a committee with representation from the Town of Amherst Comptroller's, Purchasing, Recreation and Town Attorney's office. The Amherst Town Board will make the final decision from recommendations put forth by the evaluation committee.

2.9 During the evaluation of Proposals, the Town may require clarification of information or may invite Proposers to an oral presentation to amplify and or validate Proposal contents.

### **SECTION 3: QUALIFICATION AND REQUIREMENTS OF PROPOSER:**

Provide a statement of Proposer qualifications including:

- 3.1 Provide the name, a brief history and description of your firm. Include your firm's most recent annual report.
- 3.2 Identify your firm's staff member who would be working with and coordinating marketing and advertising activities with the Town of Amherst during the term of this contract.
- 3.3 Name and title of person(s) authorized to bind the Proposer, together with the main office address, and telephone number (including area code).
- 3.4 Document your firm's qualifications to produce the required outcomes, including its ability, capacity, skill and financial strength.
- 3.5 Proposers shall submit any details of similar projects including name, addresses and telephone numbers.
- 3.6 Provide any additional information that would distinguish your firm in its service to the Town of Amherst.
- 3.7 Proposers shall include all completed attachments and forms required with their proposal.
- 3.8 Proposer shall provide, at no cost to the Town, a current **Dun & Bradstreet Comprehensive Report** which shall be a distributable copy. Due to copyright issues, the Town is unable to accept D&B reports marked "Not for Distribution". This report can be obtained online at [www.dnb.com](http://www.dnb.com). Information within this report may be used in the Town's evaluation of the Proposer's financial solvency. Any Proposer who is unable to supply this report because the business does not have or was unable to obtain a D&B number should note this in their proposal response.
- 3.9 In addition, the Town of Amherst may make such investigations it deems necessary to determine the ability of the Proposer to perform financially. The Proposer shall furnish to the Town, within five (5) days of a request, all such information and data for this purpose as may be requested. The Town reserves the right to reject any Proposal if the information submitted by, or investigation of, such Proposer fails to satisfy the Town that such Proposer is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional Proposals will not be accepted.

## SECTION 4: SCOPE OF SERVICES:

- 4.1 Title Sponsorship entitles the sponsor to rename the AIC with a name chosen by the sponsor, with pre-approval by the Town of Amherst. The sponsor will have the non-exclusive right to place its name on existing external and internal signage, including, but not limited to exterior of the facility, interior signage, street signage, directional signage and highway signage.
- 4.2 The sponsor will commit to provide all materials and replacement signage, including installation as needed to complete the re-titling of the AIC. The cost of changing all exterior and interior signage will be paid for by the naming rights sponsor. All sign placements must be approved by the Town of Amherst and be in accord with any and all municipal approvals, zoning and building code requirements. No signs may be placed on the roof of the building. The naming rights sponsor shall be responsible for contracting all work relative to the removal of existing signage and the installation of all exterior and interior signage. All contractors and subcontractors performing work at the request of the naming rights sponsor shall be required to provide certificates of insurance in compliance with the insurance requirements set forth herein.
- 4.2.1 The contractor shall provide all on going maintenance and bulb replacement for the signs that are located on the exterior of the building and street entrances. All other signs in the facility, once installed, are the responsibility of the Town of Amherst.
- 4.2.2 The dimensions for some of the largest signs are as follows, additional signage requirements are listed in Attachment "B:"
1. Front Sign (East Side Main Entrance)  
Overall Dimensions are: 37" tall x 40' w  
  
**The Letters are 16" to 23" and the logo is larger**
  2. West Side  
Overall Dimensions are: 79" tall x 16' 6" w  
  
**The Letters are 20" to 32" and the logo is larger**
  3. North End  
Overall Dimensions are: 79" tall x 16' 6" w  
  
**The Letters are 20" to 32" and the logo is larger**
  4. North - Amherst Manor Drive Street Entrances  
Overall Dimensions are 5' tall x 97" w.
  5. South - Amherst Manor Drive Street Entrances  
Overall Dimensions are 5' tall x 97" w.
- 4.2.3 It will be the responsibility of the naming rights sponsor to work with, and compensate, the New York State Department of Transportation to change the signs on all New York State highways. The Town of Amherst makes no representations concerning the requirements of such work.
- 4.3 The Town will provide the naming rights sponsor advertising space in the concourse (Front Welcome Sign) See attachment B.

