REQUEST FOR PROPOSAL

by

The University of Texas Southwestern Medical Center
(“University”)

and

Dallas County Hospital District d/b/a Parkland Health
& Hospital System (“District”)

Both parties referred herein as “Harry Hines Medical
District” (HHMD)

for

Selection of a Company to Provide

SPINE IMPLANTS

RFP No. UTH17-0019

Submittal Deadline: 3:00 p.m. on August 16, 2016

Issued: July 7, 2016
REQUEST FOR PROPOSAL

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SECTION A
RFP SUBMISSION CHECKLIST

DOCUMENTS REQUIRING SIGNATURE

☐ Sign and complete Execution of Offer (ref. Section 2 of APPENDIX ONE)

☐ Sign and complete Pricing and Delivery Schedule. (ref. Section 6 of this RFP)
  - Each proposal must state that it will remain valid for University’s acceptance for a minimum of one hundred eighty (180) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

☐ Responses to Proposer’s General Questionnaire (ref. Section 3 of APPENDIX ONE)

HUB SUBCONTRACTING PLAN

☐ Determine whether you will be Subcontracting (ref HSP checklist)

☐ If you will subcontract any portion of the contract please reference the HSP checklist.

☐ If you are not Subcontracting
  - Complete Section 1 of HSP – Respondent and Requisition Information.
  - Complete Section 2a of HSP – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
  - Complete Section 3 of HSP – Self Performing Justification
  - Complete and sign Section 4 of HSP – Affirmation

NUMBER OF COPIES REQUIRED

☐ 3 copies of your proposal.
  - Proposer must submit a total of 3 complete and identical hard copies of its entire proposal. One with original signature of officer of Proposer on the Execution of offer and should be marked as “Original”

☐ 3 electronic copies – on separate CD-ROMS or Flash Drives

☐ 2 Copies of your Hub Subcontracting Plan (submitted as a separate document from the RFP)
SUBMISSIONS SHOULD BE DELIVERED TO

**Physical Delivery Address**

Mone’ Greene  
Manager – University Hospitals Purchasing Department  
6190 Wyche Street  
Dallas, Tx 75390-9292  
Phone: 214/633-2297  
Fax: 214/633-2241  
Email: mone.greene@utsouthwestern.edu

**Fed-Ex or UPS Delivery Address:**

Mone’ Greene  
Manager – University Hospitals Purchasing Department  
6190 Wyche Street  
Dallas, Tx 75390-9292  
Phone: 214/633-2297  
Fax: 214/633-2241  
Email: mone.greene@utsouthwestern.edu

**Electronic Copy to District:**

Erika Singer  
Phone: 214-590-1418  
Email: Erika.Singer@phhs.org

- **Proposer is instructed to complete, sign and return all items referenced on the checklist as a part of the proposal. If proposer fails to include any of the required documents with its proposal and if the proposals are not received by University on or before the Submittal Deadline, then University may reject the proposal.**
SECTION 1
INTRODUCTION

1.1 Description of the University

The University of Texas Southwestern Medical Center ranks among the world’s leading academic medical centers, patient-care providers, and research institutions. Its faculty members, who are responsible for a broad array of groundbreaking biomedical research and patient care advances, are respected for their dedication to teaching, research, and clinical care. UT Southwestern’s physicians and other health care practitioners (e.g., nurses, physician assistants, psychologists, therapists, etc.) provide patients with the highest-quality care throughout the Medical Center’s two University Hospitals, outpatient and ambulatory clinics, and affiliated hospitals.

Part of The University of Texas System, UT Southwestern includes three degree-granting institutions: UT Southwestern Medical School, UT Southwestern Graduate School of Biomedical Sciences, and UT Southwestern School of Health Professions. The schools and UT Southwestern faculty train more than 4,700 medical, graduate, and health professions students, residents, and postdoctoral fellows each year.

As one of the foremost research facilities in the world, UT Southwestern – with five Nobel Laureates and 21 members of the prestigious National Academy of Sciences – advances the frontiers of biomedical research and generates discoveries that benefit society. Ongoing support from federal agencies such as the National Institutes of Health, along with foundations, individuals, and corporations, provide more than $415 million per year to fund more than 3,300 research projects.

UT Southwestern provides inpatient care to nearly 92,000 patients and performs more than 2.1 million outpatient/ambulatory visits annually. Its hospitals (William P. Clements Jr. University Hospital and Zale Lipshy University Hospital) offer patients superior care and outstanding service provided by a highly trained staff. In addition, UT Southwestern operates seven clinic facilities on campus, three Clinical Centers located off-campus in the North Texas community, and offers extensive clinical services through a network of well-respected, affiliated hospitals.

In late 2015, UT Southwestern announced the creation of an integrated regional health network (Integrated Network) including UT Southwestern Medical Center and Texas Health Resources (Texas Health) systems. The Integrated Network is expected to improve the quality of care and enhance the efficiency and accessibility of providing health services to North Texans.

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Company under this RFP. In particular, Company should note that University is part of The HHMD of Texas System ("UT System"), which is comprised of nine academic and six health universities described at http://www.utsystem.edu/institutions. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this could give rise to additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Company should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded
opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.

1.2 Description of the District

Parkland is a major economic engine for Dallas County. The hospital system employs more than 10,000 people. With more than 1 million total patient visits a year. Parkland serves as a safety net hospital, caring for needy people throughout the Dallas community. Parkland has trained half of the practicing physicians in Dallas County and we are the first and the busiest certified Level 1 Trauma Center in the region. 62 percent of the trauma cases in Dallas County come to District. Parkland is also home to the District Burn Center, the second largest civilian center in the U.S. where the standard in burn care, "The Parkland Formula," was developed.

Parkland serves as the primary teaching hospital for the University of Texas Southwestern Medical Center. More than 60 percent of the doctors in the Dallas area have undergone formal training at District. The hospital system boasts 10 Centers of Excellence with the most skilled health professionals and state-of-the-art tools and equipment. Additional information can be found at www.parklandhospital.com.

1.3 Objective of this Request for Proposal

The HHMD (Harry Hines Medical District as noted on the RFP cover page) is requesting proposals in response to this Request for Proposal for Selection of a Company with whom the HHMD could establish a purchasing agreement for spinal components & instrumentation. The goal of this agreement and all agreements within both parties portfolio is to provide a superior quality product at the lowest possible total delivered cost.

