



Purchasing Services

REQUEST FOR PROPOSAL

TITLE: SURGICAL INSTRUMENT PURCHASE AND REPAIR SERVICES FOR UNIVERSITY HOSPITAL AND THE DOCTORS OFFICE CENTER IN NEWARK, NJ

RFP NUMBER: P10-038

DATE ISSUED: February 9, 2011

DUE DATE: March 31, 2011

TIME: 2:00 PM

**LOCATION: UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY –
DEPARTMENT OF PURCHASING SERVICES
LIBERTY PLAZA
335 George Street, 2nd Floor
New Brunswick, New Jersey 08903**

Important Note: Bidders should check Section 1.3 of this document to verify if attendance at a mandatory event (e.g., pre-bid conference, site visit, etc.) is required for this procurement. Failure to attend a mandatory event will result in the rejection of your proposal.

In accordance with the requirements of this proposal, the undersigned offers and agrees, if their proposal is accepted, to furnish any and all services for which the prices are submitted in accordance with the attached conditions as specified in this proposal.

**BIDDER'S NAME
AND ADDRESS**

**SIGNATURE AND TITLE OF
AUTHORIZED INDIVIDUAL**

Name (signature)

Name (print)

Title

1.0 INFORMATION FOR BIDDERS

1.1 Purpose and Intent of the Procurement

1.1.1 Purpose

This Request for Proposal (RFP) is for the purchase, repair of surgical instruments and related accessories. It is being issued by the University of Medicine and Dentistry of New Jersey (UMDNJ) for the University Hospital Department of Central Sterility, the University Hospital Department Perioperative Services, the Doctors Office Center and may also be accessed by other interested procedural areas related to surgical departments through out UMDNJ.

The purpose of this (RFP) is to enter into a contract(s) to furnish various surgical instruments, related supplies and repair services to the University Hospital Department of Central Sterility, the University Hospital Department Perioperative Services, the Doctors Office Center and may also be accessed by other interested procedural areas related to surgical departments at UMDNJ.

1.1.2 Intent

UMDNJ invites responses from medical instrument supply companies to contract for the purchase of surgical instruments, related supplies and repair services. It is the University's intent to make an award to multiple Contractors.

1.2 Background

The University Hospital is a 519-bed acute care hospital owned and operated by UMDNJ and located in the Central Ward of Newark. As the primary teaching hospital of the New Jersey Medical School in Newark, the hospital is committed to the provision of high quality patient care, medical education, clinical research and community service.

With an active medical staff of 790, The University Hospital is an integral part of the largest medical teaching program in the state, and trains 308 medical residents from the New Jersey Medical School's Graduate Medical Education programs. Medical education occurs in virtually every clinical specialty. The hospital also serves as the focus for other schools of the University providing on-site training for the New Jersey Dental School, School of Nursing, and School of Health Related Professions and Allied Health.

While the University Hospital serves as a referral center for many of the state's most advanced medical services and specialty care programs, The University Hospital is also a major source of primary care and serves as a safety net hospital for the Greater Essex Community and the State of New Jersey. The hospital operates over 50 different outpatient clinics and programs. In FY 2007, The University Hospital had 221,371 ambulatory care visits, 22,192 inpatient admissions, 14,003 surgery procedures, 1,926 deliveries and 92,169 emergency room visits.

The University Hospital provides a significant number of jobs within its operations for minorities and for residents of its local community. Its roots are in the Newark Agreements signed in 1968

guaranteeing training and jobs for the community in exchange for land committed to medical college development. With an annual budget of approximately \$600M, The University Hospital is one of the largest employers in the City of Newark and is committed to serving as one of the region's economic stabilizers.

Perioperative Services at The University Hospital includes both an inpatient and outpatient Operating Suites, Pre-Admission Testing, Endoscopy and Special Procedures Units, and a Same Day Unit. The University Hospital performs annually about 14,000 surgical procedures and about 4400 endoscopy procedures annually.

1.2.1 Contractor Qualification

Contracts shall be issued to those bidders that are currently being used at UMDNJ University Hospital and have been determined after consultation with appropriate surgical personnel to be a manufacturer or distributor of products anticipated to be needed by the University. Such determinations shall be made at the sole discretion of the University. The instruments may be purchased only after a determination has been made by the University that the prospective procurement of such instruments is warranted under the terms and conditions of this contract.

The item categories of instruments eligible for purchase under the terms and conditions of this RFP.

General Instruments- The Contractor must supply one or more of the following types of General surgical instruments: forceps, clamps, occuluders, retractors, rulers, calipers, distractors, positioners, scalpels, lancets, dialators and specula, irrigation and injection needles, tips and tubes. The above is only a representative list of the instruments needed and the Contractor must supply all of the instruments necessary for a large Hospital Environment. The Contractor may also supply disposable versions of the items noted above.

Powered devices- The Contractor must supply surgical hand pieces, drills, saws, shavers, drivers, mills and all related attachments such as drill bits, burrs, rasps and saw blades.

Scopes and probes- including fiber optic endoscopes and related attachments including tactile probes, suction tips and tubes for removal of bodily fluids.

Specialized devices- such as Ultrasound tissue disruptors, cryotomes, cutting laser guides and bipolar forceps. Note: Some of the devices purchased may be used on equipment the University currently owns such as generators and lasers.

1.2.2 Contractor Method of Engagement

The following is the general method of engagement that shall be used for the selection of surgical instruments and related supplies. All selected contractors shall fall within the definition of at least one of the categories as listed in Section 3.2.

A bidder selected to be added as a contractor for a specific category shall be either a Primary Contractor or a Secondary Contractor. It will be possible to have more than one Primary Contractor depending on the division of sub-categories within the category and the decisions made by the Evaluation Committee. All such determinations shall be an internal decision and at the sole discretion of the University. A Primary Contractor within a category shall be the default contractor for all purchases within that category. Although **all** Secondary Contractors shall be **permitted** to sell to the University, as stated above, the Primary Contractor shall be the initial contractor that must be used for any proposed purchase.

1.2.3 Bidding Schedule

Purchasing Services has conducted an extensive survey of physicians at University Hospital for the purpose of determining additional essential manufacturers, distributors and products that are included within the scope of this Request for Proposal. Additional eligible bidders have been established on the basis of two factors: manufacturers or distributors of surgical instruments previously used by the University, or, in the opinion of the appropriate surgeons, manufacturers and distributors of surgical instruments that may prove necessary to the University in the near term. These manufacturers and distributors are listed in Section 3.1. The University shall, at its sole discretion and after consulting with the appropriate staff, evaluate all proposals using the criteria listed in Section 6.0 and make a final determination as to which of the proposals are deemed to be in the best interests of the University.

Any manufacturer or distributor that is not on the list of eligible bidders but is interested in bidding may make a request for admission to the eligibility list. These requests should be sent in writing to Francis G. Palek Senior Buyer at the e-mail address of palekfg@umdnj.edu no later than three weeks (21 calendar days) before bid opening. Such requests shall be discussed with appropriate University staff and at the sole discretion of the University, using the criteria referenced above, a final determination shall be made as to the bidder's eligibility to submit a proposal. The final determination shall be provided to the potential bidder no later than 2 weeks (14 calendar days) before bid opening.

Awards shall be made within each category to an additional Primary Contractor and the necessary number of Secondary Contractors, as deemed by the University. The additional Primary Contractor shall be the vendor-of-choice for a particular category or sub-category of surgical instruments unless Hospital protocols and procedures determine that, in specific instances as defined by these protocols, another vendor may be used. The rules, regulations and procedures for these protocols are currently being composed and shall be in place before awards are made. At its discretion, the University may divide categories into sub-categories or further for purposes of award. Consequently, instrument categories may have more than one Primary Contractor so as to ensure that, in the best interest of the University, all particular facets of a category will be included. Bidders may submit proposals for any or all of the Segments of this RFP.

The RFP is divided into a minimum of four segments. Segment A shall be for General Instrumentation. Segment B shall be for Powered Devices. Segment C shall be for Scopes and Probes and related products. Segment D shall be for Specialized Devices.

The individual specifications for each category within a segment shall be listed in Section 3.0.
Example:

Segment “A” - Category 1: General Instrumentation.
Prequalified bidders:

Concept US
Fluke Biomedical
Gynecare

All specifications of the Scope of Work for that particular category shall follow the listing of the Prequalified bidders.

Segment “B” – Category 2: Powered Devices
Prequalified bidders:

Grace Medical
Hood Laboratories
Lorenz Surgical

As stated above, all specifications of the Scope of Work for that particular category shall follow the listing of the prequalified bidders and so on through all categories listed for inclusion in Segment A.

All proposals for all segments are due on _____ date. All bidders must clearly indicate the Segment and Category they are providing a proposal for on each one of their proposals. All bidders are also required to submit the attached bidder information form (See Attachment A).

1.3 Key Events

1.3.1 Questions and Inquiries

It is the policy of the UMDNJ, Purchasing Services to accept only written questions and inquiries from all potential bidders receiving this RFP.

Written questions should be e-mailed, mailed or faxed to the UMDNJ, Purchasing Services to the attention of the assigned buyer at the following address:

UMDNJ, DEPARTMENT OF PURCHASING SERVICES
335 GEORGE STREET, 2ND FLOOR
NEW BRUNSWICK, NEW JERSEY 08903
ATTN: Francis G Palek
palekfg@umdnj.edu
Buyer’s Phone Number: (732) 235-9610
Buyer’s Fax Number: (732) 235-9058

1.3.1.1 Question Protocol

Questions should be submitted in writing to the attention of the assigned UMDNJ, Purchasing Services buyer following the prescribed format attached to this RFP in section 9.2 P010-038 Surgical Instrument purchase and repair Question Protocol. Written questions should be directly tied to the RFP by the writer. Questions should be asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Short procedural inquiries may be accepted by telephone by the buyer; however, oral explanations or instructions given over the telephone shall not be binding upon the University. Bidders shall not contact any person within the University directly, in person, or by telephone, other than the assigned buyer, concerning this RFP.

1.3.2 Non-Mandatory Pre-Bid Conference

A non-mandatory Pre-bid Conference has been scheduled for this procurement. All bidders interested in submitting proposals are strongly encouraged to attend the non-mandatory Pre-bid Conference. This procurement is for all surgical instruments categories. The structure of the RFP is not typical and it is strongly encouraged that all possible bidders to attend this conference. The purpose of this conference is to provide a structured and formal opportunity for bidders to raise questions and clarify any of the proposal requirements. Essential information shall be given to all attendees - information that may mean the difference between a responsive and non-responsive bid.

The date, time and location are provided as follows:

DATE: February 24, 2011

TIME: 10:00 am

LOCATION: UMDNJ Medical Science Building
185 South Orange Avenue
Level C Room 600
Newark, New Jersey 07103

It is the responsibility of the bidder to identify and address any additional requirements or information needed to submit a proposal. No special consideration shall be given to any bidder, because of the bidder's failure to be knowledgeable of all the requirements of the proposal after the pre-bid conference date.

At the bid conference, procedural questions will be addressed. Substantive questions concerning the RFP scope of work and requirements submitted by the bidders shall be addressed in a written addendum. If necessary, Purchasing Services may continue to accept written questions up through the close of business the day following the bid conference. If questions are to be accepted after the bid conference, an announcement will be made at the bid conference.

1.4 Additional Information for Bidders

1.4.1 Revisions to this RFP

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any RFP addendum will be distributed as follows:

The cut-off date for questions and inquiries concerning the RFP is stated in Section 1.3.1.1. If any addendum is issued for this procurement, it will be distributed to all bidders who were sent the RFP.

1.4.2 Addendum as a Part of this RFP

Any addendum to this RFP shall become part of this RFP and part of any contract resulting from this RFP.

1.4.3 Issuing Office

This RFP is issued by the UMDNJ, Department of Purchasing Services. The buyer noted in Section 1.3.1 is the sole point of contact between the bidder and the UMDNJ for purposes of this RFP.