- 4.4 Sponsor's name shall appear on all printed materials (letterhead, fax documents, business cards, brochures, etc.), press releases, radio and television advertising, website, all billboard advertising, uniforms and computer printed event tickets. The cost for artwork, production, and installation costs of the sign faces shall be the responsibility of the awarded Proposer.
- 4.5 Proposers are encouraged to offer and shall describe additional promotional advertising opportunities that may include additional revenue or marketing benefits, which support AIC attendance or attendees.
- 4.6 Proposers shall address their marketing and public relations program to promote the new facility name locally, regionally and nationally.
- 4.7 Proposers shall state their objectives and strategy to introduce, build and increase awareness of the facility's new name. This is a key component of the proposal and must be clearly delineated.
- 4.8 Proposers shall describe their strategy to ensure a complete and integrated use of the new name on the established date.
- 4.9 Proposers shall describe any programs that they believe will create excitement, enthusiasm and promote goodwill by reaching out to the local and regional community.
- 4.10 The Town reserves the right to re-negotiate the compensation requirements in the event additional rinks or major construction occurs within the facility; in the event the parties are unable to agree on compensation, the Town reserves the right to cancel the agreement without further obligation.
- 4.11 The Town reserves the right to sell or lease all or a portion of the facility during the term of this agreement.

**SECTION 5: TERM OF CONTRACT:**

- 5.1 The contract period shall be ten (10) years, beginning on or about April 2, 2010.
- 5.2 The successful Proposer shall execute a contract with the Town of Amherst that will be in substantial conformance with this RFP, Proposer's Proposal, The Standard Addendum (Exhibit "F") and any applicable Federal, State or Local law, rule or regulation.

**SECTION 6: REVENUE PROPOSAL:**

- 6.1 Submit a revenue proposal for the naming rights, a minimum annual sum of \$\_\_\_\_\_.
- 6.2 Submit a minimum annual sum to assist in the development of major amateur sporting events: \$\_\_\_\_\_.
- 6.3 If proposing additional cash or marketing activities detail the structure of how those benefits would be allocated to the Town.
- 6.4 Provide any other relevant information that will assist the Town in evaluating your Proposal.

**SECTION 7: PROPOSAL SUBMISSIONS:**

- 7.1 In order for the Town to conduct a uniform review process of all proposals, proposals must be submitted in the format set forth below. Failure to follow this format may be cause for rejection of a proposal because adherence to this format is critical for the Town's evaluation process:

**SECTION I:**

Title Page - The title page should reflect the Request for Proposal subject, name of the proposer, address, telephone number and contact person.

Table of Contents - The Table of Contents must indicate the material included in the proposal by section and page number.

**SECTION II:**

Qualification / Experience - The Qualification / Experience section must address proposer's qualifications and experience to carry out the requested service, inclusive of, but not limited to: qualification to do business in NYS, number of years in business and length of experience.

Resumes - Resumes of professional staff members who may be involved in the Town engagement must be included in this section.

**SECTION III:**

References - The References section must include references from similar type projects.

**SECTION IV:**

Plan Implementation - The Plan Implementation Section must address the Scope of Services in terms of the proposer's plan to carry out the requested service.

**SECTION V:**

Revenue Proposal Section - The Revenue Proposal Section must include all revenue associated with the proposer's plan to carry out the requested service.

**SECTION VI:**

Mandatory Documentation - The Mandatory Documentation Section must include: The Non-Collusive Bidding Certificate (Exhibit G); Firm Name Information page; Dun & Bradstreet Report as required by the Town.

**SECTION 8: PROPOSAL EVALUATION:**

This RFP shall be evaluated in conjunction with the Exclusive Pouring Rights RFP #2009005. If, upon review of the proposals, the Town determines that it is in its best interest to award the Naming Rights and the Pouring Rights to two different proposers, it represents that the awards will not be made, under any circumstances, to two different beverage companies in direct competition in the soft drink market. The Town of Amherst reserves the right to award these contracts to the Proposer(s) who offers the best overall value to the Town.

8.1 Proposals will remain valid until the execution of a contract by the Town of Amherst, unless otherwise rejected consistent with this RFP.

