



Purchasing Services

REQUEST FOR PROPOSAL

TITLE: SURGICAL NAVIGATION IMAGE-GUIDED SURGERY SYSTEM

RFP NUMBER: P10-059

DATE ISSUED: JUNE 8, 2010

DUE DATE: JULY 1, 2010

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 being issued by the University of Medicine and Dentistry of New Jersey (UMDNJ), Department of Purchasing Services on behalf of The University Hospital, Department of Perioperative Services.

The purpose of this Request for Proposal is to enter into a Fair Market Value Lease Contract for the procurement of one, two or three Surgical Navigation Image-guided Surgery System(s).

1.1.2 Intent

The intent of the UMDNJ through this Request for Proposal is to award a Fair Market Value Lease Contract to the responsive bidder whose bid proposal conforms to the specifications contained in this Request for Proposal and is most advantageous to UMDNJ, price and other factors considered.

1.2 Background

UMDNJ is the nation's largest freestanding public health sciences university. It includes eight (8) schools on five (5) campuses. It is a statewide system of health sciences education, biomedical research and healthcare delivery. UMDNJ was founded in 1970 to consolidate New Jersey's health professions education and during the last two decades it has become the core of the state's healthcare delivery system. Additional information about the University, its multiple locations, schools and healthcare facilities is available at:

<http://www.umdj.edu/homepage/index.html>

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 fiscal

year 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.

The Department of 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 approximately 14,000 surgical procedures and about 4,400 endoscopy procedures annually. The Ear, Nose and Throat team perform approximately 100 cases per year that require intra-operative surgical navigation capabilities. The Neurosurgery team performs approximately 150-200 cases per year requiring similar capabilities.

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 bidders receiving this Request for Proposal. Written questions should be e-mailed, mailed or faxed to 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: **Marcela Crisetti**
Buyer's Phone Number: **732-235-9533**
Buyer's Fax Number: **732-235-9766**
E-mail: crisetma@umdnj.edu

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. 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; this information may mean the difference between a responsive and a non-responsive bid. The date and time are provided as follows:

DATE: THURSDAY, JUNE 17, 2010
TIME: 10:00 AM ET (East Coast Time)

CALL-IN CONFERENCE: The bidder must e-mail the assigned buyer indicated in Section 1.3.1 to request a phone number and access code to call in no later than 5 (five) business days before the non-mandatory pre-bid conference date indicated in this Section.

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.

1.3.3 Cut-Off Date for Questions and Inquiries

The cut-off date for questions and inquiries relating to this Request for Proposal is at the conclusion of the non-mandatory pre-bid conference. While all questions will be entertained at the non-mandatory pre-bid conference, it is strongly urged that questions be submitted in writing prior to the non-mandatory pre-bid conference. Written questions must be delivered to the Department of Purchasing Services' Buyer. It is requested that bidders having long, complex or multiple-part questions submit their questions in writing as far in advance of the non-mandatory pre-bid conference as possible. This request is made so that answers can be prepared prior to and distributed during the non-mandatory pre-bid conference.

1.3.4 Question Protocol

Questions should be submitted in writing to the attention of the assigned UMDNJ, Purchasing Services buyer. Questions should be asked in consecutive order, from beginning to end, following the organization of the Request for Proposal. Each question should begin by referencing the Request for Proposal page number and Section number to which it relates.

Bidders shall not contact any person within the University directly, in person, or by telephone, other than the assigned buyer, concerning this Request for Proposal.

1.4 Additional Information for Bidders

1.4.1 Revisions to this Request for Proposal

In the event that it becomes necessary to clarify or revise this Request for Proposal, such clarification or revision will be by addendum. If any addenda are issued for this procurement, it will be distributed to all bidders who were sent the Request for Proposal and attended the non-mandatory pre-bid conference.

1.4.2 Addendum as a Part of this Request for Proposal

Any addendum to this Request for Proposal shall become part of this Request for Proposal and part of any Contract resulting from this Request for Proposal.