1.4 Expectations of Business Partners

The HHMD strives to provide exemplary service to its affiliated facilities and business partners. As such, there is a high expectation of its business partners. It is expected that the business partner will provide quality products and services at highly competitive prices. Just as important is the expectation that these products are provided in a manner that exhibits the highest level of ethics and professionalism. The business partner relationship should be a long term one in which both parties work together to provide value to the HHMD. It is expected that, as a result of this relationship, the business partner will work with the HHMD to ensure that the purchasing agreements remain competitive. HHMD views all of its agreements as dynamic instruments subject to change to meet the requirements of an ever-changing healthcare environment.

1.5 Partnering

The HHMD may include additional healthcare facilities to this RFP or any agreement entered into as a result of this RFP. Those facilities include, but are not limited to, hospitals, clinics or other facilities that require the same or similar products and or services provided by Company. By responding to this RFP the successful Company(s) will agree to provide such products and/or services to any “added” facilities by the HHMD at the same competitive pricing and terms as negotiated by HHMD.
SECTION 2

NOTICE TO COMPANY

2.1 Submittal Deadline

HHMD will accept proposals submitted in response to this RFP until 3:00 p.m., Central Prevailing Time on (August 16, 2016) (the “Submittal Deadline”).

2.2 HHMD Contact Person

Companies will direct all technical questions or concerns regarding this RFP to the following HHMD contact (the “HHMD Contact”):

Mone’ Greene
Manager – University Hospitals Purchasing Department
6190 Wyche Street
Dallas, TX 75390-9292
Phone: 214/633-2297
Fax: 214/633-2241
Email: mone.greene@utsouthwestern.edu

HHMD specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications (email is preferred, all email must reference the RFP #: UTH17-0019 in the subject line) forwarded to the HHMD Contact. Multiple questions shall be submitted in a MS Word document. The HHMD Contact must receive all questions or concerns no later than the close of business day (due date). HHMD will have a reasonable amount of time to respond to questions or concerns. It is HHMD’s intent to respond to all appropriate questions and concerns; however, HHMD reserves the right to decline to respond to any question or concern.

2.3 This RFP is assembled and solicited on behalf of the University and District, and as such, there will be specific criteria, rules, regulations, requirements and guidelines that may differ from what is outlined in this RFP. Every effort will be made to identify those differences and direct you to the appropriate Exhibit for clarification. Where there is a conflict of language between the RFP contents and the applicable Exhibit, the Exhibit language shall prevail.

2.3 Criteria for Selection

HHMD has the option to award multiple contracts based on submitted proposals. Any Company responding to this solicitation shall be referred to as “Company”. The successful Company, if any, selected by HHMD in accordance with the requirements and specifications set forth in this RFP will be the Company that submits a proposal in response to this RFP on or before the Submittal Deadline that is the most advantageous to HHMD.

Company is encouraged to propose terms and conditions offering the maximum benefit to HHMD in terms of (1) services to HHMD, (2) total overall cost to HHMD, and (3) project management expertise. Company should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to HHMD in a contract for the Services.
An evaluation team from HHMD will evaluate proposals. The evaluation of proposals and the selection of the Company will be based on the information provided by Company in its proposal. HHMD may give consideration to additional information if HHMD deems such information relevant.
The criteria to be considered by HHMD in evaluating proposals and selecting the Company, will be those factors listed below:

2.3.1 the cost of goods and services;
2.3.2 the reputation of the Company and of the Company's goods or services;
2.3.3 the quality of the Company's goods or services;
2.3.4 the extent to which the goods or services meet the HHMD's needs
2.3.5 the Company's past relationship with the HHMD;
2.3.6 the impact on the ability of the HHMD to comply with laws and rules relating to historically underutilized businesses and to the procurement of goods and services from persons with disabilities;
2.3.7 the total long-term cost to the HHMD of acquiring the Company's goods or services; and
2.3.8 any other relevant factor that a private business entity would consider in selecting a vendor.

2.3.9. **Awards.** The HHMD reserves the right to make a single award, multiple awards or no award at all to the RFP. In addition, this RFP may be amended as necessary to meet the needs of District or canceled by District at any time for any reason or no reason.

### 2.4 Key Events Schedule

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuance of RFP</td>
<td>July 7, 2016</td>
</tr>
<tr>
<td>Deadline for Questions/Concerns</td>
<td>July 18, 2016</td>
</tr>
<tr>
<td>(ref. Section 2.2 of this RFP)</td>
<td></td>
</tr>
<tr>
<td>Submittal Deadline</td>
<td>Extended to August 16, 2016</td>
</tr>
<tr>
<td></td>
<td>3p.m. Central Prevailing Time</td>
</tr>
<tr>
<td></td>
<td>(ref. Section 2.1 of this RFP)</td>
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</tbody>
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**2.5 Historically Underutilized Businesses (University Requirement)**

2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “HUB”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, the Company subcontracts any of the Services, then the Company must make a good faith effort to utilize HUBs certified by the Texas Building and Procurement Commission. Proposals that fail to comply with the requirements contained in this Section 2.5 will constitute a material failure to comply with advertised specifications and will be rejected by the HHMD as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP.
Company acknowledges that, if selected by HHMD, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by the Company is subject to review by the HHMD to ensure compliance with the HUB program.

2.5.2 HHMD has reviewed this RFP in accordance with Chapter 1, Texas Administrative Code, Section 111.14, and has determined that subcontracting opportunities are probable under this RFP.

2.5.3 A HUB Subcontracting Plan ("HSP"), attached in subsection 2.5.4.4 below, is required as part of Company's proposal. The HSP will be developed and administered in accordance with HHMD's Policy on Utilization of Historically Underutilized Businesses, included as a separate document, and incorporated for all purposes.

Each Company must complete and return the HSP in accordance with the terms and conditions of this RFP. Company’s that fail to do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Government Code.

The Company will not be permitted to change its HSP unless: (1) the Company completes a newly modified version of the HSP in accordance with the terms of said HSP that sets forth all changes requested by the Company, (2) the Company provides the HHMD with such a modified version of the HSP, (3) the HHMD approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by the HHMD and the Company to conform to the modified HSP.

2.5.4 Company must submit four (4) originals of the HSP to the HHMD at the same time it submits its proposal to the HHMD (ref. Section 3.2 of this RFP.) The four (4) originals of the HSP must be submitted under separate cover and in a separate envelope (the "HSP Envelope"). Company must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible:

2.5.4.1 the RFP No. (ref. Section 1.3 of this RFP) and the Submittal Deadline (ref. Section 2.1 of this RFP), both located in the lower left hand corner of the top surface of the envelope,

2.5.4.2 the name and the return address of the Company, and

2.5.4.3 the phrase “HUB Subcontracting Plan”.