1.4.4 Bidder Responsibility

The bidder assumes sole responsibility for the complete effort required in this RFP. No special consideration shall be given after bids are opened because of a bidder's failure to be knowledgeable of all the requirements of this RFP. By submitting a proposal in response to this RFP, the bidder represents that it has satisfied itself, from its own investigation, of all the requirements of this RFP.

1.4.5 Cost Liability

UMDNJ assumes no responsibility and bears no liability for costs incurred by bidders in the preparation and submittal of proposals in response to this RFP.

1.4.6 Contents of Bid Proposal

All information submitted by bidders in response to a bid solicitation is considered public information, except as may be exempted from disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

All bid proposals as public records, with the exception of information determined by the courts or UMDNJ to be proprietary, are available for public inspection after contract award.

A bidder may designate specific information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. UMDNJ reserves the right to make the

determination and will advise the bidder accordingly. The location in the bid proposal of any such designation should be clearly stated in a cover letter.

UMDNJ will not honor any attempt by a bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal. The bidder will be required to withdraw such designation before the bid proposal will be considered for contract award.

In the event of a challenge to the bidder's designation of confidentiality/proprietary materials, the bidder shall be solely responsible for defending its designation and UMDNJ shall have no responsibility thereof.

1.4.7 Price Alterations

Bid prices must be typed or written in ink. Any price changes (including "white-outs") must be initialed. Failure to initial price changes may preclude an award being made to the bidder.

1.4.8 Joint Venture

If a joint venture is submitting a bid, the agreement between the parties relating to such joint venture should be submitted with the joint venture's proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Affirmative Action Employee Information Report, MacBride Principles Certification and, if applicable, foreign (out of State) corporate registration must be supplied for each party to the joint venture.

1.4.9 Bid Bond

Not required for this procurement

1.4.10 HIPAA Compliance

As a State Agency, New Jersey State regulations require that we obtain documentation regarding our vendor "HIPAA Compliance" status. In order to be in compliance and conduct business with your company for the procurements of goods and/or services, it will be necessary for your company to complete a Business Associate Agreement. This agreement involves the access to protected health information that is considered protected pursuant to federal, state and/or local laws and regulations in accordance with the privacy requirements of the "HIPAA" – Health Insurance Portability and Accountability Act of 1996. The requirement is a precondition of entering into a valid and binding contract.

1.4.11 Business Registration Notice

All New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue, prior to conducting business with the State of New Jersey. Proof of valid business registration must be

submitted by a bidder with its bid proposal. Failure to submit such valid business registration with a bid will render the bid materially non-responsive. The business registration form (Form NJ-REG) can be found online at: <http://www.state.nj.us/treasury/purchase/busreg.htm>

1.4.11.1 Definitions

“Affiliate” means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. An entity controls another entity if it owns, directly or individually, more than 50% of the ownership in that entity.

“Business organization” means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof.

“Business registration” means a business registration certificate issued by the Department of the Treasury or such other form or verification that a contractor or subcontractor is registered with the Department of Treasury.

“Contractor” means a business organization that seeks to enter, or has entered into, a contract to provide goods or services with a contracting agency.

“Contracting agency” means the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, or any independent State authority, commission, instrumentality or agency, or any State college or university, any county college, or any local unit.

“Subcontractor” means any business organization that is not a contractor that knowingly provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract.

1.4.11.2 Requirements Regarding Business Registration Form

A contractor shall submit a copy of its business registration at the time of submission of its bid proposal in response to this RFP.

A subcontractor shall provide a copy of its business registration to any contractor who shall forward it to the contracting agency. No contract with a subcontractor shall be entered into by any contractor unless the subcontractor first provides proof of valid business registrations.

The contractor shall provide written notice to all subcontractors that they are required to submit a copy of their business registration to the contractor. The contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance. The contractor shall submit to the contracting agency a copy of the list of subcontractors, updated as necessary during the course of performance of the contract. The contractor shall submit a complete and accurate list of the subcontractors to the contracting agency before a request for final payment is made to the using agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of Treasury the use tax due pursuant to the “Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

1.4.12 Deficit Reduction Act

The University of Medicine and Dentistry (UMDNJ) is committed to the prevention and detection of any fraud, waste, and abuse within the University related to all health care programs, including Federal and State programs. To this end, UMDNJ maintains a vigorous compliance program geared in part to educating our community on the range of fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments. Our policies prohibit the knowing submission of a false claim for payment in relation to any health care program, including a Federal or State funded health care program. Such a submission is a violation of Federal and State law and can result in significant administrative and civil penalties under the Federal and State False Claims Acts.

To assist UMDNJ in meeting its legal and ethical obligations, any employee, contractor or agent who is aware of the preparation or submission of a false claim or report or reasonably suspects any other potential fraud, waste, or abuse in relation to a Federal or State funded health care program is required to report such information to his or her supervisor and UMDNJ’s Office of Ethics and Compliance. Any employee of UMDNJ who in good faith reports such information will be protected against retaliation for coming forward with such information both under UMDNJ’s internal compliance policies and procedures and United States and New Jersey law.

As an organization, UMDNJ obligates itself to investigate any such information swiftly and thoroughly through its internal compliance programs and mechanisms. Nonetheless, if an employee, contractor or agent believes that the organization’s response is deficient and unresponsive, the employee shall bring these concerns to UMDNJ’s Office of Ethics and Compliance. If such follow-up still does not trigger an investigation, after a reasonable period of time, the employee, contractor or agent has the ability to bring his/her concerns to the appropriate government agency under the relevant Federal and/or State laws.

This information shall be provided to all UMDNJ employees and all contractors and agents of UMDNJ.

2.0 DEFINITIONS

The following definitions shall be part of any contract awarded or order placed as a result of this RFP:

“Addendum” – Written clarification or revision to this RFP issued by UMDNJ, Purchasing Services.

“Amendment” – A change in scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Vice President for Supply Chain Management.

“ATIMA” – “As Their Interests May Appear”

“Bidder” – An individual or business entity submitting a bid in response to this RFP.

“Contract” – This RFP, any addendum to this RFP, and the bidder’s proposal submitted in response to this RFP and UMDNJ’s Contract Term Sheet.

“Contractor” – The contractor is the bidder awarded a contract.

“eProcurement” - eProcurement is a set of electronic tools that support and expedite the transactional purchasing process. Through eProcurement, buyers search electronic catalogs (eCatalogs) to find needed items, place requisitions, route for approval, and send to suppliers for fulfillment. eProcurement system will support the back-end invoicing and payment processing.

“Evaluation Committee” – A committee established to review and evaluate bid proposals submitted in response to this RFP and to recommend a contract award to the Manager of Purchasing Services.

“General instruments”- General surgical instruments are forceps, clamps, occuluders, retractors, rulers, calipers, distractors, positioners, scalpels, lancets, dialators and specula, irrigation and injection needles, tips and tubes.

“HIPAA” – Health Insurance Portability and Accountability Act of 1996.

“Manager” – The Manager of Purchasing Services; the contracting officer of UMDNJ.

“May” – Denotes that which is permissible, not mandatory.

“Powered Devices”- Powered Devices are hand pieces, drills, saws, shavers, drivers, mills and all related attachments such as drill bits, burrs, rasps and saw blades.

“Project” – The undertaking of services that are the subject of this RFP.

“Qualified Product List” (“QPL”)—A list of products the University indicates as meeting the standards for the procurement.

“Request for Proposal (RFP)” – This document, which establishes the bidding and contract requirements and solicits proposals to meet the purchase needs as identified herein.

“Scopes and Probes”- Scopes and Probes are fiber optic endoscopes and related attachments including tactile probes, suction tips and tubes for removal of bodily fluids.

“Shall” or “Must” or “Will” – Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a bid proposal as materially non-responsive.

“Should” – Denotes that which is recommended, not mandatory.

“Specialized Devices”- Specialized devices are Ultrasound tissue disruptors, cryotomes, cutting laser guides and bipolar forceps. Note: Some of the devices purchased may be used on equipment the University currently owns such as generators and lasers.

“Subtasks” – Detailed activities that comprise the actual performance of a task.

“Task” – A discrete unit of work to be performed.

“UMDNJ” – The University of Medicine and Dentistry of New Jersey, or otherwise referred to as the “University.”

3.0 SCOPE OF WORK/COMMODITY DESCRIPTION

3.1 Vendor Pre-Qualification

In order to submit a response to this RFP, a potential bidder must be listed below or be recommended by specific surgical units as having products needed by that unit. Any bidder not listed below that is interested in submitting a proposal must follow the pre-qualification procedure in section 1.2.3 of this RFP. The following vendors have been pre-qualified to be eligible to bid based on previous sales and need.

The potential bidders are listed below per the following segments;

Segment-General Instrumentation - Eligible bidders:

- Accurate Surgical and Scientific
- Active Medical
- Aesculap
- Alcon Labs
- Ambu
- Applied Medical
- Arthrex
- Bausch and Lomb Surgical
- Boss Instruments
- Boston Scientific
- V. Mueller/Cardinal Health
- Cardinal Products
- Cook Medical
- Cooper Surgical
- Conmed Linvatec
- Covidien
- Depuy Ortho
- Ethicon
- Gyrus Ent
- Innomed
- Instrument Specialists
- Integra Lifesciences
- Jarit
- Jedmed
- Johnson and Johnson/Codman
- Katena Products
- Karl Storz
- Kirwin Surgical
- KLS Martin
- Mediflex
- Medgyn
- Medtronic Neurologic
- Mizuho America

Olympus America
Richard wolf
Scanlan International
Smith and Nephew
Speciality Surgical Instruments
Synergetics
Synthes USA
Stryker Ortho
Thompson Surgical
Teleflex
Wilson Ophthalmics

Segment- Powered Devices Eligible bidders:

Acra-Cut
Aesculap
Anspach
Brasseler
Conmed Linvatec
Gyrus Ent
Integra Lifesciences
Johnson and Johnson/Codman
Johnson and Johnson/Ethicon
Karl Storz
Medtronic Neurologic
Micro Aire
Olympus America
Omega Surgical
Osteomed
Smith and Nephew Endo
Synthes
Stryker Instruments
Stryker Orthopaedic
Zimmer Tri-State

Segment- Scopes and Probes – Eligible bidders:

Conmed Linvatec
Karl Storz
Olympus America
Richard Wolf
Smith and Nephew
Stryker Endoscopy
Vision Sciences

Segment – Specialized Devices Eligible bidders:

Intuitive Surgical
Kirwin Products
Megadyne Medical
Omniguide Inc.
Sota
Salient Surgical Technologies

Any manufacturer or distributor that is not on the list of eligible bidders but is interested in bidding may make a request for admission to the eligibility list. These requests should be sent in writing to Francis G. Palek Senior Buyer at his e-mail address palekfg@umdnj.edu no later than three weeks (21 calendar days) before bid opening. Such requests shall be discussed with appropriate University staff and at the sole discretion of the University, using the criteria referenced above a final determination shall be made as to the bidder's eligibility to submit a proposal. The final determination shall be provided to the potential bidder no later than 2 weeks (14 calendar days) before bid opening.

1) UMDNJ surgical personnel may suggest the inclusion of additional brands of instruments on this RFP.

3.2 Types of Instruments

The surgical instruments permitted to be sold under the terms of this contract are those currently in use at the University and or those suggested for new surgical procedures. Current instruments shall be described as having a history of use at the University. Instruments for new surgical procedures shall be described as those not available at the time of the bid opening.

The bidder/contractor must be able to provide product for at least one of the categories of Instruments listed below.

As stated in Section 1.2.1, contractors must use the following definitions to distinguish between the different surgical instrument categories:

General Instruments- The Contractor must supply one or more of the following types of General surgical instruments: forceps, clamps, occuluders, retractors, rulers, calipers, distractors, positioners, scalpels, lancets, dialators and specula, irrigation and injection needles, tips and tubes. The above is only a representative list of the instruments needed and the Contractor must supply all of the instruments necessary for large Hospital Environment. The Contractor may also supply disposable versions of the items noted above.