8.2 Proposals received will be evaluated by a committee with representation from the Town of Amherst Comptroller's, Purchasing, Recreation and Town Attorney's office based upon the following:

<i><b>CRITERIA</b></i>	<i><b>WEIGHT</b></i>
Total proposed compensation	50%
Proposer's demonstrated capabilities, financial solvency	20%
Ability of Proposer to assist in the expansion of the Arena's revenue base, increase its profile, and make it a more successful enterprise	30%

8.3 Proposals will be examined and evaluated by the Committee identified above with the advice of the Town of Amherst Purchasing Director to determine whether the requirements of this RFP are met and to make a recommendation to the Town Board of Amherst for a contract award. Board approval of the contract award is required.

8.4 A notice of contract award shall not be binding upon the Town until the contract has been fully executed by both parties.

**SECTION 9: ALTERNATIVES:**

9.1 Proposer may include in its Proposal items not specified in this RFP, which it would consider pertinent. All such alternatives must be listed separately from the Proposal and the benefits thereof must be separately stated.

**SECTION 10: INDEMNIFICATION:**

10.1 The successful Proposer shall indemnify and hold the Customer, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Customer, its officers, agents, and/or employees, arising from the negligence, active or passive, of Contractor, its officers, agents, subcontractors, and/or employees.

**SECTION 11: SPECIFICATION CLARIFICATION:**

11.1 All inquiries with respect to this Request for Proposals must be directed to the Town of Amherst Purchasing Director as follows:

Lawrence K. Graner  
Town of Amherst Purchasing Director  
5583 Main Street, Second Floor  
Williamsville, NY 14221  
(716) 631-7073 (Telephone)  
(716) 635-0863 (Fax)

11.2 All questions about the meaning or intent of the specifications must be submitted to the aforementioned designated person in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded as having received the proposal documents. Questions received less than four (4) days prior to the date of submission of Proposals will not be answered. The Town will be bound only by written responses given by formal written Addenda.

11.3 Other than the contact person identified in the Proposal, or their designee, prospective Proposers shall not approach Town employees during the period of this RFP process about any matters related to this RFP or any proposals submitted pursuant thereto.

**SECTION 12: MODIFICATION AND WITHDRAWAL OF PROPOSALS:**

12.1 Proposals may be modified or withdrawn at any time prior to the opening of Proposals by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted.

12.2 If within twenty-four (24) hours after the Proposals are opened, any Proposer files a duly signed written notice with the Town and promptly thereafter demonstrates to the reasonable satisfaction of the Town that there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal and the Proposal Security will be returned. Thereafter, that Proposer will be disqualified from making a further or additional proposal on the work contemplated by this RFP.

12.3 Each proposal shall state that it is a irrevocable offer for a period of ninety (90) days from the Proposal opening date. After expiration of the irrevocable offer period, if no contract award has been made, a Proposal may be withdrawn if the Proposer does so in writing directed to the Town Purchasing Director, otherwise, Proposals remain in effect consistent with the terms of this RFP.

### **SECTION 13: PROPOSAL SECURITY:**

13.1 No proposal security is requested for this Proposal.

### **SECTION 14: INSURANCE AND SECURITY REQUIREMENTS:**

14.1 The successful Proposer will be required to procure and maintain at its own expense, insurance coverage that meets the coverage identified in the contract addendum

14.2 Each policy of insurance required shall be of form and content satisfactory to the Town of Amherst Attorney:

(a) The Town of Amherst shall be named as an additional insured on all liability policies. **Proposal number must appear on insurance certificate.**

(b) The policy shall not be changed or canceled until the expiration of thirty (30) days after written notice to the Town of Amherst. It shall be automatically renewed upon expiration and continued in force unless the Town of Amherst is given at least thirty (30) days written notice to the contrary.

14.3 No work shall be commenced under the contract until the successful Proposer has delivered to the Town Purchasing Director proof of issuance of all policies of insurance required by the Contract to be procured by the successful Proposer. If at any time, any of said policies shall expire or become unsatisfactory to the Town, the successful Proposer shall promptly obtain a new policy and submit proof of insurance of the same to the Town for approval. Upon failure of the successful Proposer to furnish, deliver and maintain such insurance as above provided, the contract may, at the election of the Town, be forthwith declared suspended, discontinued or terminated. Failure of the successful Proposer to procure and maintain any required insurance, shall not relieve the successful Proposer from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the successful Proposer concerning indemnification.