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP Envelope meeting the above requirements will be rejected by the HHMD and returned to the Company unopened as that proposal will be considered non-responsive due to material failure to comply with advertised specifications.

Furthermore, the HHMD will open a Company’s HSP Envelope prior to opening the proposal submitted by the Company, in order to ensure that the Company has submitted the number of completed and signed originals of the Company’s HSP that are required by this RFP.
A Company’s failure to submit the number of completed and signed originals of the HSP that are required by this RFP will result in the HHMD’s rejection of the proposal submitted by that Company as non-responsive due to material failure to comply with advertised specifications; such a proposal will be returned to the Company unopened. (Ref. Section 1.5 of Appendix One to this RFP.) Note: The requirement that Company provide two originals of the HSP under this Section 2.5.4 is separate from and does not affect Company’s obligation to provide the HHMD with the number of copies of its proposal as specified in Section 3.1 of this RFP.

2.5.4.4 the UNIVERSITY’s HUB Subcontracting Plan

2.5.5 M/WBE Participation Plan (District Requirement- complete the attached forms Exhibit B.

1. Company’s Plan will be evidenced by completion of the attached forms. The Plan will be reviewed and determined to be “Acceptable” or “Unacceptable”. If no M/WBE opportunities exist, such as 100% self-performance, it shall be noted in the completed forms. Plans in which no M/WBE opportunity exists will not be automatically deemed “Unacceptable” as long as ALL FORMS ARE COMPLETED.

2. The established M/WBE participation goals for District are currently 25% for goods and services and 30% for construction. The percentage goal is an expression of total dollars paid by the District under the awarded contract resulting from this Solicitation. Company’s Plan (comprised of the completed forms) shall detail and describe what Company can reasonably achieve for this specific procurement. If the work detailed in Company's proposal will be self-performed in its entirety, it shall be noted on the attached forms. All submitted forms will become Schedule H-17 to the Contract.

3. Company must complete ALL required forms in their entirety, including signature, to be considered “Acceptable”.

4. Exhibit B.1 - M/WBE Subcontractor/Supplier Participation Form. All Company’s must complete this form, detailing all subcontractors/suppliers that will be part of the work performed. The expected value of the subcontractor/supplier portions of the award should be specifically noted so that the Supplier Diversity Team can accurately determine the percentage of the M/WBE participation.

5. Exhibit B.2 - M/WBE Good Faith Effort Form. Company’s unable to meet the established participation goals for this procurement (as submitted in Exhibit B.1) must complete this form to document the steps taken to solicit M/WBE participation prior to submitting the proposal.

6. Exhibit B.3 - M/WBE Post Award Participation Form. All Company’s must complete this form, detailing the steps that an Company would take if (1) the Company’s proposal is accepted and (2) an opportunity to include M/WBE participation presents itself after such acceptance. In other words, Company shall detail a plan the Company will use to ensure that any contracting or subcontracting opportunities are made available for M/WBE participation.
SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

Company must submit a total of six (6) complete and identical hard copies of its entire proposal and six (6) electronic copies on separate CD-ROMS or flash drives. An original signature by an authorized officer of Company must appear on the Execution of Offer (ref. Section 2 of APPENDIX ONE) of at least four (4) copies of the submitted proposal. The copy of the Company’s proposal bearing an original signature should contain the mark “original” on the front cover of the proposal. Companies may request this document in an editable version to facilitate the completion of their response. A Word file will be provided.

3.2 Submission

Proposals must be received by HHMD on or before the Submittal Deadline (ref. Section 2.1 of this RFP) and should be delivered to:

**Physical Delivery Address:**

Mone’ Greene  
Manager – University Hospitals Purchasing Department  
6190 Wyche Street  
Dallas, Tx 75390-9292  
Phone: 214/633-2297  
Fax: 214/633-2241  
Email: mone.greene@utsouthwestern.edu

**Fed-Ex or UPS Delivery Address:**

Mone’ Greene  
Manager – University Hospitals Purchasing Department  
6190 Wyche Street  
Dallas, Tx 75390-9292  
Phone: 214/633-2297  
Fax: 214/633-2241  
Email: mone.greene@utsouthwestern.edu

**Electronic Copy to District:**

Erika Singer  
Phone: 214-590-1418  
Email: Erika.Singer@phhs.org

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for HHMD’s acceptance for a minimum of one hundred eighty (180) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.
3.4 **Terms and Conditions**

3.4.1 Company must comply with the requirements and specifications contained in this RFP, the Terms and Conditions (ref. Section 4 of this RFP), the Notice to Company (ref. Section 2 of this RFP), Proposal Requirements (ref. APPENDIX ONE) and the Specifications and Additional Questions (ref. Section 5 of this RFP).

If there is a conflict among the provisions in this RFP, the provision requiring Company to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

3.4.1.1. Specifications and Additional Questions (ref. Section 5 of this RFP), and District Contract (ref Section 4).

3.4.1.2. Terms and Conditions (ref. Section 4 of this RFP);

3.4.1.3. Proposal Requirements (ref. APPENDIX ONE);

3.4.1.4. Notice to Companies (ref. Section 2 of this RFP).

3.5 **Submittal Checklist**

Company is instructed to complete, sign, and return the following documents as a part of its proposal. If Company fails to return each of the following items with its proposal, then HHMD may reject the proposal:

3.5.1 Signed and Completed Execution of Offer (ref. Section 2 of APPENDIX ONE)

3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. Section 6 of this RFP)

3.5.3 Responses to Company’s General Questionnaire (ref. Section 3 of APPENDIX ONE)

3.5.4 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. Section 5 of this RFP)

3.5.5 Signed and Completed HUB Subcontracting Plan (HSP) (ref. Section 2.5), even if you do not plan to subcontract.

3.5.6 Company’s must provide written confirmation of their acceptance of the District Contract, Exhibit C, inclusive of its Schedule C – SOW at time of submission of documents. Please provide written confirmation in a separate document.

3.5.7 Company must complete and provide written confirmation of their acceptance of the District MWBE Forms Completed (Exhibit B).
SECTION 4
GENERAL TERMS AND CONDITIONS

4.1 General

The University terms and conditions contained in this Section 4 or, in the sole discretion of University, terms and conditions substantially similar to these terms and conditions, will be included in any contract or agreement that results from this RFP (ref. Section 1.4 of APPENDIX ONE).

4.2 HHMD has the option to award multiple contracts based on submitted proposals.

4.3 Terms and Conditions for the District

Any resultant contract shall include the terms and conditions set forth by District in Exhibit C. District is a political Subdivision of the State of Texas agency and therefore bound by State of Texas requirements and law. If there is any conflict of language between this RFP and the District's Contract, Exhibit C, the District Contract shall prevail.