1.4.3 Issuing Office

This Request for Proposal is issued by the UMDNJ, Department of Purchasing Services. The buyer noted in Section 1.4.1 is the sole point of contact between the bidder and UMDNJ for purposes of this Request for Proposal.

1.4.4 Bidder Responsibility

The bidder assumes sole responsibility for the complete effort required in this Request for Proposal. By submitting a proposal in response to this Request for Proposal, the bidder represents that it has satisfied itself, from its own investigation, of all the requirements of this Request for Proposal. UMDNJ is not responsible for any debts or payments incurred by the bidder in the performance of this Contract.

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 Request for Proposal.

1.4.6 Contents of Bid Proposal

The entire content of every bid proposal will be publicly opened and becomes a public record. This is the case notwithstanding any statement to the contrary made by a bidder in its 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.

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 therefore.

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 and, if applicable, foreign (out of State) corporate registration must be supplied by each party to the joint venture.

1.4.9 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.

The HIPAA privacy rules permit disclosure of patient information without authorization in certain situations in which no business associate agreement is needed. However, in the day to day interaction of providing the devices and services under this Request for Proposal, the Contractor may well have access to information unrelated to the patient receiving the medical device. For example, the Contractor's representative may be in a patient room with a patient not receiving a device. A Contractor's representative may have discussions with a physician regarding the Contractor's device and receive patient information by way of an example for future cases. A Contractor's representative may see another patient's X-rays while in a room reviewing a patient's records. For these and similar reasons, it is prudent to have a business associate agreement in place to safeguard these patients' rights to privacy.

1.4.10 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/busregcert.htm>.

1.4.10.1 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.

1.4.10.2 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 Request for Proposal.

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.

1.4.11 Deficit Reduction Act

The University of Medicine and Dentistry 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.

1.4.12 Federal and State Laws and Regulations Regarding Healthcare

The University is committed to compliance with all federal and state regulations regarding healthcare, including but not limited to licensing, Stark and anti-kickback laws, Medicare and Medicaid regulations. All goods provided under this IFB and the Contract award under this IFB must comply with all applicable laws. In addition, if a violation comes to the attention of either party, or any changes in the laws or regulations occurs which make the Contract entered into between the parties as a result of this IFB, to be in violation of any applicable law, then the agreement shall be amended to address the violation or to comply with the change, or be terminated if amending will not resolve the violation.

2.0 DEFINITIONS

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

“Addendum” – Written clarification or revision to this Request for Proposal 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.

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

“Contract” – This Request for Proposal, any addendum to this Request for Proposal, the bidder’s proposal submitted in response to this Request for Proposal, UMDNJ’s Standard Terms and Conditions, and UMDNJ’s Contract Term Sheet.

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

“Deliverable” – Any component that the Contractor provides under this contract, for example, application software, documentation, third party products, etc.

“Documentation” – Manuals, listings, diagrams, and other hard- or soft-copy written or graphic materials that describe the use, operation, maintenance, or design of software or hardware, including any and all revisions thereto.

“Evaluation Committee” – A committee established to review and evaluate bid proposals submitted in response to this Request for Proposal and to recommend a contract award to the Vice President of Supply Chain Management.

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

“ISO” – International Organization for Standardization

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

“Project” – The undertaking of services that are the subject of this Request for Proposal.

“Remedy” – To restore to the natural or proper condition.

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

“Shall” or “Must” – 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.

“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.”

“Vice President” – Vice President of Supply Chain Management.

3.0 SCOPE OF WORK/COMMODITY DESCRIPTION

The University Hospital, Department of Perioperative Services is seeking to lease, through a competitive bid process, one, two, or three Surgical Navigation or Image-guided Surgery System(s) according to the requirements contained in this RFP.