Powered Devices- The Contractor must supply drills, dermatomes and related supplies including: drill bits, burrs and rasps.

Scopes and Probes- The Contractor must supply fiber optic endoscopes and related attachments including tactile probes.

Specialized Devices- The Contractor must supply Ultrasound tissue disruptors, cryotomes, cutting laser guides and bipolar forceps. Note: Some of the devices purchased may be used on equipment the University currently owns such as generators and lasers.

Bidders may submit proposals for any of the following instrument categories:

- GENERAL INSTRUMENTS
- POWERED DEVICES
- SCOPES AND PROBES AND RELATED SUPPLIES
- SPECIALIZED DEVICES

3.3 Product Performance

3.3.1 The Contractor must only provide new Instruments, which are the manufacturer's current model(s).

3.4 Product Recalls

3.4.1 The Contractor shall notify UMDNJ immediately of any product recall or alert, voluntary or otherwise.

3.5 Addition of New Items

In the event new items are added to the accepted contractor's product lines during the contract period, said additions will be made available to UMDNJ at the percent discount offered for new products in the original bid proposal. The price(s) from which the discount shall be taken shall be the introductory published price list for the new items.

3.6 Codes and Standards

3.6.1 All Instruments shall meet or exceed all applicable established codes and standards regarding durability and performance.

3.6.2 All Instruments shall be approved by all necessary industry governing bodies.

3.7 Ordering and Shipping Procedure

3.7.1 The Contractor must accept orders by phone, fax, and/or electronically.

- 3.7.2 The Contractor must provide UMDNJ immediate information if the product ordered is not available on the requested delivery date or on back order.
- 3.7.3 The Contractor must provide UMDNJ with a toll free telephone number and/or E-mail address, to confirm and track orders.
- 3.7.4 The Contractor shall be responsible for the delivery of materials to UMDNJ in new/undamaged condition in accordance with good commercial practice.
- 3.7.5 The Contractor's shipping boxes must be marked to show the applicable Purchase Order Number, the name and address of the receiving department and the name of the contractor.
- 3.7.6 Contractors must only accept orders with a UMDNJ corresponding purchase order.
- 3.7.7 All deliverables must be strictly in accordance with the Request for Proposal.
- 3.7.8 All deliveries shall be FOB destination.

3.8 Repair Services

- 3.8.1 The Contractor may be required to provide repair services to their line of instruments. The repairs are due to the normal wear and tear by end users and may include, but are not limited to, sharpening, screw replacement or to straighten bent tips. UMDNJ currently has an instrument repair vendor that will be called in first to see if the instrument can be fixed. The Contractor will only be used if the current instrument repair Contractor cannot provide repairs to the instrument.
- 3.8.2 The Contractor may be called in by the end user to pick the instrument up at the UMDNJ site or UMDNJ will ship the item back to the Contractor at UMDNJ expense. The item will only be shipped if a representative is unavailable to pick it up. UMDNJ would prefer that the Contractors pick the item up for evaluation.
- 3.8.3 The Contractor must evaluate the instrument and provide a written quote for its repair within 48 hours. If the instrument cannot be repaired the Contractor must provide a written quote for a suitable replacement at the Contractors submitted price.
- 3.8.4 The Contractor's price on their quote for repair or replacement must include the freight to UMDNJ. The quote must include the labor for the repair or any parts cost. The repaired item must be returned to the campus department location where it was picked up.

3.9 Quotations

- 3.9.1 The pricing in the Contractor's departmental requested quotations must be based on the submitted pricelist and indicate the associated contract number, product catalog number, instrument list price and or percentage of discount and discounted price.

3.10 Ancillary/Supplemental Supplies and/or Parts

- 3.11 The Contractor must be able to provide Ancillary Supplemental Supplies and/or Parts for their Instruments and they must be listed in the submitted contractor's catalog.

3.12 Reports

- 3.12.1 The Contractor may be required to supply a monthly report at the request of the participating department detailing a list of the Instruments purchased. The UMDNJ Participating Departments will specify the media format of the requested report.

3.13 Method of Engagement

- 3.13.1 Each awarded Contractor shall be placed as a Primary Contractor or a Secondary Contractor from which each participating department can select an Instrument contractor as indicated in sections 1.2.1 and 1.2.2 of this RFP.

3.14 Pricing

- 3.14.1 The Contractor must submit a price for each Instrument offered. The Contractor's submitted pricing for surgical instrument and any new products must be in the form of a discount off the bidder's current published catalog/price list in effect at the time of the bidding. The price list and catalog must be submitted with the bid proposal.
- 3.14.2 The Contractor's submitted price must include all costs including fees, shipping, receiving, delivery, restocking fees and surcharges.

3.15 Product Training

- 3.15.1 The Contractor must supply training for current, supplemental and new instruments. Training shall be at no cost to the University. The training must be at the University by the Contractors sales people in the guise of an in service and my need to be done in an operating room environment. The Contractor must have a 24 hour manned technical support line to answer questions which may arise in relation to their instruments. The questions could be about instrument performance, technical specs and use.

3.16 Eprocurement

The Contractor shall be required to participate in UMDNJ's eProcurement system Marketplace. This system provided by SciQuest is an electronic method of conducting procurement related transactions including payment. eProcurement is a set of electronic tools that support and expedite the transactional purchasing process. Through eProcurement, buyers search electronic catalogs (eCatalogs) to find needed items, place requisitions, route for approval, and send to suppliers for fulfillment. The UMDNJ eProcurement system supports the back-end invoicing and payment processing.

3.17 Inventory Management System

3.17.1 The Contractor shall be required to participate in UMDNJ's current inventory management system. The system is a materials inventory control system used to track the entire materials management process. The system is used in the procurement, contract price, delivery and inventory process of hospital related products. UMDNJ is currently in the process of transitioning the Inventory Management System from Mediclick to SciQuest's Supplies Manager Module. The vendor must work closely with UMDNJ with providing information in a format that the system can use.

4.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

4.1 Contract Term and Extension Option

4.1.1 Contract Term

The Contract shall be awarded for a period of three (3) years commencing from the date of award. If delays in the bid process result in an adjustment of the anticipated contract effective date, the bidder agrees to accept a contract for the full term of the contract.

4.1.2 Contract Extension Option

This contract may be extended for two (2) additional one (1) year period options. Any extension of this contract under this provision will be put into effect by mutual agreement between the University and the Contractor, with written notification provided to the Contractor by the University. The original terms and conditions will remain in effect for any extension period. Unless otherwise noted in this RFP (or any Addendum thereto), pricing for each optional year is to remain the same as the final year of the original contract term.

4.2 Contract Transition

In the event services end by either contract expiration or termination, it shall be incumbent upon the Contractor to continue services, if requested by the Vice President, until new services can be completely operational. The Contractor acknowledges its responsibility to cooperate fully with the replacement Contractor and UMDNJ to ensure a smooth and timely transition to the replacement Contractor. Such transitional period shall not extend more than ninety (90) days beyond the expiration date of the contract, or any extension thereof. The Contractor will be reimbursed for services during the transitional period at the rate in effect when the transitional period clause is invoked by UMDNJ.

4.3 Precedence of the University's Standard Terms and Conditions

See **Exhibit A** for UMDNJ's Standard Terms and Conditions.

The terms and conditions of this Contract are non-negotiable as per New Jersey statute N.J.S.A. 18A: 64 G-6 et seq. The Contract resulting from this procurement shall consist of this Request for Proposal, including UMDNJ's Standard Terms and Conditions, any addenda to this Request for Proposal, the Contractor's bid proposal and UMDNJ's signed Contract Term Sheet.

In the event of a conflict between the provisions of this Request for Proposal, including any addendum to this Request for Proposal, and the bidder's proposal, the Request for Proposal and/or the addendum shall govern.

Unless specifically noted within this Request for Proposal, UMDNJ's Standard Terms and Conditions take precedence over the Special Terms and Conditions contained in this Section of

the Request for Proposal. The Standard Terms and Conditions in effect for this procurement are attached to this RFP or Exhibit "A".

In the event of a conflict between the provisions of this Request for Proposal, including UMDNJ's Standard Terms and Conditions and the Special Terms and Conditions contained in this Section, and any addendum to the Request for Proposal, the addendum shall govern.

4.4 Insurance

The Contractor shall assume all responsibility for its actions and those of anyone else working for it while engaged in any activity connected with this Contract. The Contractor shall carry sufficient insurance to protect it and UMDNJ from any property damage or bodily injury claims arising out of the use of the products supplied or contracted work. Evidence of current insurance coverage shall be provided in the form of a Certificate of Insurance which shall be submitted no later than ten (10) days after receipt of notice of intent to award the Contract. This Certificate of Insurance should include the bid proposal number. IN ORDER TO PREVENT ANY UNNECESSARY DELAY, BIDDERS MAY SUBMIT EVIDENCE OF REQUIRED INSURANCE WITH THEIR BID PROPOSALS. UMDNJ shall be named as additional insured ATIMA (As Their Interests May Appear) with respect to Commercial General, Automobile and Excess Liability Insurance provided by the Contractor pursuant to this Contract. UMDNJ is to be named as certificate holder.

Indemnification: The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the UMDNJ and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and cost and expenses in connection therewith on account of the loss of life, property, or injury or damage to the person, body of property of any person or persons whatsoever including the UMDNJ, its agents, servants or employees, which shall arise from or result directly or indirectly from the services and/or materials supplied under the Contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this Contract. This Contract shall be subject to all the provisions of the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et, Seq., and all other laws applicable to the parties involved.

The insurance to be provided by the Contractor shall be as follows:

Commercial General Liability Insurance - including contractual liability endorsement, subject to primary limits of coverage of not less than \$1,000,000 per occurrence/\$1,000,000 annual aggregate. If applicable,

Excess Liability Insurance - subject to an additional limit of liability of not less than \$1,000,000 per occurrence/\$1,000,000 aggregate excess of the primary policy;

Workers' Compensation Insurance - statutory coverage and including employers liability coverage of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate;

Network Security and Privacy Liability Insurance - coverage having limits of liability of not less than \$1,000,000 per occurrence;

Additional Insured - UMDNJ to be named as additional insured ATIMA with respect to Commercial General Liability, Network Security and Privacy Liability Insurance, and Excess Liability Insurance provided by contractor pursuant to this proposal/contract;

All insurers affording coverage are to be licensed to conduct the business of insurance within the State of New Jersey and to be rated not less than A- by Bests Insurance Rating Service.

UMDNJ is to be named as certificate holder with respect to all afore-mentioned insurance coverages.

All Insurance coverages shall remain in effect throughout the course of the contract. Contractor shall be responsible for any and all future claims, litigation, damages, liabilities, whatsoever, which may arise as a result of Contractor's performance of services pursuant to this contractual agreement.

All required commercial general liability insurance and any required pollution liability insurance coverage shall be maintained throughout the course of the project. Failure to maintain said insurance coverage shall be deemed sufficient cause to immediately terminate the contract without having to show additional cause. Further, said liability insurance coverages shall be subject to an extended reporting period of not less than six years following the completion of the contract/project and, also, shall include completed operations coverage for a period of not less than six years following the completion of the project /contract.

All insurers affording coverage are to be licensed to conduct the business of insurance within the State of New Jersey and to be rated not less than A- by Bests Insurance Rating Service.

4.5 **Departure From Bid Specifications or Terms and Conditions**

Notwithstanding the forgoing, a bidder's proposal may be deemed **NON-COMPLIANT AND BE REJECTED** and/or be found **non-responsive** if the change is a material departure from the bid specifications or the terms and conditions of this Request for Proposal. A material departure occurs when the change increases the likelihood that the waiver from compliance with the Request for Proposal is capable of giving the appearance of corruption or favoritism, or encouraging excessive spending or is likely to affect the amount or price of the bid or to influence any potential bidder to refrain from bidding or is capable of affecting the ability of the University to make a bid comparison, or is unacceptable to the University. The determination of material departure shall be in the sole discretion of the University.