Company’s must provide written confirmation of their acceptance of Exhibit C, inclusive of its Schedule C – SOW at time of submission of documents. Please provide written confirmation in a separate document placed after the Cover Sheet.

TO ENSURE THAT THIS RFP IS BASED ON FAIR COMPETITION, THE CONTRACT TERMS AND CONDITIONS OF THE AGREEMENT ARE NON-NEGOTIABLE.

Failure to strictly adhere to this requirement may result in your proposal being eliminated from consideration.

4.2 Family Code Child Support Certification

Pursuant to Section 231.006, Family Code, Company certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

4.3 Eligibility

Pursuant to Section 2155.004, Government Code, Company certifies that the individual or business entity named in this Agreement has not received compensation for participation in the preparation of the Request for Proposal related to this Agreement and is not ineligible to receive the award of or payments under this Agreement; and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
4.4 Tax Certification

If Company is a taxable entity as defined by Chapter 171, Texas Tax Code (“Chapter 171”), then Company certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Company is exempt from the payment of those taxes, or that Company is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

4.5 Payment of Debt or Delinquency to the State

Pursuant to Sections 2107.008 and 2252.903, Government Code, Company agrees that any payments owing to Company under this Agreement may be applied directly toward any debt or delinquency that Company owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

4.6 Products and Materials Produced in Texas

If Company will provide services under this Agreement, Company covenants and agrees that in accordance with Section 2155.4441, Government Code, in performing its duties and obligations under this Agreement, the Company shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

4.7 Notices

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to University:  UT Southwestern Medical Center
5323 Harry Hines Blvd
Dallas, TX  75390-9226
Attention: Charles Cobb
Fax: 214-648-6046
Charles.Cobb@utsouthwestern.edu

with copy to :  UT Southwestern Medical Center
5323 Harry Hines Blvd.
Dallas, TX  75390-9062
Attention: Shawn Cohenour
Fax: (214) 648-0845
Shawn.Cohenour@utsouthwestern.edu

If to District:  Attention: Director of Contracts
Contracts Department
8435 N. Stemmons Freeway, Suite 920
Dallas, Texas 75247
If to Company:

Street Address: ________________

Attention: _____________________
Fax: ___________________________
Email: _________________________

or such other person or address as may be given in writing by either Company to the other in accordance with the aforesaid.

4.8 **State Auditor’s Office**

Company understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”) or third party on behalf of HHMD, to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Education Code*. Company agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Company will include this provision in all contracts with permitted subcontractors.

4.9 **Venue; Governing Law**

Dallas County, Texas, shall be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

“District” is a political Subdivision of the State of Texas agency and therefore bound by the State of Texas requirements and law.

4.10 **Breach of Contract Claims**

4.10.1 To the extent that Chapter 2260, *Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by HHMD and Company to attempt to resolve any claim for breach of contract made by Company:

4.10.1.1 Company's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Company will submit written notice, as required by subchapter B of Chapter 2260, to HHMD in accordance with the notice provisions in this Agreement. Company's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that HHMD allegedly breached, the amount of damages Company seeks, and the method used to calculate the damages. Compliance by Company with subchapter B of Chapter 2260 is a required prerequisite to Company's filing of a contested case proceeding under subchapter C of Chapter 2260.
The Chief Business Officer of HHMD, or the other officer of HHMD as may be designated from time to time by HHMD by written notice thereof to Company in accordance with the notice provisions in this Agreement, will examine Company's claim and any counterclaim and negotiate with Company in an effort to resolve the claims.

4.10.1.2 If the parties are unable to resolve their disputes under Section 4.11.1.1, the contested case process provided in subchapter C of Chapter 2260 is Company's sole and exclusive process for seeking a remedy for any and all of Company's claims for breach of this Agreement by HHMD.

4.10.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by HHMD nor any other conduct, action or inaction of any representative of HHMD relating to this Agreement constitutes or is intended to constitute a waiver of HHMD's or the state's sovereign immunity to suit and (ii) HHMD has not waived its right to seek redress in the courts.

4.10.2 The submission, processing and resolution of Company's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

4.10.3 HHMD and Company agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

4.11 Compliance with Law

Company is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, including but not limited to Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), Rehabilitation Act of 1973, as amended (41 CFR 60-741), Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991 and all laws and regulations and executive orders as are applicable.

4.12 HHMD’s Right to Audit

At any time during the term of this Agreement and for a period of four (4) years thereafter HHMD or a duly authorized audit representative of HHMD, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Company's records and books relevant to all services provided under this Agreement. In the event such an audit by HHMD reveals any errors/overpayments by HHMD, Company shall refund HHMD the full amount of such overpayments within thirty (30) days of such audit findings, or HHMD, at its option, reserves the right to deduct such amounts owing HHMD from any payments due Company.
4.13 Access to Documents

To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Company agrees to allow, during and for a period of not less than four (4) years after the Agreement term, access to this Agreement and its books, documents, and records; and contracts between Company and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

4.14 Insurance

4.14.1 Company, consistent with its status as an independent Company, will carry at least the following insurance in the form, with the companies and in the amounts (unless otherwise specified) as HHMD may require:

4.14.1.1 Workers’ Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limit of not less than One Million Dollars ($1,000,000) per accident or disease. Policies must include All States Endorsement and a waiver of all rights of subrogation and other rights against the HHMD;

4.14.1.2 Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal and Advertising Injury, Completed Operations/Products Liability, Medical Expenses, Interest of Employees as additional insureds and Broad Form General Liability Endorsements, for at least One Million Dollars ($1,000,000) per occurrence on an occurrence basis;

4.14.1.3 Commercial Automobile Liability insurance covering all owned, non-owned or hired automobiles to be used by Company, with coverage for at least One Million Dollars ($1,000,000) Combined Single Limit Bodily Injury and Property Damage;

4.14.1.4 Professional Liability Insurance covering performance of professional services caused by any negligent error, omission or act with coverage of at least one million dollars ($1,000,000) per claim, one million dollars ($1,000,000) annual aggregate.