3.1 Clinical Applications of the Surgical Navigation or Image-guided Surgery System

The Surgical Navigation Image-Guided Surgery System shall be used in the following clinical areas: Cranial, neurosurgical craniotomy, neuroendoscopy; deep brain stimulation (DBS) procedures; ENT; CMF; spinal procedures such as spinal fusion, frameless and framed neurosurgery, frameless spine biopsy; lesionectomies, callosotomies, and insertion and placement of depth electrodes for patients with epilepsy; treatment of meningiomas, craniopharyngiomas, chondrosarcomas, other lesions at the skull base and anterior and lateral skull-base procedures; thalamotomies and pallidotomies for Parkinson's disease; stereotactic cingulotomies for psychiatric disease; vascular neurosurgery; and ventriculostomies and ventricular shunt placement; uni-compartmental knee arthroplasty, unicondylar knee replacement, high tibial osteotomy, total knee arthroplasty, total hip arthroplasty, femoral surface replacement, anterior cruciate ligament reconstruction, femoral-acetabular impingement (FAI), trauma (fracture reduction, screw placement); tumor resection, frameless tumor localization/resection, cortical mapping; Functional Endoscopic Sinus Surgery (FESS) and advanced ENT procedures such as transsphenoidal hypophysectomy, orbital decompression, balloon sinuplasty.

3.2 System Components of the Surgical Navigation or Image-guided Surgery System

The Surgical Navigation Image-Guided Surgery System shall consist of including but not limited to a computer workstation with image processing and surgical planning software, a localization/digitization system, a display monitor, tracking device, image import, and documentation tools.

3.3 Localization Method of the Surgical Navigation or Image-guided Surgery System

3.3.1 The Surgical Navigation or Image-guided Surgery system's localization system may be a probe attached to a position-sensing articulated arm mounted on the operating table, a head clamp, active or passive optical tracking, or electromagnetic position-sensing probes used with headsets or fiducials. Active optical tracking systems shall use charge-coupled device (CCD) camera arrays to track the position of LEDs (light-emitting diodes) mounted on instruments and/or on a reference frame. Passive optical tracking systems shall use CCD camera arrays to track infrared light from special reflectors placed on the instruments.

3.3.2 The Surgical Navigation Image-Guided Surgery System shall be capable of using adhesive-backed, implantable fiducial markers or a headset with position sensors for the

purpose of acquiring computed tomography (CT), magnetic resonance imaging (MRI), positron emission tomography (PET), single photon emission computed tomography (SPECT), or ultrasonography images. Image data shall be transferred digitally to the computer workstation for reconstruction into 3-D and triplanar two-dimensional images, and the reconstructed images shall then be transferred to the computer and display monitor in the operating room (OR). The Surgical Navigation Image-Guided Surgery System shall integrate with the Picture Archiving and Communication System (PACS) and Diffusion Tensor Imaging (DTI) for imaging data transfer.

3.3.3 The Surgical Navigation Image-Guided Surgery System shall be compatible with currently existing CT and MRI equipment or with the American College of Radiology/National Electrical Manufacturers Association Digital Imaging and Communications in Medicine (DICOM) standard. The Surgical Navigation Image-Guided Surgery System shall provide software/hardware to allow file conversion to reformat CT and MRI data.

3.3.4 Localization systems shall use an electromagnetic position-sensing localization method or a passive method for the MRI suite; both shall have an accuracy of less than 2mm.

3.4 Registration Method of the Surgical Navigation or Image-guided Surgery System

3.4.1 Registration refers to the definition of the image and the surgical space as one entity; that is, the displayed image is matched with the corresponding patient anatomy to allow interactive surgical navigation. The Surgical Navigation Image-Guided Surgery System shall accomplish registration by touching the probe to the fiducial markers or to anatomic landmarks and identifying a corresponding point on the displayed image or by using a laser pointer or a mask. Accuracy shall be checked by placing the handpiece at known positions on the patient and verifying the location on the monitor. After registration, a virtual probe shall appear on the display screen in relation to the actual probe used by the surgeon. The resulting images shall provide a navigational guide, showing the position of the probe relative to the patient's anatomy.