4.6 **Compliance Obligations.**

Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. §1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set

forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement.

Contractor has received a copy of UMDNJ's Code of Conduct and UMDNJ's Stark Law and Anti-Kickback Statute Policies and Procedures. UMDNJ's Code of Conduct is available at <http://www.umdj.edu/complweb/code/conduct.pdf>. UMDNJ's Stark Law and Anti-Kickback Statute Policies and Procedures are available at the following web addresses:

http://www.umdj.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-60_05.pdf;

http://www.umdj.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-60_10.pdf; and,

http://www.umdj.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-60_15.pdf.

Each party shall ensure that its individuals providing service under the agreement who meet the definition of "Covered Persons" (as such term is defined in the "Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and the University of Medicine and Dentistry of New Jersey" available at <http://www.umdj.edu/presweb/president/UMDNJ-CIA.pdf>) shall comply with UMDNJ's Compliance Program, including the training related to the Anti-Kickback Statute and the Stark Law.

4.7 Contract Amendment

Any changes or modifications to the terms of the Contract shall only be valid when they have been reduced to writing and executed by the Contractor and the Vice President of Supply Chain Management.

4.8 Contractor Responsibilities

The Contractor shall have sole responsibility for the complete effort specified in the Contract. UMDNJ is not responsible for any debts or payments incurred by the Contractor in the performance of this Contract. Payment will be made only to the Contractor. The Contractor shall have sole responsibility for all payments due to any subcontractor.

The Contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the Contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that UMDNJ may have arising out of the Contractor's performance of this contract.

4.9 Substitution of Staff

If it becomes necessary for the Contractor to substitute any management, supervisory or key personnel, the Contractor will identify the substitute personnel and the work to be performed.

The Contractor must provide detailed justification documenting the necessity for the substitution. Résumés must be submitted evidencing that the individual(s) proposed as substitution(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The Contractor shall forward a request to substitute staff to the Vice President of Supply Chain Management, through the University's Project Manager, for consideration and approval. No substitute personnel are authorized to begin work until the Contractor has received written approval to proceed from the Vice President of Supply Chain Management, through the University's Project Manager.

4.10 Substitution or Addition of Subcontractor(s)

If it becomes necessary for the Contractor to substitute and/or add a subcontractor, the Contractor will identify the proposed new subcontractor and the work to be performed. The Contractor must provide detailed justification documenting the necessity for the substitution or addition.

The Contractor must provide detailed résumés of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge ability and experience relevant to that part of the work, which the subcontractor is to undertake.

In the event a subcontractor is proposed as a substitution, the proposed subcontractor must equal or exceed the qualifications and experience of the subcontractor being replaced. In the event the subcontractor is proposed as an addition, the proposed subcontractor's qualifications and experience must equal or exceed that of a similar subcontractor proposed by the Contractor in its bid proposal.

The Contractor shall forward a request to substitute/add a subcontractor to the Vice President of Supply Chain Management, through the University's Project Manager, for consideration and approval. No substitution or addition of a subcontractor is authorized until the Contractor has received written approval to proceed from the Vice President of Supply Chain Management, through the University's Project Manager.

4.11 Ownership of Material

All data, technical information, materials gathered, oriented, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents,

regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of UMDNJ and shall be delivered to UMDNJ upon 30 days notice by UMDNJ.

With respect to software computer programs and/or source codes developed for UMDNJ, the work shall be considered "work for hire," i.e., UMDNJ, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, Contractor or subcontractor hereby assigns to UMDNJ all right, title and interest in and to any such material, and the UMDNJ shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the bid proposal. Otherwise, the language in the first paragraph of this section prevails. If the bidder identifies such intellectual property ("Background IP") in its bid proposal, then the Background IP owned by the bidder on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the bidder. Upon contract award, the bidder or contractor shall grant UMDNJ a non-exclusive, perpetual royalty free license to use any of the bidder/contractor's Background IP delivered to the UMDNJ for the purposes contemplated by the contract.

4.12 Data Confidentiality

All financial, statistical, personnel and/or technical data supplied by UMDNJ to the Contractor are confidential. The Contractor is required to use reasonable care to protect the confidentiality of such data. Any use, sale or offering of this data in any form by the Contractor, or any individual or entity in the Contractor's charge or employ, will be considered a violation of this contract and may result in contract termination and the Contractor's suspension or debarment from UMDNJ contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

4.13 News Releases

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without prior written consent of the Vice President of Supply Chain Management.

4.14 Advertising

The Contractor shall not use UMDNJ's name, logos, images, or any data or results arising from this contract as a part of any commercial advertising without first obtaining the prior written consent of the Vice President of Supply Chain Management.

4.15 License and Permits

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The Contractor shall supply UMDNJ with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations shall have been included by the Contractor in its proposal.

4.16 Claim and Remedies

4.16.1 Claims

The following shall govern claims made by the Contractor regarding contract award rescission, contract interpretation, Contractor performance and/or suspension or termination.

Final decisions concerning all disputes relating to contract award rescission, contract interpretation Contractor performance and/or reduction, suspension or termination are to be made in a manner consistent with N.J.A.C. 17:12-1.1, et seq. The Vice President's final decision shall be deemed a final agency action reviewable by the Superior Court of New Jersey, Appellate Division.

All claims asserted against UMDNJ by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

However, any claim against UMDNJ relating to a final decision by the Vice President of Supply Chain Management regarding contract award rescission, contract interpretation, Contractor performance and/or contract reduction, suspension or termination shall not accrue, and the time period for performing any act required by N.J.S.A. 59:8-8 or 59:13-5 shall not commence, until a decision is rendered by the Superior Court of New Jersey, Appellate Division (or by the Supreme Court of New Jersey, if appealed) that such final decision by the Vice President of Supply Chain Management was improper.

4.16.2 Remedies

Nothing in the contract shall be construed to be a waiver by UMDNJ of any warranty, expressed or implied, or any remedy at law or equity, except as specifically and expressly stated in writing executed by the Vice President of Supply Chain Management.

4.17 Form of Compensation and Payment

The Contractor must submit billing statements to UMDNJ with supporting documentation evidencing that the product and/or work for which payment is sought has been satisfactorily completed. Invoices must reference the Contract number (P10-081) and Purchase Order number and also must be in strict accordance with the prices and discounts that were submitted and accepted with this proposal. When applicable, invoices should reference the appropriate Request

for Proposal price sheet line number from the Contractor's bid proposal. All invoices must be approved by UMDNJ before payment will be authorized.

UMDNJ will issue payment for goods and services within forty-five (45) days of the receipt and acceptance of goods and/or services by the using department, whichever is later. Vendors shall not submit an invoice to Accounts Payable until the vendor receives a Purchase Order from UMDNJ for the goods and/or services. Vendors shall also not date an invoice that is before the date the Purchase Order is issued by UMDNJ.

Vendors may propose a discount for payments made before the 45 day period. UMDNJ may exercise the discretion to take advantage of such early payment terms.

4.17.1 Payment for Special Projects/Additional Work

Invoices must also be submitted for any special projects, additional work or other items properly authorized and satisfactorily completed under the contract. Invoices shall be submitted according to the payment schedule agreed upon when the work was authorized and approved. Payment can only be made for work when it has received all required written approvals and has been satisfactorily completed.

4.18 Additional Work and/or Special Projects

The Contractor shall not begin performing any additional work or special projects without first obtaining written approval from the Vice President of Supply Chain Management.

In the event that the need for additional work and/or a special project arises, UMDNJ will submit such a request to the Contractor in writing. The Contractor must present a written proposal to perform the additional work/special project to UMDNJ. The proposal should provide justification for the necessity of the additional work/special project. The relationship between the additional work/special project being requested and the work required by the Contractor under the base contract must be clearly established by the Contractor in its proposal for performing the additional work/special project. The Contractor's written proposal must provide a detailed description of the work to be performed, broken down by task and subtask. The proposal should contain details on the level of effort, including hours, labor categories, etc., necessary to compete the additional work.

The written proposal must detail the cost necessary to complete the additional work in a manner consistent with the contract. The written cost proposal must be based upon the hourly rates, unit costs or other cost elements submitted by the Contractor in the Contractor's original bid proposal submitted in response to this Request for Proposal. Whenever possible, the cost proposal should be a firm, fixed cost to perform the required work. The firm fixed price should specifically reference and be tied directly to costs submitted by the Contractor in its original bid proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt of the Contractor's written proposal, it shall be forwarded to the Vice President of Supply Chain Management for written approval. Complete documentation from the using agency, confirming the need for the additional work/special project, must be submitted.

No additional work and/or special project may commence without the Vice President of Supply Chain Management's written approval. In the event the Contractor proceeds with additional work and/or special projects without the written approval of the Vice President of Supply Chain Management, it shall be at the Contractor's sole risk. UMDNJ shall be under no obligation to pay for work done without the Vice President of Supply Chain Management's written approval.

4.19 Option to Reduce Scope of Work

UMDNJ has the option, in its sole discretion, to reduce the scope of work for any task or subtask called for under this contract. In such an event, the Vice President of Supply Chain Management shall provide advanced, written notice to the Contractor.

Upon receipt of such written notice, the Contractor will submit, within five (5) working days to the Vice President of Supply Chain Management, an itemization of the work effort already completed by task or subtasks. The Contractor shall be compensated for such work effort according to the applicable portions of its cost proposal.

4.20 Suspension of Work

The Vice President of Supply Chain Management may, for valid reason, issue a stop order directing the Contractor to suspend work under the contract for a specific time. The Contractor shall be paid until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order or upon such other date as the Vice President of Supply Chain Management may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Vice President of Supply Chain Management and the Contractor shall negotiate an equitable adjustment, if any, to the contract price.

4.21 Changes in Law

Whenever an unforeseen change in applicable law or regulation affects the services that are the subject of this contract, the Contractor shall advise the Vice President of Supply Chain Management in writing and include in such written transmittal any estimated increase or decrease in the cost of its performance of the services as a result of such change in law or regulation. The Vice President of Supply Chain Management and the Contractor shall negotiate an equitable adjustment, if any, to the contract price.

4.22 Material Safety Data Sheets

Upon request, the Contractor shall furnish material safety data sheets (MSDS), or manufacturers' equivalent information sheets, on the products and/or chemicals used in performing the services specified in this Request for Proposal to the University's Project Manager. These sheets must list

complete chemical ingredients including the percentage composition of each ingredient on the mixture (down to 0.1%), the chemical abstract services numbers for those substances listed any potentially hazardous products which may give off gas during or following application. Failure to do so may constitute reason for termination of the contract.

4.23 Items Ordered and Delivered

University departments are authorized to order, and the Contractor is authorized to ship, only those items covered by the contract. If a review of orders placed by a department reveals that material other than that covered by the Contract has been ordered and delivered, such delivery shall be a violation of the terms of the Contract and may be considered, by the Vice President of Supply Chain Management, in the termination of the Contract or in the award of any subsequent Contract(s). The Vice President of Supply Chain Management may take such steps as are necessary to have the items returned by the department, regardless of the time between the date of delivery and discovery of the violation. In such event, the Contractor shall reimburse the University the full purchase price.

4.24 Timely Delivery

The Contract involves items that are necessary for the continuation of ongoing, critical services. Any delay in delivery of these items would disrupt University services and could force the University to immediately seek alternative sources of supply on an emergency basis. Timely delivery is critical to meeting the University's ongoing needs.