4.14.2 Company will deliver to HHMD:

4.14.1.1 Evidence satisfactory to HHMD in its sole discretion, evidencing the existence of all the insurance promptly after the execution and delivery hereof and prior to the performance or continued performance of any services to be performed by Company hereunder from or after the date of this Agreement; and

4.14.1.2 Additional evidence, satisfactory to HHMD in its sole discretion, of the continued existence of all required insurance not less than thirty (30) days prior to the expiration of any required insurance. If, however, Company fails to pay any of the renewal premiums for the expiring policies, HHMD will have the right to make the payments and set-off the amount thereof against the next payment coming due to Company under this Agreement.
Such insurance policies, with the exception of Workers’ Compensation and Employer’s Liability, will name and the evidence will reflect HHMD as an Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to HHMD, giving HHMD the right to pay the premium to maintain coverage, in which event Section 11.2.2 will apply.

4.14.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:

4.14.3.1 Commercial General Liability Insurance, and

4.14.3.2 Workers’ Compensation Insurance and Employer’s Liability Insurance will be kept in force until the Services have been fully performed and accepted by HHMD in writing.

4.15 Indemnification

4.15.1 To the fullest extent permitted by law, Company will and does hereby agree to indemnify, protect, defend with counsel approved by HHMD, and hold harmless HHMD and The HHMD of Texas System, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively “Indemnitees”) from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorneys’ fees), and other claims of any nature, kind, or description (collectively “Claims”) by any person or entity, arising out of, caused by, or resulting from Company’s performance under this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Company, anyone directly employed by Company or anyone for whose acts Company may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

4.15.2 In addition, Company will and does hereby agree to indemnify, protect, defend with counsel approved by HHMD, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Company, or the use by Indemnitees, at the direction of Company, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for infringement, HHMD will promptly notify Company and Company will be given the opportunity to negotiate a settlement. In the event of litigation, HHMD agrees to reasonably cooperate with Company. All parties will be entitled to be represented by counsel at their own expense.
4.16 Press Releases.

Except when defined as part of the Work, Company will not make any press releases, public statements, advertisement or other promotional materials using the name or logo of HHMD or the name of any HHMD employee, or referring to the Agreement or the engagement of Company as an independent Company of HHMD, or the purchase of goods or services by HHMD, without the prior written approval of HHMD. Requests for prior written approval of any such releases, public statements, advertisements or other promotional materials must be directed to University’s Vice President – Communications, Marketing and Public Affairs and Districts Senior VP of Communications.

4.17 Assignment of Overcharge Claims

Company hereby assigns to HHMD any and all claims for overcharges associated with the Contract arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq., or arising under the antitrust laws of the State of Texas, Business and Commerce Code, Sec. 15.01, et seq.

4.18 Observance of HHMD Rules and Regulations

Company agrees that at all times its employees, agents and permitted subcontractors (if any) will observe and comply with all regulations of the facilities, including but not limited to, no smoking, parking and security regulations.

4.19 Assignment and Subcontracting (only applies to University)

Except as specifically provided in any Historically Underutilized Business Subcontracting Plan (“HSP”) attached as Exhibit 2 to this Agreement and incorporated for all purposes, neither Company’s interest in this Agreement, its duties and obligations under this Agreement nor fees due to Company under this Agreement may be subcontracted, assigned, delegated or otherwise transferred to a third Company, in whole or in part, and any attempt to do so will (1) not be binding on University; and (2) be a breach of this Agreement for which Company will be subject to any remedial actions provided by Texas law, including Chapter 2161, Government Code, and 1 Texas Administrative Code (“TAC”) Section 111.14. HHMD may report nonperformance under this Agreement to the Texas Building and Procurement Commission (“TBPC”) in accordance with 1 TAC Chapter 113, Subchapter F, Vendor Performance and Debarment Program. The benefits and burdens of this Agreement are, however, assignable by University.

4.20 Historically Underutilized Business Subcontracting Plan (only applies to University)

If an HSP is attached to this Agreement, Company agrees to use good faith efforts to subcontract the Services in accordance with the HSP. Company agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by the TBPC. Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Company has failed to subcontract as set out in the HSP, University will notify Company of any deficiencies and give Company an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Company. If University determines that Company failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TBPC in accordance with 1 TAC Chapter 113, Subchapter F, Vendor Performance and Debarment Program. University may also revoke this Agreement for breach and make a claim against the Company.
4.21 Payment

HHMD agrees to pay fees due under this Agreement in accordance with the Texas Prompt Payment Act ("Act"), Chapter 2251, Government Code. Pursuant to the Act, payment shall be deemed late on the 31st day after the later of: 1) the date the performance of the Services under this Agreement are completed, or 2) the date HHMD receives an invoice for the Services. HHMD will be responsible for interest on overdue payments equal to the sum of: 1) one percent, plus 2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year (HHMD’s fiscal year begins September 1) that does not fall on a Saturday or Sunday.

4.22 Limitations

The parties to this Agreement are aware that there are constitutional and statutory limitations on the authority of the HHMD (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another Company; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “Limitations”), and terms and conditions related to the Limitations shall not be binding on HHMD except to the extent authorized by the laws and Constitution of the State of Texas.

4.23 Affirmative Action

Company agrees that a written copy of Company’s Civil Rights "Affirmative Action Compliance Program" will be provided simultaneously with this Agreement and incorporated for all purposes, or if Company is not required to have such a written program, the reason Company is not subject to such requirement will be provided in writing.

4.24 OSHA Compliance

Company represents and warrants that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.
4.25 Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance

Company certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Company agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Agreement. The term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, entertainment areas, transportation, or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Company further agrees that, except where it has contracts prior to the award with subcontractors exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Company will retain such certifications for each one of its subcontractors in Company’s files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding $10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Company understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

4.26 Premises Rules

If this Agreement requires Company’s presence on HHMD’s premises or in HHMD’s facilities, Company agrees to cause its representatives, agents, employees and permitted subcontractors (if any) to become aware of, fully informed about, and in full compliance with all applicable HHMD rules and policies, including, without limitation, those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

4.27 Debarment

Company confirms that neither Company nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (“U.S.”) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs issued by the U.S. General Services Administration. “Principals” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Company shall provide immediate written notification to HHMD if, at any time prior to award, Company learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when HHMD executes this Agreement. If it is later determined that Company knowingly rendered an erroneous certification, in addition to the other remedies available to HHMD, HHMD may terminate this Agreement for default by Company.
4.28 Office of Inspector General Certification

Company acknowledges that HHMD is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Company to work on site at HHMD’s premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Company shall not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at HHMD’s premises or facilities. Company shall perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at HHMD’s premises or facilities. Company acknowledges that HHMD will require immediate removal of any employee, subcontractor or agent of Company assigned to work at HHMD’s premises or facilities if such employee, subcontractor or agent is found to be on the OIG’s List of Excluded Individuals. The OIG’s List of Excluded Individuals may be accessed through the following Internet website:
http://exclusions.oig.hhs.gov/

4.29 Access by Individuals with Disabilities

Company represents and warrants (the “EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to HHMD as a result of this Request for Proposal (collectively, the “EIRs”) comply with the applicable requirements set forth in 1 TAC Chapter 213 and 1 TAC Section 206.70 (as authorized by Subchapter M, Chapter 2054, Texas Government Code.) To the extent Company becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Company represents and warrants that it will, at no cost to HHMD, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty.