3.4.2 The Surgical Navigation Image-Guided Surgery System shall be capable of automatic and manual registration.

3.4.3 The Surgical Navigation or Image-guided Surgery System's surgical planning software shall be used to aid the surgeon in determining incision location and size, trajectories from the incision to the target, and distance and volumetric measurements during surgery.

3.4.4 The Surgical Navigation Image-Guided Surgery System shall provide a feature that alerts the user of patient or fiducial movements and allows re-registration if an error greater than a certain value is detected. The accuracy of the System's camera array and digitizer and of the registration process shall not exceed 2mm.

3.5 Digitizer of the Surgical Navigation or Image-guided Surgery System

The Surgical Navigation or Image-guided Surgery System's digitizer shall import any DICOM 3.0 image from CT and MRI. The host computer system shall have a memory capacity of not less than 512 MB, and archival storage capacity greater than 20 GB.

3.6 Requirements of the Surgical Navigation or Image-guided Surgery System's Host Computer

3.6.1 The Surgical Navigation or Image-guided Surgery System's various monitor display screens should be 43 cm (17 in) or larger in size, with a pixel resolution greater than 1024 x 768, and user interaction shall be available via keyboard, mouse, and/or touchscreen.

3.6.2 The Surgical Navigation or Image-guided Surgery System's software shall include features such as 3-D imaging tools, as well as multiple planes and quantitative calculations for surgical planning.

3.7 Microscope Compatibility with the Surgical Navigation or Image-guided Surgery System

The Surgical Navigation Image-Guided Surgery System shall be compatible with most surgical microscopes such that a computer-generated image of the area of interest is projected into the microscope and superimposed on the surgical field. The images shall be scaled so that the projected images are actual size when viewed through the surgical microscope. The System shall be compatible with the following surgical microscopes: Zeiss Microscope S8, Leica Microscope OH3, Leica Microscope OHS, Leica Mitaka M525 OH4 F1800.

3.8 Other Requirements of the Surgical Navigation or Image-guided Surgery System

3.8.1 The Surgical Navigation Image-Guided Surgery System shall utilize minimally invasive spine instrumentation such as Jamshidi needles, compact probes, endoscopic retractors and others.

3.8.2 The Surgical Navigation Image-Guided Surgery System shall allow and support an open platform system. An open platform system describes a software system which has published external programming interfaces that allow using the software to function in ways other than the original programmer intended without requiring modification of the source code. Using these interfaces, typically known as an Application Programming Interface (API), a third party or a strategic partner could integrate with the platform to add functionality.

3.9 Maintenance and Repair of the Surgical Navigation or Image-guided Surgery System

3.9.1 The Contractor shall include in the lease cost a full maintenance, including a preventive maintenance, and repair service plan for the duration of the lease Contract.

3.9.2 In the event the maintenance or repair of the Surgical Navigation Image-Guided Surgery System takes longer than 24 hours, the Contractor should include in the lease cost a

loaner Surgical Navigation Image-Guided Surgery System to be provided within 24 hours of Department notification at no extra cost.

3.10 Training for the Surgical Navigation or Image-guided Surgery System

The Contractor shall provide on-site training of the Surgical Navigation Image-Guided Surgery System to approximately sixty staff members of the Department of Perioperative Services initially and at a minimum of once per year thereafter for the duration of the lease Contract at no extra cost.

3.11 Technical Support for the Surgical Navigation or Image-guided Surgery System

3.11.1 The Contractor shall include in the lease cost unlimited 24 hours per day, 365 days per year telephone technical support to the staff of the Department of Perioperative Services as required for the duration of the lease agreement.

3.11.2 The Contractor shall include in the lease cost on-site technical support to the staff of the Department of Perioperative Services as required for the duration of the lease agreement.