### **SECTION 15: REMEDY FOR BREACH:**

15.1 In the event of a breach by CONTRACTOR, CONTRACTOR shall pay to the TOWN all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the TOWN to procure a substitute contract, together with the TOWN's costs incurred in procuring a substitute contractor including a reduction of revenue in a substitute contract. The foregoing remedies are in addition to and not in lieu or limitation of any other rights or remedies with the TOWN may have, at law or in equity.

**SECTION 16: FREEDOM OF INFORMATION LAW:**

16.1 Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Proposer's intending to seek an exemption from disclosure of these materials under the Freedom of Information Law (New York State Public Officers Law, Sections 84-90) must request the exemption in writing, at the time of the submission of the materials, setting forth the reason for the claimed exemption. In addition, the proposer must mark each page of its submission on which there appears any material claimed to be protected as confidential or proprietary with the following legend, in bold face, capital letters at the top of each page: "THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE NEW YORK STATE FREEDOM OF INFORMATION LAW". Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

**SECTION 17: DISCREPANCY**

17.1 In the event of any discrepancy, disagreement or ambiguity among the documents which comprise this BID/RFP/RFQ, and/or, the Agreement (between the Town and the successful bidder/proposer) and its incorporated documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) the Agreement; 2) the RFP, RFQ, RFB; 3) the Contractor's proposal or bid.

**SECTION 18: TERMINATION:**

18.1 The TOWN shall have the right to terminate the AGREEMENT for breach or default, by written notice of such termination provided to the CONTRACTOR by the TOWN. The TOWN shall have the right to terminate the AGREEMENT for any reason, upon 180 days written notice of such termination provided to the CONTRACTOR by the TOWN. In the event of such termination of this AGREEMENT, the Parties shall be entitled to or liable for, on a pro-rata basis, any respective revenue, cost or benefit under the AGREEMENT.

### **INSTRUCTIONS TO RESPONDENTS**

1. **The response** should be submitted following the outline format of the RFP (i.e. answer questions and submit requirements in the same order and under the same heading as the outline) or RFP will not be considered. RFP must be typed or printed in ink. Original autograph signatures in ink are required. Facsimile or rubber stamp signatures will not be accepted.
2. **Late Proposals.** Any responses received after the date and time prescribed will not be considered for contract award.
3. **Emergency Closings.** In the event the closing of certain Town facilities and/or operations and/or services due to any flood, fire, fire drill, power failure, uncontrolled weather conditions or other cause beyond the Town's control, only bids received in the Purchasing Department prior to the date and time or postmarked as of the date prescribed will be considered for contract award.
4. **Any change in wording or interlineation by a respondent of the inquiry** as published by Town of Amherst shall be reason to reject the proposal of such respondent, or in the event that such change in the RFP is not discovered prior to entering into a contract, to void any contract entered into pursuant to such RFP.
5. **The Town of Amherst reserves the right to reject any and all responses,** to accept either in whole or in part any one response or combination of responses, as may be provided in the RFP specifications, or to waive any informalities in responses. The Town of Amherst does not obligate itself to accept the lowest or any other proposal and has the right, within its sole and absolute discretion to reject any proposal.
6. **For the purpose of determining which respondent is the lowest qualified responsible vendor,** it shall be the obligation of all respondents to present information and documentation to the Town of Amherst to satisfy that the respondent possesses sufficient capital resources, skill, judgment and experience to perform the work or deliver the material, as per the RFP specifications.
7. **Contract(s) or Purchase Order(s) will be awarded** after due consideration of the suitability of goods and/or services proposed to satisfy these specifications, the total cost of such goods and/or services including all cost elements, and the timeliness of the agreed upon delivery date.
8. **This EXECUTORY CLAUSE** shall be a part of any agreement entered into pursuant to this bid:  
  