4.25 Chapter 51 / Executive Order 117 Compliance and 2-year Vendor Certification

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Public Law 2005, c.51, was signed into law on March 22, 2005. On September 24, 2008, Governor Corzine issued Executive Order 117, which is designed to enhance New Jersey's efforts to protect the integrity of procurement decisions and increase the public's confidence in procurement. The Executive Order builds upon the provisions of Chapter 51. Pursuant to the requirements of Public Law 2005, c.51, and Executive Order 117, all bidders must submit the Two-Year Chapter 51/Executive Order 177 Vendor Certification and Disclosure of Political Contributions prior to contract award. See Section 9 of this RFP for the certification form. The form and instructions for completion of the form may be found at http://.umdnj.edu/purchweb/employees/employ36_forms_policies.htm .

Bidders should submit the Chapter 51 / Executive Order 117 and 2-year Vendor Certification with their bid proposal. If the bidder fails to submit the Chapter 51 / Executive Order 117 Certification, the bidder, if selected for contract award, must submit and comply with Chapter 51 / Executive Order 117 requirements before the contract award can be finalized.

http://www.umdnj.edu/purchweb/vendors/vendor_06_E0134.htm

4.25.1 State Treasurer Review

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the Contractor. If the State Treasurer determines that any contribution or action by the Contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation the State Treasurer shall disqualify the Business Entity from award of such contract.

4.26 New Jersey Election Law Enforcement Commission Requirement

The Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, section 3) if the Contractor receives in excess of \$50,000 from a public entity in a calendar year. It is the Contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

4.27 No Non-Compete Clause

The Contractor shall not enter into agreements with employees, independent contractors or any other party which contain "Not to Compete" or "Non-Competition" provisions that would in any way restrict the ability of UMDNJ to provide services in their facilities.

4.28 Foreign (out of State) Corporations

All foreign corporations receiving a notice of Contract award shall be afforded seven (7) days thereafter to register with the State of New Jersey, Department of the Treasury's Division of Revenue. <http://www.state.nj.us/treasury/revenue/busregcert.htm>

4.29 Applicable Laws

This Contract and any and all litigation arising there from or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

4.30 Tax Exempt Status

UMDNJ is tax exempt. N.J.S.A. 54:32b-1, et. seq., exempts the material listed in this RFP from New Jersey State Sales or Use Taxes.

4.31 Material Safety Data Sheets

As applicable the Contractor is required to furnish material safety data sheets (MSDS), or manufacturers' equivalent information sheets, on products and/or chemicals used with their instruments delivered under the term of contract award available through this RFP. The sheets must list complete chemical ingredients including the percentage composition of each ingredient on the mixture (down to .01%), the chemical abstract services numbers for those substances listed any potentially hazardous products which may off gas during or flowing application. Failure to do so may constitute reason for termination of the contract.

4.32 Contractor's Personnel

4.32.1 Direct Management of Personnel

The Contractor will be solely responsible for all direct management, supervision, and control of the work performed by the Contractor's personnel. The Contractor shall be responsible for determining the proper work methods and procedures to be used and for ensuring that the work is properly and safely undertaken and completed in a satisfactory manner.

4.32.2 Employees of the Contractor

All parties must clearly understand that all Contractor personnel provided by the Contractor or any of his subcontractors shall be considered employees of the Contractor or subcontractor. Under no circumstances shall these people be considered employees of the University or as independent Contractors. Therefore, the Contractor and any of his subcontractors must provide all functions related to these personnel with respect to their classification as employees. These functions will include such services as salary, benefits and proper payroll deductions such as federal and state income taxes, disability and unemployment insurance, etc.

Contractor's personnel will be in uniform, clearly indicating name of firm and identifying their affiliation with the firm. In addition, personnel shall bear identification cards at all times with their name as well as the firm name listed on the card.

4.32.3 Employee Conduct

All Contractor personnel must observe all University regulations in effect at the location where the work is being performed. While on University property, the Contractor's personnel shall be subject to oversight by the University's Project Manager. Under no circumstances shall the Contractor's or any subcontractor's personnel be deemed employees of the University. Contractor or subcontractor personnel shall not represent themselves to be employees of the University.

Contractor's personnel will at all times make their best efforts to be responsive, polite, and cooperative when interacting with representatives of the University or any other University employees.

The Contractor's personnel shall be required to work in a harmonious manner with University employees as well as outside Contractor, if applicable. Nothing contained in this RFP shall be construed as granting the Contractor the sole right to supply personal or contractual services required by the University.

The Contractor agrees that, upon request by the University's Project Manager, the Contractor shall remove from the work crew any of its personnel who are, in the opinion of the University, guilty of improper conduct or who are not qualified or needed to perform the work assigned to them. Examples of improper conduct include, but are not limited to, insobriety, sleeping on the job, insubordination, tardiness, or substandard performance. The University's Project Manager or their representative is empowered to request that the Contractor replace offending personnel immediately.

The University's Project Manager may require replacement and removal from the work crew any employee who is identified as a potential threat to the health safety, security, general well being, or operational mission of the facility and its population.

5.0 PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

5.1 General

The bidder must follow instructions contained in this RFP and in the bid cover sheet in preparing and submitting its bid proposal. The bidder is advised to read thoroughly and to follow all instructions.

The information required to be submitted in response to this RFP has been determined to be essential in the bid evaluation and contract award process. Any qualifying statements made by the bidder to the RFP's requirements could result in a determination that the bidder's proposal is materially non-responsive. Each bidder is given wide latitude in the degree of detail it elects to offer or the extent to which plans, designs, systems, processes and procedures are revealed. Each bidder is cautioned, however, that insufficient detail may result in a determination that the bid proposal is materially non-responsive or, in the alternative, may result in a low technical score being given to the bid proposal.

The bidder is instructed to clearly identify any requirement of this RFP that the bidder cannot satisfy.

5.2 Proposal Delivery and Identification

In order to be considered a bid proposal must arrive at the Department of Purchasing Services in accordance with the instructions on the RFP cover sheet. Bidders submitting proposals are cautioned to allow adequate delivery time to ensure timely delivery of proposals. UMDNJ regulations mandate that late proposals are ineligible for consideration. The exterior of all bid proposal packages must be labeled with the Request for Proposal identification number, final bid opening date and the buyer's name.

5.3 Number of Bid Proposal Copies

Each bidder must submit one (1) complete original bid proposal, clearly marked as the "ORIGINAL" bid proposal. Each bidder should also submit five (5) full, complete and exact copies of the original. The copies required are necessary in the evaluation of the bid. It is suggested that the bidder make and retain a complete copy of its bid proposal.

5.4 Proposal Form and Content

The proposal should follow the format indicated in the following Sections of this RFP. The bidder should limit their response to one volume, if at all possible, with that volume divided into three (3) sections as indicated below.

5.5 Section 1 – Forms

The following forms are required with bidder’s proposal and shall be submitted with bidder’s proposal:

5.5.1 Ownership Disclosure Form

The bidder must complete the attached Ownership Disclosure Form. A complete Ownership Disclosure Form must be received prior to, or accompanying, the bid. Failure to do so will preclude the award of a contract.

5.5.2 Business Registration Notice

All New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue, prior to conducting business with the State of New Jersey. Proof of valid business registration must be submitted by a bidder with its bid proposal. Failure to submit such valid business registration with a bid will render the bid materially non-responsive. The business registration form (Form NJ-REG) can be found online at:

<http://www.state.nj.us/treasury/revenue/gettingregistered.htm#busentity>

The following forms are required before Contract award and may be submitted with bidder’s proposal:

5.5.3 Affirmative Action

The bidder must complete the attached Affirmative Action Employees Information Report, or, in the alternative, supply either a New Jersey Affirmative Action Certificate, or evidence that the bidder is operating under a federally approved or sanctioned affirmative action program. The requirement is a precondition of entering into a valid and binding contract.

5.5.4 Business Associate Agreement

The bidder must complete the attached Business Associate Agreement, involving the access to protected health information that is considered protected pursuant to federal, state and/or local laws and regulations in accordance with the privacy requirements of the “HIPAA” – Health Insurance Portability and Accountability Act of 1996. The requirement is a precondition of entering into a valid and binding contract.

5.5.5 Executive Order 117 Compliance and Certification

Effective November 15, 2008, all UMDNJ contractors are required to comply with Executive Order 117. In the early Fall of 2008, Governor Jon S. Corzine signed Executive Order No. 117, which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

Bidders should submit the Executive Order 117 Certification with their bid proposal. If the bidder fails to submit the Executive Order 117 Certification, the bidder, if selected for contract award, must submit and comply with Executive Order 117 requirements before the contract award can be finalized. The Executive Order 117 Certification with instructions may be found on the UMDNJ Purchasing Services Department's website at: <http://www.umnj.edu/purchweb/vendors/index.htm>

5.6 Section 2 - Technical and Organizational Support and Experience Proposals

5.6.1 Catalog & Price List

Products and/or services offered must be in accordance with the specifications contained herein. Surgical Instrument and Related Supplies and Parts price lists for evaluation must be included with the bidder's submitted proposal. The vendor must supply their list on a CD in the latest version of excel.

5.6.2 Qualified Vendor Product List

Products offered must be in accordance with the instrument device categories and specifications contained herein. Since all instruments in use at UMDNJ go thru a New Product Analysis Committee a Vendor Qualified Product List (QPL) is being used in this procurement. The Qualified Product List of vendors have been approved by the Committee for use at the University of Medicine and Dentistry of New Jersey. The bidder who is eligible or has requested eligibility shall bid on the surgical instrument segment categories indicated in section 1.2.1 of the RFP. Any other submission shall not be considered. Bidders, brands/models not on the current surgical instrument product list may be prequalified as stated in Section 1.2.1.

Bidders must submit their technical and organizational support and experience proposals by fully and accurately completing the Bidder Data Sheets included in this RFP as Section 7.0.

A bidder's failure to fully, properly and accurately complete all of the technical proposal and organizational support and experience information required by Section 7.0 of the RFP may result in their bid being non-responsive.

5.7 Section 3 - Cost Proposal

5.7.1 Bidders must submit their cost proposal in accordance with the Price Sheet(s) included in this RFP as Section 8.0.

Bidders must provide individual pricing for all available surgical instruments under the indicated category. The Bidder's stated individual surgical instrument price must remain firm for the current individual calendar year of the contract. The bidder must submit in January for each additional year of the contract, a new surgical instrument price list. The Bidder's surgical instrument price to the University may be increased only in the amount equal to the percentage it had been increased on the newly submitted most current price list. The first January of this contract, however, the price must remain at the price of the surgical instruments submitted with this bid.

Bidders must provide a percentage discount for all available surgical instrument supplies and related parts under the indicated contract. The Bidder's stated discount percentage must remain firm for each year of the contract.

Bidders must provide a percentage discount price from the most current manufacturer's list price for new surgical instruments which will become available after the bid is awarded.

Bidder's prices must include all costs, including those associated with loaner fees, shipping (FOB Point Destination-Newark, New Jersey), receiving, delivery and surcharges.

Bidders must submit an surgical instruments and related parts and supplies catalog with each proposal.

Failure to submit all information required will result in your bid being considered non-responsive. Each bidder is requested to hold its prices firm for a minimum of one hundred eighty (180) days so that an award can be made.

ONLY price and costing information provided by the bidder in its original bid proposal submitted in response to this RFP may later be used for additional work and/or special projects to be paid against the contract resulting from this RFP.

5.7.2 The bidder's signature on the cover of this RFP guarantees that prices set forth within the manufacturer's preprinted price lists and/or catalogs will govern for the period of the contract. The bidder also acknowledges that, notwithstanding any reference to price escalation clauses, FOB shipping point, and shipping charges contained in the preprinted price lists, catalogs, and/or literature, such references shall not be part of any contract awarded as a result of this RFP.

6.0 PROPOSAL EVALUATION AND CONTRACT AWARD

6.1 Proposal Evaluation Committee

Bids will be evaluated by an Evaluation Committee composed of members of affected departments together with representative(s) from the Department of Purchasing Services. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of an outside consultant in an advisory role.

6.2 Oral Presentation and/or Clarification of Bids

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its bid proposal. The Evaluation Committee may also require a bidder to submit written responses to questions regarding its bid.