3.12 Upgrades of the Surgical Navigation or Image-guided Surgery System

The Contractor shall include in the lease cost of the Surgical Navigation Image-Guided Surgery System all hardware and software upgrades including any associated re-training as they become available for the duration of the lease Contract.

4.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

4.1 Contract Term and Extension Option

4.1.1 Contract Term

The Fair Market Value Lease Contract shall have a duration of five (5) 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 is not eligible for an extension.

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 of Supply Chain Management, 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 as **Exhibit A** to this Request for Proposal.

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.

- 4.4.1 **Commercial General Liability Insurance** - including contractual liability endorsement, subject to primary limits of coverage of not less than \$1,000,000.00 per person and \$3,000,000.00 aggregate for bodily injury and not less than \$500,000.00 per occurrence for property damage liability. If applicable, XCU (Explosion, Collapse and Underground) coverage may be required. The policy should be as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for products liability coverage, contractual liability and completed operations, and shall include the UMDNJ, as an additional insured.
- 4.4.2 **Automobile Liability Insurance** – covering owned, non-owned and hired vehicles with not less than \$1,000,000 for bodily injury and property damage.
- 4.4.3 **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.
- 4.4.4 **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.

4.4.5 **Errors and Omissions Liability Insurance** - with limits of \$1million/\$1million; UMDNJ to be named as additional insured ATIMA (As Their Interests May Appear) with respect to services provided by contractor pursuant to this proposal contract.

4.4.6 **Professional Liability Insurance** - coverage insuring the Contractor and the Contractor's technicians providing services herein subject to limits of liability of not less than \$3,000,000 per occurrence and \$5,000,000 annual aggregate.

All required insurance coverage must be in effect no later than 12:01 A.M. at the start of the day of the Contract and remain in effect for the duration of the Contract, including any renewals or extensions, and for the ninety (90) days following termination of all work. The Contractor shall be responsible for any and all future claims, litigation, damages, liabilities, whatsoever, which may arise as a result of the Contractor's performance of services or delivery of goods pursuant to this contractual agreement.

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 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.

4.7 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.

4.8 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.

4.9 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.

4.10 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.

4.11 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.

4.12 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.

4.13 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.

4.14 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.

4.15 Claim and Remedies

4.15.1 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.

4.15.2 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.

4.16 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 (P10-059) 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.

4.16.1 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.

4.17 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 complete 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.

4.18 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.

4.19 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.

4.20 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.

4.21 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.

4.22 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.

4.23 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.

4.24 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 117 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

4.24.1 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.

4.25 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.

4.26 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.

The 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.umdny.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.umdny.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-60_05.pdf;

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

http://www.umdny.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.umdny.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.

4.27 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 Late Delivery and Liquidated Damages

The Contractor must immediately advise the Vice President of Supply Chain Management of any circumstance or event that could result in the late completion of any task or subtask required to be completed on or by a certain date.

The Contractor shall not be liable for any failure or delay in performance under the Contract to the extent said failures or delays are proximately caused by causes beyond the Contractor's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, to substantially meet its performance obligations under the Contract, provided that, as a condition to the claim of non-liability, the contractor shall give UMDNJ prompt written notice, with full details following the occurrence of the cause relied upon, and that the contractor must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events and that the Contractor substantially fulfilled all non-excused obligations. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

5.0 PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

5.1 General

The bidder must follow instructions contained in this Request for Proposal 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 Request for Proposal has been determined to be essential in the bid evaluation and contract award process. Any qualifying statements made by the bidder to the Request for Proposal'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 Request for Proposal that the bidder cannot satisfy.

5.2 Proposal Delivery and Identification

In order to be considered for award a bid proposal must arrive at the Department of Purchasing Services in accordance with the instructions on the Request for Proposal 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 four (4) full, complete and exact copies of the original, clearly marked as "COPY" and one (1) electronic copy of the complete bid proposal (compact disc or flash drive). 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 Request for Proposal. The bidder should limit their response to one volume, if at all possible, with that volume divided into the four (4) following subsections:

5.4.1 Subsection 1 – Forms

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

5.4.1.1 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.