It is understood by the parties that this agreement shall be executory only to the extent of the monies available to the Town of Amherst and appropriated therefore, and no liability on account thereof shall be incurred by the Town beyond the monies available and appropriated for the purpose thereof.
9. **Failure to perform** or meet delivery schedule as per accepted response may result in legal action by the Town of Amherst to recover damages, both direct and consequential.
10. **Prices shall be quoted F.O.B. Destination,** delivered inside (The dock or inside office). "Tailgate delivery" will not be accepted unless specified by the Town of Amherst.
11. **Collect transportation charges will not be paid by the Town of Amherst.** All freight, cartage, rigging, postage or other transportation charges shall be prepaid and included. There will be no additional charges for delivery.
12. **No taxes are to be billed to the Town of Amherst.** Proposals shall not include any Federal, State, or local excise, sales, transportation, or other tax, unless Federal or State law specifically levies such tax on purchases made by a political subdivision. The Town of Amherst Purchase Order is an exemption certificate. Any applicable taxes from which the Town of Amherst is not exempt shall be listed separately as cost elements, and added into the total net price.

13. **The successful respondent shall comply with all laws, rules, regulations and ordinances** of the Federal Government, the State of New York and any other political subdivision or regulatory body which may apply to its performance under this contract.
14. **Gratuities, Illegal or Improper Schemes.** The Town may terminate this agreement if it is determined that gratuities in the form of entertainment, gifts or otherwise were offered or given by a vendor, his agent or representative to any Town official or employee with a view towards securing favorable treatment with respect to the awarding of this bid or the performance of this agreement. The Town may also terminate this agreement if it is determined that the successful bidder engaged in any other illegal or improper scheme promotive of favoritism or unfairness incidental to the bidding process or the performance of this agreement. In the event that it is determined that said improper or illegal acts occurred, the Town shall be entitled to terminate this agreement and/or exercise any other remedy available to it under existing law.
15. **Insurance** shall be procured by the successful respondent before commencing work and no later than 14 days after notice of award, and maintained without interruption for the duration of the Contract, in the types of coverages and amounts specified in the agreement addendum, unless otherwise stipulated in these RFP Specifications. If the insurance is not provided in acceptable form within this period of time, then the Director of Purchasing may declare the vendor non-responsive and award the contract to the next responsible vendor.
16. **Any cash discount** which is part of bid will be considered as a reduction in the bid prices in determining the award of the bid. Date of invoice must not precede date of delivery. The Town of Amherst policy is to pay all claims in a timely manner within the specified time. However, if for some reason payment is delayed, the Town will take the discount when payment is made. The Town will not pay any interest charges, nor refund discount amounts taken after the discount period. If this is unsatisfactory, please quote net.
17. **Changes in work.** The Town may, as the need arises, through the Director of Purchasing, order changes in the work through additions, deletions, or modifications without invalidating the contract. Compensation, as it may be affected by any change, shall be adjusted by agreement between the contractor and the Town through the Director of Purchasing.
18. **Responses offering material** other than that of specified manufacturer or trade name will be considered unless stated otherwise. The use of the name of a particular manufacturer, trade name, or brand in describing an item does not restrict a respondent to that manufacturer or specific article. However, the substituted article on which a proposal is submitted must be of such character or quality that it would serve the purpose for which it is to be used equally as well as the manufacturer or brand specified and are subject to the prior written approval of Director of Purchasing. Proposals will be accepted in accordance with specifications on file or approved equal.
19. **If material or services** other than those specified in this RFP document are offered, the respondent must so state and furnish as part of the response the following information:
  - a) Complete description of the item offered, and detailed explanation of the differences between the item specified and the item offered. If, in the opinion of the Director of Purchasing, sufficient detail is not presented as a part of the sealed RFP to permit definitive evaluation of any substitute item, the proposal will not be considered.
  - b) Descriptive literature or item offered, for evaluation.
  - c) List of other installations using the item or service offered.
20. **Any additional information** which the respondent desires to add to the response shall be attached to and submitted with the formal sealed RFP on a separate sheet of paper.