The purpose of such communication with a bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid. The original bid, as submitted, however, cannot be supplemented, changed, or corrected in any way during the evaluation process. No comments regarding other bids are permitted. Bidders may not attend presentations made by their competitors.

It is within the Evaluation Committee's discretion whether to require a bidder to give an oral presentation or require a bidder to submit written responses to questions regarding its bid. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a bid. The Purchasing Services' buyer is the sole point of contact regarding any request for an oral presentation or written clarification.

6.3 Evaluation Criteria

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate bid proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

6.3.1 The quality of the goods proposed.

6.3.2 The bidder's documented experience in successfully providing goods of a similar nature to those required by this RFP.

6.3.3 The overall ability of the bidder successfully provide the goods required by this RFP.

6.3.4 The bidder's cost proposal.

6.4 University's Right to Consider Additional Information

- 6.4.1 The Vice President of Supply Chain may obtain any information determined to be appropriate regarding the ability of the bidder to supply and/or render the service required by this Request for Proposal.
- 6.4.2 The Vice President of Supply Chain may consider such other factors that, in the opinion of the Vice President, are important in evaluating the bidder's proposal and awarding Contracts as determined to be in the best interest of the University.
- 6.4.3 The University reserves the right to request all bidders to explain the method used to arrive at any or all cost or pricing figures.
- 6.4.4 When making the Contract award decision, the University may consider evidence of formal or other complaints against any bidder(s) by the University for Contracts held in the past or present by the bidder.
- 6.4.5 The University reserves the right to check the bidder's financial capacity and ability to successfully undertake and complete the services required by this Request for Proposal by any means deemed appropriate.
- 6.4.6 The University reserves the right to conduct site inspections of any facility(s) serviced by the bidder(s) to assist in judging the bidder's ability to provide the services required by this Request for Proposal. This applies to all facilities services by the bidder or any subcontractor to the bidder. This right extends to all facilities of which the University is aware, or about which it becomes aware, that the bidder is servicing, whether or not the facility is listed in the bidder's proposal.

6.5 Contract Award

The Contract shall only be awarded after a full evaluation has been completed. Bidders who submit a proposal are not guaranteed a Contract award. The Contract shall be awarded with reasonable promptness by written notice to that responsible and responsive bidder whose bid, conforming to the Request for Proposal, will be most advantageous to UMDNJ, price and other factors considered. Any or all bids may be rejected when the Vice President of Supply Chain Management determines that it is in the public interest to do so.

6.6 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

After evaluating bid proposals, the evaluation committee may enter into negotiations with each bidder in the competitive range, unless there are too many highly rated proposals to evaluate efficiently. In this situation, UMDNJ may limit the competitive range to the number of proposals that will permit efficient competition among the most highly rated proposals. The primary purpose of negotiations is to maximize UMDNJ's ability to get the best value, based on the requirements and evaluation criteria set forth in the RFP. Negotiations may involve the

identification of significant proposal weaknesses, ambiguities and other deficiencies that could limit a bidder's award potential, including payments. More rounds of negotiations may be held with one bidder in the competitive range than with another. Negotiations will be structured to safeguard information and ensure that all bidders in the competitive range are treated fairly. When the evaluation committee determines to conclude negotiations, all bidders in the competitive range will be so notified and advised of the time and place for submission of best and final offers. The best and final offer can modify any aspect of the bid proposal, provided mandatory RFP requirements are satisfied and further provided that the revised payment proposal is not higher than the original payment proposal. Any revised payment proposal that is not equal to or higher in payment than the original payment proposal will be rejected as nonresponsive. Evaluation of the best and final offers will be on the basis of payment and the evaluation criteria set forth in the RFP. If, after review of the best and final offers, clarification is required, it may be sought from the bidders. If further negotiation is desired after evaluation of the revised proposals, it will be followed by another BAFO opportunity. UMDNJ reserves the right to reassess the competitive range before proceeding with a subsequent round of negotiations and BAFO submissions and to remove from the competitive range any proposal that is no longer considered to be a leading contender for award. After evaluation of the final BAFO submissions, the evaluation committee will recommend to the Vice President for award the responsible bidder(s) whose bid proposal(s), conforming to the RFP, is most advantageous to the State, payment and other factors considered. The Vice President may accept, reject or modify the recommendation of the Evaluation Committee. The Vice President may negotiate further increases in payment with the selected bidder.

Negotiations will only be conducted in those circumstances where they are deemed by UMDNJ to be in UMDNJ's best interests and to maximize the UMDNJ's ability to get the best value. Therefore, bidders are advised to submit their best technical and payment proposals in response to this RFP, because the UMDNJ may, after evaluation, make a contract award based on the content of these initial submissions, without further negotiation with any bidder.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for clarification, negotiation or BAFO, any revised technical and/or payment proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

6.7 Bidder's Right to Challenge a Contract Award

Except in cases of emergency, bidders have the right to protest a proposed contract award.

A bidder's protest must be submitted to the buyer of record with a copy to the Vice President of Supply Chain Management ("Vice President") within ten (10) days of receipt of notice to the bidder that it did not receive a contract award for its submitted bid proposal or notice that an award had been made to another bidder. The protest period may be shortened by the Vice President of Supply Chain Management. If the protest period is shortened or a protest period is not authorized due to emergency, all bidders will receive notice of the shortened protest period or emergency in the notice sent to bidder on the award of the contract.

Notices of Contract award under this section may be faxed, e-mailed, sent by regular mail or by any other means, excluding telephonic communication, conducive to transmitting the notice. If notice is sent by regular mail, the recipient is deemed to have received the notice three (3) days after mailing.

If a bidder files a protest to a contract award under this section, the bidder must set forth in writing with specificity the basis of the protest. At the time of the protest filing, the bidder must also submit all documentation supporting the basis of the protest. Failure to comply with these requirements may lead to rejection of the protest and UMDNJ award of the contract.

The protest will be reviewed and addressed with reasonable promptness. If deemed necessary by Vice President, a hearing may be held on the merits of the protest. In all cases, the Vice President will notify the bidder of the final determination on the protest

7.0 BIDDER'S DATA SHEETS (FORMS TO BE COMPLETED BY BIDDER)

The bidder should fully complete and submit the following Bidder's Data Sheets. Failure to satisfactorily complete and submit the Bidder's Data Sheets may result in a determination that your bid is non-responsive, resulting in rejection of your bid.

Bidders are strongly advised to use the Bidder's Data Sheets supplied herein. The bidder should make additional copies, if necessary.

7.1 CONTACT INFORMATION

1. Name of individual that may be contacted at all times if information, service, or problem solving is required by the University. This service shall be available at no additional charge.

NAME OF CONTACT PERSON: _____

ADDRESS: _____

Telephone Number: (____) ____ - _____ Fax Number: (____) ____ - _____

2. Number of years this individual has been servicing similar accounts: _____

3. Identify the similar accounts this individual has serviced:

7.2 REFERENCE INFORMATION

The bidder should provide all of the information requested.

Supply the following information of customers for whom you are currently providing goods that are similar to those required by this RFP:

1. Name of customer provided as reference: _____

Name of individual the University may contact to verify this reference:

Phone number of contact person: (____) ____ - _____

Length of time goods have been provided by the bidder to this customer:

2. Name of customer provided as reference: _____

Name of individual the University may contact to verify this reference:

Phone number of contact person: (____) ____ - _____

Length of time goods have been provided by the bidder to this customer:

3. Name of customer provided as reference: _____

Name of individual the University may contact to verify this reference:

Phone number of contact person: (____) ____ - _____

Length of time goods have been provided by the bidder to this customer:

7.3 LIST OF ALL CONTRACTS LOST IN LAST THREE (3) YEARS

The bidder should provide a complete list of all contracts the bidder has lost or has had terminated during the last three (3) years, along with the reason why each one was lost or terminated. Include the name of a contact person and phone number for each contract lost or terminated.

1. NAME OF FIRM: _____

NAME OF CONTACT PERSON AT FIRM: _____

PHONE NUMBER OF CONTACT PERSON: _____

REASON FOR TERMINATION: _____

2. NAME OF FIRM: _____

NAME OF CONTACT PERSON AT FIRM: _____

PHONE NUMBER OF CONTACT PERSON: _____

REASON FOR TERMINATION: _____

(MAKE ADDITIONAL COPIES OF THIS SHEET, IF NECESSARY)

8.0 PRICE SHEET AND SUPPORTING DETAIL

Bidders must provide individual pricing for all surgical instruments under the indicated category. The Bidder's stated individual surgical instrument price must remain firm for the current individual calendar year of the contract. The bidder must submit in January for each additional year of the contract, a new surgical instrument price list. The Bidder's surgical instrument price to the University may be increased only in the amount equal to the percentage it had been increased on the newly submitted most current price list. The first January of this contract, however, the price must remain at the price of the surgical instrument submitted with this bid.

Bidders must provide a percentage discount for all available Ancillary/Supplemental Supplies and/or Parts under the indicated contract. The Bidder's stated discount percentage must remain firm for each year of the contract.

Bidders must provide a percentage discount price from the most current manufacturer's list price for new surgical instruments which will become available after the bid is awarded.

Bidder's prices must include all costs, including those associated with loaner fees, shipping (FOB Point Destination), receiving, delivery and surcharges.

Bidders must submit a Surgical Instruments catalog with each proposal.

Note: UMDNJ reserves the right to take advantage of available promotions and to negotiate most advantageous pricing.

Bidders must use the following definitions to distinguish between the different surgical instruments.

General Instruments- The contractor must supply one or more of the following types of General surgical instruments forceps, clamps, occuluders, retractors, rulers, calipers, distractors, positioners, scalpels, lancets, dialators and specula, irrigation and injection needles, tips and tubes. The above is only a representative list of the instruments needed and the Contractor must supply all of the instruments necessary for large Hospital Environment. The Contractor may also supply disposable versions of the items noted above.

Powered Devices- The contractor must supply one or more of the following Powered Devices Drills, Dermatomes and related supplies including Mechanical cutters- drill bits, burrs and rasps.

Scopes and probes- The contractor must supply one or more of the following Scopes and probes fiber optic endoscopes and related attachments including tactile probes, suction tips and tubes for removal of bodily fluids.

Specialized devices- The contractor must supply one or more of the following Specialized devices Ultrasound tissue disruptors, cryotomes, cutting laser guides and bipolar forceps. Note: Some of the devices purchased may be used on equipment the University currently owns such as generators and lasers.

The following is an example of how the bidder must submit its Surgical Instrument pricing. The Bidder must list and provide individual pricing on all its available Surgical Instruments as defined in this RFP. Additional rows can be added to include all the bidder's instruments.