5.4.1.2 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:

5.4.1.3 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.

5.4.1.4 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.

5.4.1.5 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.umdny.edu/purchweb/vendors/index.htm>

5.4.2 Subsection 2 - Technical Response

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

5.4.2.1 Product Literature

The bidder must describe its Surgical Navigation Image-Guided Surgery System and set forth with, specificity and details, how its system conforms to the requirements of this RFP. The bidder must submit with its proposal all associated printed and electronic literature describing the technical specifications of its system.

5.4.2.2 Preventive Maintenance and Repair Service Plans and Warranty

The bidder must include with its proposal detailed documentation on its comprehensive preventive maintenance and repair service plan for its Surgical Navigation or Image-guided Surgery System. The bidder must also include the details of its complete warranty program.

5.4.2.3 Potential Problems

The bidder should set forth a summary of any and all problems that the bidder anticipates during the term of the Contract. For each problem identified, the bidder should provide its proposed solution.

5.4.3 Subsection 3 – Organizational Support and Experience

The bidder should include information relating to its organization and experience, including but not limited to references, contact names and telephone numbers, and the bidder's qualifications and capabilities to provide the goods and services required by this RFP.

5.4.3.1 Experience of Bidder on Contracts of Similar Size and Scope

The bidder must provide information which demonstrates that they have prior experience with the operation and management of hospitals and a familiarity with the quality of work expected of similar institutions. The bidder must indicate the number of years in business and list the contracts award and references.

5.4.3.2 Location and Contact Information

The bidder should include the location of the bidder's office that will be responsible for managing the Contract. The bidder should include the telephone number and name of the individual to contact. The bidder should also provide a listing of all the company's location(s), if applicable.

5.4.3.3 Bidder's Financial Capability

The bidder should provide proof of its firm's financial capacity and capabilities to undertake and successfully provide goods/services required under this Contract. A financial statement for the most recent fiscal year or bank reference is acceptable. The University reserves the right to check and evaluate the firm's financial capacity and capability by any means deemed appropriate. The submission of this information with the bid is desired by the University, but is not mandatory. However, if a bidder chooses not to include this information with its bid, this information may be requested from the bidder during the evaluation process. If the bidder is requested to submit this information during the evaluation process, the bidder will be required to submit it, and failure to do so will be cause for finding the bid non-responsive.

5.4.3.4 Subcontractor(s)

5.4.3.4.1 Should the bidder propose to utilize a subcontractor(s) to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's(s): (a) performance; (b) compliance with all of the terms and conditions of the contract, and (c) compliance with the requirements of all applicable laws.

5.4.3.4.2 The bidder should provide detailed description of services to be provided by each subcontractor, referencing the applicable Section or subsection of this RFP.

5.4.3.4.3 The bidder should provide detailed résumés for each 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 designated to perform.

5.4.3.4.4 The bidder should provide documented experience demonstrating that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal.

5.4.4 Subsection 4 - Cost Proposal

All bidders must submit their cost proposal in accordance with the Price Sheet(s) included in Section 8.0 of this Request for Proposal. Failure to submit all information required will result in the bid being considered non-responsive. Each bidder is requested to hold its cost proposal firm for a minimum of 120 days so that an award can be made.

The cost proposal must be submitted in hard copy format and as an electronic MS Excel spreadsheet. The Excel spreadsheet must be on a flash drive or compact disk and submitted with the bidder's proposal.

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

NOTE: The bidder's signature on the cover of this Request for Proposal guarantees that prices set forth within the 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 Request for Proposal.

Once submitted there can be NO alterations or modifications to the pricing of the original proposal without UMDNJ approval.

6.0 PROPOSAL EVALUATION AND CONTRACT AWARD

6.1 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 Request for Proposal. 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 and their conformance to the requirements of this Request for Proposal.