21. **Workmanship** must meet with the approval of the Director of Purchasing, and shall be first class in every respect without exception and shall be equal to the best modern practices. Materials furnished are to be new and unused. All materials furnished or work performed are to be guaranteed free from defects. Anything found defective or not meeting specifications, no matter in what state of completion, may be rejected and shall be made good by the contractor at his own expense.
22. **Contractor shall Clean up and remove** all debris and rubbish resulting from the work and leave the premises broom clean to the approval of the department head.
23. **This RFP is firm and irrevocable for a period of 90 days** from the date and time of the RFP opening. If a contract is not awarded within the 90 day period, a vendor to whom the RFP has not been awarded, may withdraw its proposal by serving written notice of his intention to do so upon the Town of Amherst, Purchasing Department.
24. **Prices charged to the Town of Amherst** are to be no higher than those offered to any other governmental or commercial consumer. If a bidder has a New York State or a Federal GSA contract for any of the items covered in this bid or any similar items, he shall so indicate that he has said contract on these bid papers and automatically supply a copy of this contract within five days after notification of award.
25. **Price is Firm.** The unit prices bid shall remain firm, and any other charges bid shall also remain firm, for delivery of the equipment, material, work, or services described in this bid. No cost increase shall be charged for any reason whatsoever.
26. **Extension of price protection.** Any contract entered into pursuant to this RFP to supply the Town of Amherst requirements of goods and/or services for a definite period of time as stated in the attached specifications may be extended for not more than two successive periods of equal length at the same bid price upon the mutual agreement of the successful respondent and the Town of Amherst. All extensions shall be submitted in writing and shall have prior approval by the Town of Amherst, Director of Purchasing.
27. **In executing this proposal,** the respondent affirms that all of the requirements of the specifications are understood and accepted by the respondent, and that the prices quoted include all required materials and services. The undersigned has checked all of the RFP figures, and understands that the Town of Amherst will not be responsible for any errors or omissions on the part of the undersigned in preparing this proposal. Mistakes or errors in the estimates, calculations or preparation of the RFP shall not be grounds for the withdrawal or correction of the RFP. In case of error in extension of prices in the proposal, the unit price will govern.
28. **The undersigned shall be fully accountable** for performance under this proposal, or any contract entered into pursuant to this proposal, and agrees that the signer, or officer/s, will answer under oath all questions relevant to the performance thereof and to any transaction, act or omission had, done or omitted in connection therewith if called before any court with jurisdiction.
29. **Termination of Agreement:**
  - a. This agreement may be terminated by either party upon seven (7) days written notice, should the other party fail substantially to perform in accordance with its terms, through no fault of the party initiating the termination.
  - b. At its option, the Town of Amherst may at any time for any reason terminate this agreement and the Contractor shall immediately cease all work under the agreement upon receipt of written notice of such termination from the Town of Amherst.
  - c. In the event of termination for any reason other than the fault of the Contractor, the Contractor shall be paid the amount due to date of termination, and all reasonable expenses caused by such termination.

30. **The successful vendor** to whom the RFP is awarded shall defend, hold harmless, and indemnify the Town of Amherst, its affiliates, its agents and employees from and against all claims, damages, losses, including reasonable attorney's fees and litigation expenses, and/or causes of action arising out of or resulting from such vendor's performance pursuant to this RFP.
31. **STATUS AS AN INDEPENDENT CONTRACTOR:** The successful Bidder to whom the bid is awarded and the Town agree that the Bidder and its officers, employees, agents, contractors, subcontractors and/or consultants are independent contractors and not employees of the Town or any department, agency or unit thereof. In accordance with their status as independent contractors, the Bidder covenants and agrees that neither the Bidder nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the Town or any department, agency or unit thereof.
32. **Governed by New York law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Erie.

(Rev. 1/09)

FIRM NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

STATE \_\_\_\_\_ ZIP \_\_\_\_\_

AUTHORIZED  
SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

To facilitate correct drawing and execution of contract, bidder shall supply full information concerning legal status:

FIRM NAME \_\_\_\_\_

ADDRESS OF PRINCIPAL OFFICE:

STREET \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_

ZIP \_\_\_\_\_ AREA CODE \_\_\_\_\_ PHONE \_\_\_\_\_

Check one: CORPORATION \_\_\_\_\_ PARTNERSHIP \_\_\_\_\_ INDIVIDUAL \_\_\_\_\_

INCORPORATED UNDER THE LAWS OF THE STATE OF \_\_\_\_\_

If foreign corporation, state if authorized to do business in the State of New York:

YES \_\_\_\_\_ NO \_\_\_\_\_

TRADE NAMES: \_\_\_\_\_

ADDRESS OF LOCAL OFFICE:

STREET \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_

ZIP \_\_\_\_\_ AREA CODE \_\_\_\_\_ PHONE \_\_\_\_\_

NAMES AND ADDRESSES OF PARTNERS:

_____	_____
_____	_____
_____	_____
_____	_____



## **Town of Amherst**

### **Purchasing Department**

### **ASSIGNMENT OF PUBLIC CONTRACTS**

#### **GENERAL MUNICIPAL LAW - Section 109:**

1. A clause shall be inserted in all specifications of contracts hereafter made or awarded by an officer, board or agency of a political subdivision, or any district therein, prohibiting any contractor, to whom any contract shall be let, granted or awarded, as required by law, from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right, title or interest therein, or his power to execute such contract, to any other person or corporation without the previous consent in writing of the officer, board or agency awarding the contract.
2. If any contractor, to whom any contract is let, granted, or awarded, as required by law, by any officer, board or agency of a political subdivision, or of any district therein, without the previous written consent specified in subdivision one (1) of this section, assign, transfer, convey, sublet or otherwise dispose of such contract, or his right, title or interest therein, or his power to execute such contract to any other person or corporation, the officer, board or agency which let, made, granted or awarded such contract shall revoke and annul such contract, and the political subdivision or district therein, as the case may be, and such officer, board or agency shall be relieved and discharged from all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignee, transferee or sublessee shall forfeit and lose all monies, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent or affect any assignment by any such contractor for the benefit of his creditors made pursuant to the laws of the State.

**NO ASSIGNMENT OF ANY AGREEMENT** pursuant to this bid shall be made without specific prior approval, in writing, by the Town of Amherst Director of Purchasing.



**Town of Amherst**  
**Purchasing Department**  
**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- (1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or any competitor;
- (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**NOTICE**

(Penal Law, Section 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

**BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:**

Affirmed under penalty of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

TERMS \_\_\_\_\_ DELIVERY DATE AT DESTINATION \_\_\_\_\_

FIRM NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

ZIP \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

TYPED NAME OF AUTHORIZED SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_ TELEPHONE NO. \_\_\_\_\_

**Addendum to Contract**

Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision conflict with the clauses in this Article the provisions in this Article are to be enforceable and the conflicting provision shall be considered null and void.

No rules, requirements or customs of any society or association of professional Contractors or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Customer.

Contractor shall indemnify and hold the Customer, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Customer, its officers, agents, and/or employees, arising from the negligence, active or passive, of Contractor, its officers, agents, subcontractors, and/or employees.

Contractor shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Customer.

(a) Compensation Insurance: Contractor shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability, Automobile Liability, Excess Liability and Property Damage Insurance: Contractor shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows:

General and professional (if applicable) liability insurance in an amount not less than \$1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and \$2,000,000.00 aggregate. Excess Liability at a minimum of \$2,000,000 per occurrence.

Contractor shall ensure all its subcontractors, if any, have obtained all the above insurances.

Contractor shall furnish the above insurances, including subcontractors' insurances, to the Customer and shall also name the Customer as a primary additional insured in said policies.

(c) Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible and not later than three (3) days after the date of such accident.

No Assignment: In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Customer.

Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this Agreement shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

- (a) Labor Law section 220-e and Executive Law sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
- (b) Affirmative action as required by the Labor Law.
- (c) Prevention of dust hazard required by Labor Law section 222-a.
- (d) Preference in employment of persons required by Labor Law section 222.
- (e) Eight-hour workday as required by Labor Law section 220(2).
- (f) Chapter 32 of the Town of Amherst : Minority Women and Business Utilization Commitment.
- (g) Chapter 163 of the Town of Amherst : Registration of Sex Offenders.

The Contractor, in accordance with its status as an independent contractor or, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as, nor claim to be, an officer or employee of the Customer by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Customer, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

This agreement shall be governed by, and interpreted according to the laws of the State of New York. Any and all legal action necessary to enforce the agreement will be held in Erie County, New York.

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

Authority for execution on behalf of Customer: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Customer, at a meeting thereof held on \_\_\_\_\_. Barry A. Weinstein, MD, Supervisor, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Customer. This instrument shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Customer.

Agreed to and Accepted by:

Agreed to and Accepted by:

\_\_\_\_\_  
Print Name of Company

Town of Amherst

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Barry A. Weinstein, MD, Supervisor

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_