In the event that Company fails or is unable to do so, then HHMD may terminate any contract or agreement and Company will refund to HHMD all amounts HHMD has paid under such agreement within thirty (30) days after the termination date.
SECTION 5
SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General
A Category response to the specifications and requirements in Section 5 of this document is required.

SECTION REFERENCE--RESTATE QUESTION--COMPANY WRITTEN RESPONSE. Attaching a Company system specifications brochure does not constitute an acceptable response. No response or insufficient information will be regarded as an exception to that requirement and will be considered to reflect an inability to meet that requirement. FAILURE TO PROVIDE A POINT-BY-POINT RESPONSE WILL BE CONSIDERED TO BE NONRESPONSIVE TO THE REQUEST FOR PROPOSAL.

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Company as part of its proposal, are set forth below. The Company should provide a complete set of specification sheets for all equipment offered. As indicated in Section 2.3 of this RFP, the successful Company is referred to as the "Company."

5.2 Scope of Products and/or Services

The HHMD is seeking proposals from technically qualified Company for spinal and related implants. While specific implant volumes are not reflected here the estimated HHMD spend in the Spine service line is approximately $6,200,000

5.3 Request for Proposal Specifications and General Information

Please review the following specifications and minimum expectations. You must note in your response any exceptions to these minimum expectations. Your proposal will not be considered if you fail to respond to all substantive questions and issues. Feel free to attach supplementary pages in order to adequately convey your position.

1. Specifications - The following are HHMD’s minimum expectations. If Company takes exception to any of these terms please note the exceptions fully in your written proposal.

2. Scope of awards:

   - **The HHMD has included in Section 6, Pricing and Delivery Schedule, four different pricing scenarios. HHMD will evaluate each Company’s pricing structure to determine what is most advantageous for the HHMD. If it is determined and HHMD enters into an Agreement for a committed percentage, the committed percentage will be calculated per the definition of “Compliance Calculations” below.**

   - **Compliance Calculations: Calculated as the total number of primary cases in an awarded category / minus all (IRB (institutional review board) / IDE (investigational device exemption) / and implant developer cases) for which the resulting number is the denominator in the equation.**
Cases being excluded under the stipulation of development cases are reserved for only the named developer per a formal HHMD agreement between HHMD and the Company specifically naming the developer and the items they are under agreement to work on. This covers both the time of the product development and going forward when commercially available for use by the named developer / developers.

- Pricing may be proposed for any other items Company or distributed by your Company for consideration by the HHMD. These proposals, if submitted, must be free standing and not linked in any contingent fashion to the spinal implant proposals. We will evaluate all additional proposals for the value that they bring to the HHMD and enter into separate negotiations with the Company's related to their respective offerings.

- The HHMD will develop all agreements and any subsequent new product additions, enhancements or revisions. During the term of these agreements there will be no individually negotiated agreements or product additions between the HHMD and a Company, their representatives or authorized distributors. Unless otherwise agreed to in writing by the parties.

- Agreements developed with a Company and HHMD will contain all FDA approved items that Company markets in the awarded category.

5. **Instrumentation:** Instrumentation will be provided and maintained in proper working order without charge.

6. **Consignment:** At the HHMD’s option, all inventories may be on a consignment basis. The Company acknowledges that the HHMD will have a “reasonable” amount of inventory on hand based on their volume of procedures. These levels can be mutually negotiated between the HHMD and the selected Company(s). Clearly state the minimum expiration date required for a product to be returned in situations where the HHMD maintains the inventory. HHMD will not pay any restocking charges or other handling fees.

6. **Freight:** All materials are FOB destination.

7. **Service Requirements:** It is expected that the selected Company(s) will provide the appropriate amount of service customary with industry accepted practices and the past service requirements of the HHMD. Representatives should be available in a timely manner if requested to be present at a case. These services shall be provided at no additional charge.

8. **Market Competitiveness:** Company agrees to meet with designated HHMD staff for the purpose of conducting business review meetings to ensure that the program is operating efficiently and that pricing is always market competitive. HHMD and Company will mutually agree upon the frequency of such meetings.
9. **Technological Breakthroughs and Enhanced Cost Effectiveness / Efficiencies:** HHMD believes an essential element of advancing the core objectives and mission of HHMD is to encourage the development and utilization of health care technology that significantly improves the quality, cost effectiveness, safety, process and/or outcome of care. In support of this belief, Company and HHMD mutually agree that in the event of a significant technological advancement or breakthrough technologies in a product or service, a major market change, or a substantial cost savings in a clinically comparable existing FDA approved product as defined by package insert (hereinafter defined as “Breakthrough Product”), during the Term, and, if at such time, Company does not offer the same or an acceptable alternative to HHMD, then HHMD reserves the right to enter into agreements with the seller(s) of such Breakthrough Products in order to make such product(s) or service(s) available to HHMD. Company hereby agrees that the purchase of such Breakthrough Product(s) by HHMD shall not negatively impact any Agreement between the parties and/or access to any favorable terms and conditions offered under this agreement and HHMD shall incur no penalties.

10. **Term of Agreement:** HHMD seeks a contract with firm pricing for a minimum period of two years. Longer terms may be negotiated based on a Company ability to submit quantifiable pricing into the future that is guaranteed to be market competitive.

11. **Growth Incentive:** HHMD seeks a growth incentive recognizing that HHMD is a dynamic and growing healthcare organization. Please note any exceptions of your willingness to agree to a growth incentive.

12. **Education Training:** What educational training do you offer with your product line for the practitioners?

13. **Indigent Care:** What programs do you have to assist in covering / reducing the costs of products utilized on patients whom are not fortunate enough to have the ability to pay for such required healthcare services?
SECTION 6

PRICING SCHEDULE

Proposal of: ________________________________
(Company Name)

To: The Harry Hines Medical District (HHMD)

Ref.: Spine Implant RFP

RFP No.: __________________

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the Spine Implant RFP resources required pursuant to the above-referenced Request for Proposal upon the terms quoted below.

6.1 Product Cost

The attached spreadsheet details the pricing scenarios the HHMD would like to consider and given the commitment scenarios.