6.3.2 The bidder's documented experience in successfully providing Surgical Navigation or Image-guided Surgery Systems to institutions of similar size and scope as the UMDNJ, The University Hospital.

6.3.3 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 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 cost proposal is not higher than the original cost proposal. Any revised cost proposal that is not equal to or higher in cost than the original cost proposal will be rejected as non-responsive.

Evaluation of the best and final offers (BAFO) will be on the basis of cost 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 UMDNJ, cost 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 costs 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 cost proposals in response to this RFP, because 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 cost proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

6.6 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.

6.7 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.

PLEASE TYPE OR PRINT LEGIBLY

7.1 Contact Information

7.1.1 The bidder should provide the location of bidder's business office that will be responsible for management of this contract.

Name of contact person: _____

Address: _____

Business Phone Number: (____)-____-____

Business Fax Number: (____)-____-____

E-mail: _____

7.1.2 The bidder should provide the name(s) and phone number(s) of the bidding firm's management personnel to be contacted if problems or emergencies occur (24 hours per day).

Name: _____

Role of this person for this contract: _____

Work Telephone Number: (____)-____-____

Home Telephone Number: (____)-____-____

E-mail: _____

Name: _____

Role of this person for this contract: _____

Work Telephone Number: (____)-____-____

Home Telephone Number: (____)-____-____

E-mail: _____

7.1.3 The bidder should list below the name of the individual that may be contacted at all times if service or information is required from the Contractor by the University.

Name: _____

Address: _____

Role of this person for this contract: _____

Business Phone Number: (____)-____-____

Business Fax Number: (____)-____-____

Home Telephone Number: (____)-____-____

E-mail: _____

7.1.4 The bidder should list below the name, address and telephone number of the insurance firm from which it intends to purchase the insurance required for this contract, and a person to contact at this firm.

Name of Insurance Firm: _____

Address of insurance firm: _____

Name and telephone number of individual at the insurance company that the University may contact to verify this information:

Name: _____

Telephone Number: (____)-____-____

E-mail: _____

7.2 References: Experience of Bidder on Contracts of Similar Size and Scope

The bidder should provide three (3) current references that clearly demonstrate the bidder's proven capabilities in providing goods/services of a similar size and scope to those required by this RFP. Supply the following information for customers for whom you are currently providing goods/services that are similar to those required by this Request for Proposal. These references will serve as a demonstration of the firm's ability to successfully undertake and provide the goods required by this Request for Proposal.

7.2.1 Name of customer provided as reference: _____

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

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

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

7.2.2 Name of customer provided as reference: _____

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

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

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

7.2.3 Name of customer provided as reference: _____

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

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

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

7.3 Listing of All Contracts Lost or Terminated in Last Three (3) Years

The bidder should provide a list of all contracts the bidder has lost or has had terminated before the expiration date of the contract by the other party for whatever reason 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.

7.3.1 Name of firm: _____

Name of contact person at firm: _____

Phone number of contact person: _____

Reason for termination: _____

7.3.2 Name of firm: _____

Name of contact person at firm: _____

Phone number of contact person: _____

Reason for termination: _____

7.3.3 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)

7.4 Bidder's Financial Capability

The bidder should provide proof of its firm's financial capacity and capabilities to undertake and successfully provide services required under this Contract. A financial statement for the most recent fiscal year or bank reference is acceptable. The University reserves the right to check and evaluate the firm's financial capacity and capability by any means deemed appropriate. The submission of this information with the bid is desired by the University, but is not mandatory. However, if a bidder chooses not to include this information with its bid, this information may be requested from the bidder during the evaluation process. If the bidder is requested to submit this information during the evaluation process, the bidder will be required to submit it, and failure to do so will be cause for finding the bid non-responsive. Attach information to this form.