Category 1: General instruments

Bidder's Name: Acme Surgical

DESCRIPTION OF SURGICAL INSTRUMENT	MODEL #	PRICE PER EACH	PROPOSED UNIT PRICE TO UNIVERSITY	% DISCOUNT
Instrument A	AA2	\$ 200.00	\$ 100.00	50%
Instrument B	BB2	\$ 300.00	\$ 150.00	50%
Instrument C	CC2	\$ 400.00	\$ 200.00	50%
Instrument D	DD2	\$ 500.00	\$ 250.00	50%
Instrument E	EE2	\$ 600.00	\$ 300.00	50%

Category 2: Powered Devices**Bidder** Acme Surgical

DESCRIPTION OF POWERED DEVICE	MODEL #	LIST PRICE PER EACH	PROPOSED PRICE PER EACH TO UNIVERSITY	% DISCOUNT
Powered Device A	AA2	\$ 200.00	\$ 100.00	50%
Powered Device B	BB2	\$ 400.00	\$ 200.00	50%
Powered Device C	CC2	\$ 400.00	\$ 300.00	25%
Attachment to Powered Device A	DD2	\$ 500.00	\$ 400.00	20%
Attachment to Powered Device B	EE2	\$ 800.00	\$ 640.00	20%

Category 3: Scopes and Probes

Bidder Acme Surgical

DESCRIPTION OF POWERED DEVICE	MODEL #	LIST PRICE PER EACH	PROPOSED PRICE PER EACH TO UNIVERSITY	% DISCOUNT
Scope A	AA2	\$ 200.00	\$ 100.00	50%
Probe B	BB2	\$ 400.00	\$ 200.00	50%
Scope C	CC2	\$ 400.00	\$ 300.00	25%
Attachment to Scope A	DD2	\$ 500.00	\$ 400.00	20%
Attachment to Scope A	EE2	\$ 800.00	\$ 640.00	20%

Category 4: Specialized Devices

Bidder Acme Surgical

DESCRIPTION OF POWERED DEVICE	MODEL #	LIST PRICE PER EACH	PROPOSED UNIT PRICE TO UNIVERSITY	% DISCOUNT
Attachment A	AA2	\$ 200.00	\$ 100.00	50%
Attachment B	BB2	\$ 400.00	\$ 200.00	50%
Attachment C	CC2	\$ 400.00	\$ 300.00	25%
Attachment D	DD2	\$ 100.00	\$ 75.00	25%
Attachment E	EE2	\$ 800.00	\$ 640.00	20%

8.1 Category 1 Price Sheet

Bidder's Name _____

Category 1: General Instruments

Bidders must provide individual pricing for all available General Instruments under the indicated category. The Bidder's stated General Instrument price must remain firm for the current individual calendar year of the contract. The bidder must submit in January for each additional year of the contract, a new General Instrument price list. The Bidder's General Instrument price to the University may be increased only in the amount equal to the percentage it had been increased on the newly submitted most current price list. The first January of this contract, however, the price must remain at the price of the General Instrument submitted with this bid.

Bidders must provide a percentage discount price from the most current manufacturer's list price for new General Instrument which will become available after the bid is awarded.

Bidder's prices must include all costs, including those associated with loaner fees, shipping (FOB Point Destination), receiving, delivery and surcharges.

DESCRIPTION OF GENERAL INSTRUMENT	MODEL #	LIST PRICE PER EACH	PROPOSED PRICE PER EACH TO UNIVERSITY	% DISCOUNT
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

8.1 Category 2 Price Sheet

Bidder's Name _____

Category 2: Powered Devices

Bidders must provide individual pricing for all available Powered Devices under the indicated category. The Bidder's stated individual Powered Devices price must remain firm for the current individual calendar year of the contract. The bidder must submit in January for each additional year of the contract, a new Powered Devices price list. The Bidder's Powered Devices price to the University may be increased only in the amount equal to the percentage it had been increased on the newly submitted most current price list. The first January of this contract, however, the price must remain at the price of the Powered Device submitted with this bid.

Bidders must provide a percentage discount for all available Attachments to the Powered Devices under the indicated contract. The Bidder's stated discount percentage must remain firm for each year of the contract.

Bidders must provide a percentage discount price from the most current manufacturer's list price for new Powered devices which will become available after the bid is awarded.

Bidder's prices must include all costs, including those associated with loaner fees, shipping (FOB Point Destination), receiving, delivery and surcharges.

DESCRIPTION OF POWERED DEVICES	MODEL #	LIST PRICE PER EACH	PROPOSED PRICE PER EACH TO UNIVERSITY	VOLUME DISCOUNT
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

PRODUCT DESCRIPTION	% DISCOUNT OFF OF MOST CURRENT CATALOG	CATALOG OR PRICE LIST	SUBMITTED CATALOG OR PRICE LIST DATE
ATTACHMENT			
ATTACHMENT			
New Powered Device Products			

8.1 Category 3 Price Sheet

Bidder's Name _____

Category 3: Scopes and Probes

Bidders must provide individual pricing for all available Scopes and Probes under the indicated category. The Bidder's stated individual Scopes and Probes prices must remain firm for the current individual calendar year of the contract. The bidder must submit in January for each additional year of the contract, a new Scopes and Probes price list. The Bidder's Scopes and Probes price to the University may be increased only in the amount equal to the percentage it had been increased on the newly submitted most current price list. The first January of this contract, however, the price must remain at the price of the Scopes and Probes submitted with this bid.

Bidders must provide a percentage discount for all available attachments to Scopes and Probes under the indicated contract. The Bidder's stated discount percentage must remain firm for each year of the contract.

Bidders must provide a percentage discount price from the most current manufacturer's list price for new Scopes and Probes which will become available after the bid is awarded.

Bidder's prices must include all costs, including those associated with loaner fees, shipping (FOB Point Destination), receiving, delivery and surcharges.

DESCRIPTION OF SCOPES AND PROBES	MODEL #	LIST PRICE PER EACH	PROPOSED PRICE PER EACH TO UNIVERSITY	VOLUME DISCOUNT
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

PRODUCT DESCRIPTION	% DISCOUNT OFF OF MOST CURRENT CATALOG	CATALOG OR PRICE LIST	SUBMITTED CATALOG OR PRICE LIST DATE
ATTACHMENT			
ATTACHMENT			
New SCOPE AND PROBE Products			

8.1 Segment A Price Sheet

Bidder's Name _____

Category 4: Specialized Device Attachments

Bidders must provide individual pricing for all available Specialized Device Attachments under the indicated category. The Bidder's stated individual Specialized Device Attachments price must remain firm for the current individual calendar year of the contract. The bidder must submit in January for each additional year of the contract, a new Specialized Device Attachments price list. The Bidder's Specialized Device Attachments price to the University may be increased only in the amount equal to the percentage it had been increased on the newly submitted most current price list. The first January of this contract, however, the price must remain at the price of the Specialized Device Attachments submitted with this bid.

Bidders must provide a percentage discount for all available Specialized Device Attachments under the indicated contract. The Bidder's stated discount percentage must remain firm for each year of the contract.

Bidders must provide a percentage discount price from the most current manufacturer's list price for new Specialized Device Attachments which will become available after the bid is awarded.

Bidder's prices must include all costs, including those associated with loaner fees, shipping(FOB Point Destination), receiving, delivery and surcharges.

DESCRIPTION OF ISPECIALIZED ATTACHMENTS	MODEL #	LIST PRICE PER EACH	PROPOSED PRICE PER EACH TO UNIVERSITY	VOLUME DISCOUNT
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

8.2 PRICE SHEET AND SUPPORTING DETAIL

Additional price sheet for repairs of surgical instruments.

Bidder's Name _____.

Hourly Labor Price \$_____.

9.0 REQUIRED FORMS

- Ownership Disclosure Form
- Affirmative Action Employee Information can be found online at:
http://www.umdny.edu/purchweb/words_download/Form%20AA%20302%20.pdf
http://www.umdny.edu/purchweb/words_download/AA302_instructions.pdf
- Business Associate Agreement
- Public Law 51, formerly EO 134 Form can be found online at:
http://www.umdny.edu/purchweb/words_download/c51_cd_EO134.pdf
- Public Law C271 can be found online at:
<http://www.umdny.edu/purchweb/vendors/index.htm>
- The business registration form (Form NJ-REG) can be found online at:
<http://www.state.nj.us/treasury/purchase/busreg.htm>

9.2 P010-038 Surgical Instrument Question Protocol Format

Vendor Name:_____

Question #	Page #	RFP Section Reference	Question

OWNERSHIP DISCLOSURE FORM

Name of Firm: _____

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, offices held and any ownership interest of all officers of the firm named above. If addition space is necessary, provide on an attached sheet.

Name	Home Address	Date of Birth	Office Held	Ownership Interest
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, and ownership interest of all individuals not listed above, and any partnerships, corporations and any other owner having a 10% or greater interest in the firm named above. If a listed owner is a corporation or partnership, provide below the same information for the holders of 10% or more interest in that corporation or partnership. If additional space is necessary, provide that information on any attached sheet. If there are no owners with 10% or more interest in your firm, enter "None" below. Complete the certification at the bottom of this form. If this form has previously been submitted to the UMDNJ, Purchasing Department in connection with another bid, indicate changes, if any, where appropriate, and complete the certification below.

Name	Home Address	Date of Birth	Office Held	Ownership Interest
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

COMPLETE ALL QUESTIONS BELOW

Within the past five years has another company or corporation had a 10% or greater interest in the firm identified above? (If yes complete and attach a separate disclosure form reflecting previous ownership interests.) Yes _____ No _____

Has any person listed in this form or its attachments ever been arrested, charged, indicted, plead guilty or been convicted in a criminal or disorderly persons matter by the State of New Jersey, any other Political subdivision state or the U.S. Government? (If yes, attach a detailed explanation for each instance.) Yes _____ No _____

Has any person or entity listed in this form or its attachments ever been excluded suspended, debarred or otherwise declared ineligible by any agency of government from bidding or Contracting to provide services, labor, material or supplies? (If yes, attach a detailed explanation for each instance.) Yes _____ No _____

Are there now any criminal matters, suspension or debarment proceedings pending in which the firm and/or its officers and/or managers are involved? (If yes, attach a detailed explanation for each instance.) Yes _____ No _____

Has any federal, state or local license, permit or other similar authorization, necessary to perform the work applied for herein and held or applied for by any person or entity listed in this form, been suspended or revoked, or been the subject of any pending proceedings specifically seeking or litigating the issue of suspension or revocation? (If yes to any part of this question, attach a detailed explanation for each instance.) Yes _____ No _____

CERTIFICATION: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing or any changes to the answers or information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach o my agreement(s) with the State of New Jersey and that the State at its option, may declare any contract(s) resulting from this certification void and unenforceable.

I, being duly authorized, certify that the information supplied above, including all attached pages, is complete and correct to the best of my knowledge. I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. (Print or Type)

Date: _____ Signature _____

_____ Name

_____ Title

Request for Proposal: (RFP # P010-038 Surgical Instruments Purchase)

NOTICE TO ALL BIDDERS
REQUIREMENT TO PROVIDE A CERTIFICATION
IN COMPLIANCE WITH MACBRIDE PRINCIPLES
AND NORTHERN IRELAND ACT OF 1989

Pursuant to Public Law 1995, c.134, a responsible bidder selected, after public bidding, by the Director of the Division of Purchase and Property, pursuant to N.J.S.A. 52:34-12, or the Director of the Division of Building and Construction, pursuant to N.J.S.A. 52-32-2, must complete the certification below by checking one of the two representations listed and signing where indicated. If a bidder who would otherwise be awarded a purchase, contract or agreement does not complete the certification, then the Directors may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the purchase, contract or agreement to another bidder who has completed the certification and has submitted a bid within five (5) percent of the most advantageous bid. If the Directors find contractors to be in violation of the principles which are the subject of this law, they shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

I certify, pursuant to N.J.S.A. 52:34-12-2, that the entity for which I am authorized to bid:

_____ has not ongoing business activities in Northern Ireland and does not maintain a physical presence therein through the operation of offices, plants, factories or similar facilities, either directly or indirectly through intermediaries, subsidiaries or affiliated companies over which it maintains effective control; or

_____ will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.8 and in conformance with the United Kingdom's Fair Employment 9Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signature of Bidder

Dated: _____

Print or Type Name

Title

PBMACB 12/95

Request for Proposal: (RFP # P010-038 Surgical Instruments Purchase)

AFFIRMATIVE ACTION DOCUMENTATION

Dear Vendor:

As a State Agency, New Jersey State Regulations N.J.A.C. 17:27 requires us to obtain documentation regarding our vendors' "Affirmative Action" status. In order for us to be in compliance and do business with your company for the procurement of goods and services, it will be necessary for you to provide only one of the following documents with your bid/proposal response.

1. A State of New Jersey "Certificate of Employee Information Report Approval," or
2. A Form AA/302 Affirmative Action Employee Information Report, or
3. A Federal letter of approval from the Department of Labor.

Please understand the importance of this request. Although you may have already submitted this information, our files must be updated annually with current employment statistics. Your noncompliance of this request may result in suspension of any future business with your company.