Pricing should be firm for two years and discounted based on the current price book in effect. Please indicate what price book is currently in effect.

Current Price Book Year: __________

Please populate the attached spreadsheet to show how your proposed line item pricing for the four requested scenarios would net out in each of the requested categories on the spreadsheet.

Pricing proposed shall be available to all HHMD facilities that currently, or in the future, performs the type procedures identified herein regardless of site specific volume.

Products under active development with a Company or those that HHMD previously had a role in developing are expected to be at extremely market competitive prices. Under no circumstances will HHMD pay more for a product under a development agreement that what we have under a preferential contractual arrangement with another Company. The HHMD will review this prior to a developer getting clearance internally to utilize a particular product.

The HHMD reserves the right to select any combination of Companies from proposals that are received and judged technically acceptable. From the acceptable proposals received, the HHMD will determine what mix of products is required given their specific needs.

UTSW Spine Pricing Component Matrix
6.2 HHMD’s Payment Terms

HHMD’s standard payment terms are “Net 30 days.” Indicate below the prompt payment discount that Company offers to HHMD:

Prompt Payment Discount: ____%____days/net 30 days

Respectfully submitted,

Company: ____________________________

By: ________________________________
   (Authorized Signature for Company)

Name: ______________________________

Title: ______________________________

Date: ________________
APPENDIX ONE

PROPOSAL REQUIREMENTS

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1.1 Purpose

HHMD is soliciting competitive sealed proposals from Companies having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by HHMD.

By submitting a proposal, Company certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Company also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Company.

COMPANY IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

HHMD may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by HHMD as having received a copy of this RFP. Only HHMD’s responses that are made by formal written Addenda will be binding on HHMD. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by HHMD prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Any interested Company that receives this RFP by means other than directly from HHMD is responsible for notifying HHMD that it has received an RFP package, and should provide its name, address, telephone number and FAX number to HHMD, so that if HHMD issues Addenda to this RFP or provides written answers to questions, that information can be provided to such Company.

1.3 Public Information

Company is hereby notified that HHMD strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

HHMD may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, HHMD will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (Government Code, Chapter 552.001, et seq.). Company will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, Government Code.

1.4 Type of Agreement

The Company, if any, will be required to enter into a contract with HHMD in a form that (i) includes terms and conditions substantially similar to the terms and conditions set forth in Section 4 of this RFP, and (ii) is otherwise acceptable to HHMD in all respects (the "Agreement").

1.5 Proposal Evaluation Process

HHMD will select the Company by using the competitive sealed proposal process described in this Section. HHMD will open the HSP Envelope submitted by a Company prior to opening the Company’s proposal in order to ensure that the Company has submitted the number of completed and signed originals of the Company’s HUB Subcontracting Plan (also called the HSP) that are required by this RFP (ref. Section 2.5.4 of the RFP). All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be opened publicly to identify the name of each Company submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be rejected by the HHMD as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, HHMD may invite one or more selected Companies to participate in oral presentations. HHMD will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of the Company.

HHMD may make the selection of the Company on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, HHMD may make the selection of the Company on the basis of negotiation with any of the Companies. In conducting such negotiations, HHMD will avoid disclosing the contents of competing proposals.
At HHMD's sole option and discretion, HHMD may discuss and negotiate all elements of the proposals submitted by selected Companies within a specified competitive range. For purposes of negotiation, HHMD may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, HHMD will defer further action on proposals not included within the competitive range pending the selection of the Company; provided, however, HHMD reserves the right to include additional proposals in the competitive range if deemed to be in the best interests of HHMD.

After submission of a proposal but before final selection of the Company is made, HHMD may permit a Company to revise its proposal in order to obtain the Company's best and final offer. In that event, representations made by Company in its revised proposal, including price and fee quotes, will be binding on Company. HHMD will provide each Company within the competitive range with an equal opportunity for discussion and revision of its proposal. HHMD is not obligated to select the Company offering the most attractive economic terms if that Company is not the most advantageous to HHMD overall, as determined by HHMD.

HHMD reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Companies, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of HHMD. Company is hereby notified that HHMD will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by HHMD.

1.6 Company's Acceptance of Evaluation Methodology

By submitting a proposal, Company acknowledges (1) Company's acceptance of [a] the Proposal Evaluation Process (ref. Section 1.5 of APPENDIX ONE), [b] the Criteria for Selection (ref. 2.3 of this RFP), [c] the Specifications and Additional Questions (ref. Section 5 of this RFP), [d] the terms and conditions set forth in Section 4 of this RFP, and [e] all other requirements and specifications set forth in this RFP; and (2) Company's recognition that some subjective judgments must be made by HHMD during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Company understands and agrees that (1) this RFP is a solicitation for proposals and HHMD has made no representation written or oral that one or more agreements with HHMD will be awarded under this RFP; (2) HHMD issues this RFP predicated on HHMD's anticipated requirements for the Services, and HHMD has made no representation, written or oral, that any particular scope of services will actually be required by HHMD; and (3) Company will bear, as its sole risk and responsibility, any cost that arises from Company's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

1.8.1 Company should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.

1.8.2 Proposals and any other information submitted by Company in response to this RFP will become the property of HHMD.

1.8.3 HHMD will not provide compensation to Company for any expenses incurred by the Company for proposal preparation or for demonstrations or oral presentations that may be made by Company, unless otherwise expressly agreed in writing. Company submits its proposal at its own risk and expense.

1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by HHMD, at HHMD's sole discretion.

1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Company's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.

1.8.6 HHMD makes no warranty or guarantee that an award will be made as a result of this RFP. HHMD reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP when deemed to be in HHMD's best interest. HHMD reserves the right to seek clarification from any Company concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to HHMD, at HHMD's sole discretion. Representations made by Company within its proposal will be binding on Company.

1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by HHMD, in HHMD's sole discretion.
1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. Section 5 of this RFP). Company should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Company should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Company should explain the reason when responding N/A or N/R.

1.9.2 Execution of Offer

Company must complete, sign and return the attached Execution of Offer (ref. Section 2 of APPENDIX ONE) as part of its proposal. The Execution of Offer must be signed by a representative of Company duly authorized to bind the Company to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by HHMD, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Company must complete and return the Pricing and Delivery Schedule (ref. Section 6 of this RFP), as part of its proposal. In the Pricing and Delivery Schedule, the Company should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

HHMD will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Company should describe each significant phase in the process of providing the Services to HHMD, and the time period within which Company proposes to be able to complete each such phase.