7.5 Potential Problems

The bidder should include a summary of any problems it anticipates encountering in implementing or providing the services or other work elements as detailed in the Scope of Work/Commodity Description of this Request for Proposal. The bidder should list issues or concerns which the bidder, in its judgment, feels may become problems. It is important for the bidder to convince the University of its understanding of, and ability to solve, these problem areas.

Potential Problem:

Show in a brief narrative that you understand the cause and substance of the potential problem. Be specific.

Give a specific recommendation on how to address and solve the problem.

(MAKE ADDITIONAL COPIES OF THIS SHEET, IF NECESSARY)

7.6 Subcontractor Data Sheet(s)

If the bidder is proposing to use subcontractors, the following information should be completed and submitted with the bid. The Contractor shall submit the name, address and contact person of each subcontractor along with the list of the tests they will be performing along with their proposal response.

NOTE: If there is more than one (1) subcontractor, bidders should submit the following data for each subcontracting firm. It is suggested that bidders make blank copies of this section and complete a copy for each subcontractor.

7.6.1 Subcontractor's name, address, contact person and 24-hour phone number:

Firm name: _____

Address: _____

Contact person: _____

24-hour phone number: (____)-____-____

7.6.2 Name(s), title(s) and function(s), of the responsible operating officers:

Name	Title	Function
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7.6.3 Describe, in detail, the function(s) the subcontractor will be performing including, without limitation, the specific tests that will be performed by the subcontractor:

(Subcontractor Data Sheet, continued)

7.6.4 Describe the subcontractor's experience in performing similar services to those required by this Request for Proposal:

7.6.5 Name of company, address, contact name and telephone number of firm provided as a reference for subcontractor:

Name of company provided as a reference for the subcontractor:

Address:

Name of company's management person that the University may contact to verify reference:

Phone number of individual listed above: (____)-____-____

Dates under contract: From _____ to _____

Provide a brief description of services that the subcontractor provided for this company under contract. Emphasize services that are similar to those required by this Request for Proposal:

(MAKE ADDITIONAL COPIES OF THESE SHEETS, IF NECESSARY)

7.7 Product Literature

The bidder must submit with its proposal all associated printed and electronic literature describing the technical specifications of its system. Attach product literature to this form.

7.8 Preventive Maintenance and Repair Service Plans and Warranty

The bidder must include with its proposal detailed documentation on its comprehensive preventive maintenance and repair service plan for its Surgical Navigation or Image-guided Surgery System. The bidder must also include the details of its complete warranty program. Attach information to this form.

8.0 PRICE SHEET AND SUPPORTING DETAIL

Submitted by _____
(insert your firm name here)

All bidders must provide the annual lease cost where indicated in this Section in accordance with all requirements listed in Section 3.0. Total annual lease cost must include all functionalities, all system hardware and software upgrades, loaners, maintenance and repair service plans, training, and all technical support.

All-inclusive 60-month Fair Market Value Annual Lease Cost	
for ONE system	\$ _____
for TWO systems	\$ _____
for THREE systems	\$ _____

9.0 REQUIRED FORMS

9.1 The following forms shall be submitted with bidder's proposal:

- Ownership Disclosure Form
- Business Registration Certificate (BRC)

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

- Affirmative Action Employee Information Report (AA302)
- Business Associate Agreement
- Two-Year Chapter 51 / Executive Order 117 Vendor Certification and Disclosure of Political Contributions Form
- Certificate of Insurance

OWNERSHIP DISCLOSURE FORM

Name of Firm: _____

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

Name	Office Held	Ownership Interest
------	-------------	--------------------

INSTRUCTIONS: Provide below the names 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	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 of 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 of 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 # P10-059, Surgical Navigation Image-Guided Surgery System

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 #: _____
Print Name	
_____	Bid/Bid #: _____
Print Title	
_____	Term of Contract: _____
Signature	

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.

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

The following provisions (Amendment) are added and incorporated into the attached P10-059, Surgical Navigation Image-Guided Surgery System 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 provides Surgical Navigation Image-Guided Surgery System 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