Sincerely,

Purchasing Services

SUPPLIER DIVERSITY AND VENDOR DEVELOPMENT PROGRAM
DIVERSITY VENDOR POLICY/REQUIREMENTS

I. PURPOSE

To outline goals and action plans to support and enhance the University's vendor base toward eradicating racial, ethnic, and gender discrimination from society at large through the New Jersey Set-Aside Program.

II. DEFINITIONS

Vendor Diversity Program - The University's commitment to ensure that a fair percentage of the total purchases for supplies, equipment, services, and construction is placed with, small businesses which include minority and women-owned businesses. The University has established a 25 percent goal for Small Businesses.

Small Businesses - A small business is now defined as having its principal place of business in New Jersey, gross annual revenues of \$12 million or less and no more than 100 full time employees.

A. New Jersey Business – this may be calculated in one of two ways:

- 1) 51% or more of its employees work in New Jersey as evidenced by payment of New Jersey unemployment taxes; or
- 2) 51% or more of its business activities take place in New Jersey as evidenced by payment of New Jersey income/business taxes.

B. 100 or fewer employees – a sole proprietorship, partnership or corporation having 100 or fewer employees, not including seasonal and part-time employees who work less than 90 days annually, if seasonal and part-time employees are normal to the industry. This does not include a consultant engaged by the business for work to be performed on a contract not related to the contract for which the small business is seeking eligibility.

C. Gross annual revenues may not exceed \$12 million.

Construction Contract - any contract involving any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any structure or facility. The term also includes the supervision, inspection and other on-site functions incidental to actual construction.

III. IMPLEMENTING DOCUMENT

A. Requirements:

1. General Guidelines:

- a. As part of its Supplier Diversity Program encompassing small businesses, the University is committed to actively and affirmatively seek diverse business relations. The goal is to ensure that an equitable portion of the University's total purchases for construction, goods, equipment and services is placed with diverse businesses. Vendors are to complete the Sub-Contractor Utilization Report in order to comply with target goals set by the University.
- b. All academic, healthcare and administrative units of the University are encouraged to consider vendor diversity in their purchases.

2. UMDNJ Vendor Diversity Program Goals and Targets:

A total of 25% of all contracts should be awarded to registered small businesses; which include minorities and women:

- 10% to firms whose gross annual revenues do not exceed \$500,000
- 10% to firms whose gross annual revenues do not exceed \$5 million
- 5% to firms whose gross annual revenues do not exceed \$12 million

A small business may be registered in one of three categories, based upon its annual gross revenues. These categories are:

- up to \$500,000
- up to \$5 million
- up to \$12 million

3. Program Requirements

Public contracting entities are now subject to meeting a 25% minimum overall goal collectively for the three categories of small business.

4. New Reporting Requirement

Public contracting authorities must now report annually on their outreach efforts.

5. Important Process Change

In order to be eligible to bid as a small business, a firm must now be registered as a small business as of the date of the bid opening. This is a change from previous requirements, which required a firm to have submitted an application one-day prior to bid opening.

6. Other UMDNJ Policies and Procedures:

The UMDNJ Vendor Diversity Program requirements shall apply to all other policies and procedures of the UMDNJ Department of Purchasing Services.

B. Responsibilities

All departments are responsible for integration of supplier diversity into their operations.

Revised 1/23/04
8/23/05

Small Business Sub-Contractor Utilization Report

Project Name	
Date	Purchase Order #
Project Coordinator	
Representative	
Address	
Phone #	

Prime Vendor Representative - Please fill in the following sub-contractor information (If applicable). List small business subcontractor vendor type as follows: (1) up to \$500,000, (2) up to \$5 million, (3) up to \$12 million. Photocopy this form as needed to list all subcontractors you will be utilizing for this awarded contract.

Sub-Contractor/Vendor Name	Type:___
Contact Person	
Address	
Phone #	
* Amt. \$ Pd. To Sub-contractor	
Scope/Type of Service	
Fed. ID #	

Sub-Contractor/Vendor Name	Type:___
Contact Person	
Address	
Phone #	
* Amt. \$ Pd. To Sub-contractor	
Scope/Type of Service	
Duration period of Sub-Contract	

Prepared By: _____ Phone #: _____

 _____ Bid/Bid #: _____

 _____ Term of Contract: _____

Return to: UMDNJ Manager of Purchasing
Liberty Plaza, 2nd Floor
335 George Street
New Brunswick, New Jersey 08903

*Amount Paid to Subcontractor by
invoice: By-Weekly, Monthly, etc.

Request for Proposal: (RFP # P010-038 Surgical Instruments Purchase)

**Business Associate Agreement
Involving the Access to Protected Health Information**

The following provisions (Amendment) are added and incorporated into the attached P10-038 Surgical Instrument Purchase Repair Services for University Hospital and the Doctors Office Center entered in between UMDNJ ("Covered Entity") and

_____ (Business Associate),
(Name and address of Contracting Party)

herein collectively referred to as the "Parties". Any conflict in the terms of the Agreement and this Amendment shall be governed by the terms of this Amendment.

WHEREAS Covered Entity is the state university of health sciences in New Jersey which maintains and operates UMDNJ;

WHEREAS Business Associate performs and or provides Surgical Instruments which requires it to have access to confidential health information that is considered protected pursuant to federal, state and/or local laws and regulations;

WHEREAS Covered Entity desires to protect the confidentiality and integrity of the information noted above, prevent inappropriate disclosure of such information and comply with all applicable federal, state and/or local laws and regulations governing the use and disclosure of such information;

NOW therefore, the parties agree as follows:

1. Confidentiality and Disclosure of Patient Information.

A. The Parties to this Agreement agree that Business Associate, its agents and employees may have access to confidential protected health information ("PHI"), including but not limited to demographic information. As used herein, PHI shall mean individually identifiable health information, as defined in 45 CFR § 164.501 which includes health information that (i) identifies an individual (or can be used to form a reasonable basis upon which to identify an individual), (ii) is created or received by a health care provider, health plan, employer, or health care clearinghouse; (iii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past present, or future payment for the provision of health care to an individual; and (iv) is shared, transmitted or otherwise communicated between Covered Entity and Business Associate (including subcontractors or agents of such parties) in connection with this Agreement.

B. The Parties to this Agreement agree that Business Associate:

- a. will not use or further disclose PHI other than as permitted by this Agreement;
- b. will ensure that all transmissions of PHI are authorized and in accordance with the privacy requirements of the Health Insurance Portability and Accountability Act of 1999, as amended from time to time (“HIPAA”) and will not use or disclose PHI in a manner that violates or would violate HIPAA;
- c. will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the Covered Entity.
- d. will use appropriate safeguards to prevent use or disclosure of the information other than as provided for by its contract;
- e. will (i) promptly report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, including but not limited to systems compromises, immediately upon becoming aware of such unauthorized use or disclosure; (ii) will take all necessary steps to prevent and limit any further improper or unauthorized disclosure and misuse of such information; and (iii) indemnify and hold Covered Entity, its directors, officers, agents, and employees harmless from all liabilities, costs and damages arising out of, or in any manner connected with, the disclosure by Business Associate, its employees, agents, or independent contractors; and (iii) permit Covered Entity to investigate any such report and to examine Business Associate’s premises, records and premises;
- f. will promptly report to the Covered Entity any security incident of which the Business Associate becomes aware; a security incident is defined as the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- g. will ensure that to the extent that the Business Associate it uses one or more agents, including subcontractors, to provide services under this Agreement, such subcontractors or agents who receive or have access to PHI that is received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, will comply with the same restrictions and conditions to which Business Associate is bound by entering into a separate written agreement between Business Associate and its subcontractors to that effect;
- h. will ensure that any agent, including a subcontractor, to whom the Business Associate provides electronic protected health information, agrees to implement reasonable and appropriate safeguard to protect the electronic protected health information.

- i. will, at the request of, and in the time and manner designated by the Covered Entity, provide access to the PHI to the Covered Entity or the individual to whom such PHI relates or his or her authorized representative in order to meet a request by such individual under promptly notify Covered Entity as required by 45 CFR §164.524;
 - j. will, at the request of, and in the time and manner designated by the Covered Entity, incorporate any and all amendments or corrections to PHI when notified by Covered Entity that such information is inaccurate or incomplete in accordance with 45 CFR § 164.526;
 - k. will, at the request of, and in the time and manner designated by the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity, including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements, to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR 528;
 - l. will make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services governmental officers and agencies and Covered Entity for purposes of determining compliance with 45 CFR §§ 164.500-534; and
 - m. will adhere to the Covered Entity's HIPAA policies and procedures.
- C. Termination for violation of disclosure restrictions.** Notwithstanding any other provision of this Agreement, Covered Entity may terminate this Agreement and any related agreements, without penalty if Covered Entity determines that Business Associate has violated a material term of this Agreement's restrictions, safeguards or requirements relating to the proper use and disclosure of PHI. Alternatively, Covered Entity may choose to: (i) provide Business Associate with written notice of the existence of a breach of the terms of this Agreement relating to PHI; and (ii) afford Business Associate an opportunity to cure such breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be achieved within 10 business days, Business Associate must cure said breach to the satisfaction of the Covered Entity within 10 business days. Covered Entity may immediately terminate this Agreement for Business Associate's failure to cure in the manner set forth in this section.
- D. Return/Destruction of PHI.** Business Associate agrees that, upon termination of this Agreement for any reason, it will if feasible, return or destroy all PHI maintained in any form (including ensuring the return or destruction of all PHI in the possession of its subcontractors or agents) received from, or created or received by it on behalf of Covered Entity and retain no copies of such information.
An authorized representative of Business Associate shall certify in writing to covered Entity, within five (5) days from the date of termination or other expiration of this

Agreement, that all PHI has been returned or disposed of as provided above, (including all PHI in the possession of its subcontractors or agents) and that neither Business Associate nor its subcontractors or agents retains any such PHI in any form.

- E. **No Feasible Return/Destruction of PHI.** To the extent that the return or destruction of PHI as provided for in *Section 4* above is not feasible, Business Associate shall extend the precautions of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. Notwithstanding any other provision of this Agreement to the contrary, Business Associate shall remain bound and shall ensure that the provisions of this Agreement, similarly bind its subcontractors and agents even after termination of this Agreement, until such time as all PHI has been returned or otherwise destroyed as provided in accordance with this section.
- F. **Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in the possession of Business Associate or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure, nor shall Covered Entity be liable to Business Associate for any claim, loss or damage relating to the unauthorized use or disclosure of any information received by Business Associate from Covered Entity or from any other source. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- G. **Legal Action.** Business Associate agrees that unauthorized disclosure of PHI may give rise to irreparable injury to the patient or to the owner of such information and accordingly the patient or owner of such information may seek legal remedies against Business Associate. Business Associate further agrees that the remedy at law for any breach by it of the terms of this Agreement shall be inadequate and that the damages resulting from such breach and are not be susceptible to being measured in monetary terms. Accordingly, in the event of a breach or threatened breach by Business Associate of the terms of this Agreement, covered Entity shall be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or further breach. Nothing herein shall be construed as prohibiting Covered Entity from pursuing any other remedies available to Covered Entity for such breach or threatened breach, including recovery of damages from Business Associate. Business Associate further represents that it understands and agrees that the provisions of this agreement shall be strictly enforced and construed against it.
- H. **Construction.** This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA.

- I. **Severability.** In the event that any provision of this Agreement violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.
- J. **Authority.** The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding agreement.
- K. **Governing Law.** This Agreement shall be governed by the laws of the State of New Jersey and shall be construed in accordance therewith.
- L. **Reference:** Code of Federal Regulations, Title 45, Part 160 et seq.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written below.

Covered Entity

Business Associate

By: _____

By: _____

Title: Francis X. Colford
Vice President for
Finance and Treasurer

Title: _____

Date: _____

Date: _____

Revised 2/21/07