1.9.4 Company’s General Questionnaire

Proposals must include responses to the questions in Company’s General Questionnaire (ref. Section 3 of APPENDIX ONE). Company should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Company should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Company should explain the reason when responding N/A or N/R.

1.9.5 Intentionally Left Blank

1.9.6 Submission

Company should submit all proposal materials enclosed in a sealed envelope, box, or container. The RFP No. (ref. Section 1.3 of this RFP) and the Submittal Deadline (ref. Section 2.1 of this RFP) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of the Company should be clearly visible.

Company must also submit the number of originals of the HUB Subcontracting Plan (also called the HSP) as required by this RFP (ref. Section 2.5 of the RFP.)

Upon Company’s request and at Company’s expense, HHMD will return to a Company its proposal received after the Submittal Deadline if the proposal is properly identified. HHMD will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the number of completed and signed originals of the HSP that are required by this RFP.

HHMD will not accept proposals submitted by telephone, proposals submitted by Facsimile (“FAX”) transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFP.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to HHMD. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without HHMD’s consent, which will be based on Company’s submittal of a written explanation and documentation evidencing a reason acceptable to HHMD, in HHMD’s sole discretion.

By signing the Execution of Offer (ref. Section 2 of APPENDIX ONE) and submitting a proposal, Company certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP and (b) do not place any requirements on HHMD that are not set forth in this RFP or in the Appendices to this RFP. Company further certifies that the submission of a proposal is Company’s good faith intent to enter into an agreement with HHMD as specified herein and that such intent is not contingent upon HHMD’s acceptance or execution of any terms, conditions, or other documents attached to or referenced in Company’s proposal.
SECTION 2
EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH COMPANY’S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE COMPANY’S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

2.1 By signature hereon, Company represents and warrants the following:

2.1.1 Company acknowledges and agrees that (1) this RFP is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Company in response to this RFP will not create a contract between HHMD and Company; (3) HHMD has made no representation or warranty, written or oral, that one or more contracts with HHMD will be awarded under this RFP; and (4) Company will bear, as its sole risk and responsibility, any cost arising from Company’s preparation of a response to this RFP.

2.1.2 Company is a reputable company that is lawfully and regularly engaged in providing the Services.

2.1.3 Company has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.

2.1.4 Company is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.

2.1.5 Company understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in Section 4 of this RFP, under which Company will be required to operate.

2.1.6 If selected by HHMD, Company will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-Company, except as expressly provided in the Agreement.

2.1.7 If selected by HHMD, Company will maintain any insurance coverage as required by the Agreement during the term thereof.

2.1.8 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Company acknowledges that HHMD will rely on such statements, information and representations in selecting the Company. If selected by HHMD, Company will notify HHMD immediately of any material change in any matters with regard to which Company has made a statement or representation or provided information.

2.1.9 Company will defend, indemnify, and hold harmless HHMD, The HHMD of Texas System, the State of Texas, and all of their regents, officers, agents and employees, from and against all claims, actions, suits, demands, costs (including, but not limited to reasonable attorneys’ fees), damages, and liabilities, arising out of, connected with, or resulting from any negligent acts or omissions or willful misconduct of Company or any agent, employee, subcontractor, or supplier of Company in the execution or performance of any contract or agreement resulting from this RFP.

2.1.10 Pursuant to Sections 2107.008 and 2252.903, Government Code, any payments owing to Company under any contract or agreement resulting from this RFP may be applied directly to any debt or delinquency that Company owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

2.2 By signature hereon, Company offers and agrees to furnish the Services to HHMD and comply with all terms, conditions, requirements and specifications set forth in this RFP.

2.3 By signature hereon, Company affirms that it has not given or offered to give, nor does Company intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and the Company may be removed from all proposal lists at HHMD.

2.4 By signature hereon, Company certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, Tax Code, or that Company is exempt from the payment of those taxes, or that Company is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at HHMD’s option, may result in termination of any resulting contract or agreement.

2.5 By signature hereon, Company hereby certifies that neither Company nor any firm, corporation, partnership or institution represented by Company, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
2.6 By signature hereon, Company certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Company and to bind Company under any agreements and other contractual arrangements that may result from the submission of Company’s proposal.

2.7 By signature hereon, Company certifies as follows:

"Under Section 231.006, Family Code, relating to child support, Company certifies that the individual or business entity named in the Company’s proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP may be terminated if this certification is inaccurate.”

2.8 By signature hereon, Company certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Company that is a sole proprietorship, the officers or directors of any Company that is a corporation, the partners of any Company that is a partnership, the joint venturers of any Company that is a joint venture or the members or managers of any Company that is a limited liability company, on one hand, and an employee of any component of The HHMD of Texas System, on the other hand, other than the relationships which have been previously disclosed to HHMD in writing and (ii) Company has not been an employee of any component institution of The HHMD of Texas System within the immediate twelve (12) months prior to the Submittal Deadline. All disclosures by Company in connection with this certification will be subject to administrative review and approval before HHMD enters into a contract or agreement with Company.

2.9 By signature hereon, Company affirms that no compensation has been received for its participation in the preparation of the requirements or specifications for this RFP, in accordance with Section 2155.004, Government Code.

2.10 By signature hereon, Company certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

2.11 By signature hereon, Company represents and warrants that all products and services offered to HHMD in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the Texas Hazard Communication Act, Chapter 502, Health and Safety Code, and all related regulations in effect or proposed as of the date of this RFP.

2.12 Company will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time HHMD makes an award or enters into any contract or agreement with Company.

2.13 Company should complete the following information:

If Company is a Corporation, then State of Incorporation: ______________________________

If Company is a Corporation then Company’s Corporate Charter Number: ________________

RFP No.: _____________________
NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Company Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(main contact name and email address)

(Date Signed)

(Company’s Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)
SECTION 3
COMPANY’S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Company’s General Questionnaire. Company should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Company should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Company will explain the reason when responding N/A or N/R.

3.1 Company Profile

3.1.1 Legal name of Company:

________________________________________

Address of principal place of business:

________________________________________

________________________________________

________________________________________

Address of office that would be providing service under the Agreement:

________________________________________

________________________________________

________________________________________

Number of years in Business: __________________________

State of incorporation: __________________________

Number of Employees: __________________________

Annual Revenues Volume: __________________________

Name of Parent Corporation, if any: __________________________

NOTE: If Company is a subsidiary, HHMD prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.
EXHIBIT B

DISTRICT MWBE PARTICIPATION PLAN

District MWBE Plan
Exhibit B 060716.docx

EXHIBIT C

DISTRICT CONTRACT

Exhibit C District
Contract for Spine 0