AMENDMENT # 1

DATE: February 21, 2014

TO: All Bidders of Record

FROM: Gil Rivera, Buyer

SUBJECT: Amendment #1 to T-2920 “Re-issue, Medical Ultrasound & Transducer Systems”

This amendment becomes part of the Contract Documents and modifies the original bidding documents as noted below:

1. QUESTION: SECTION A: STANDARD BID TERMS AND CONDITIONS, PARAGRAPH 1. ACCEPTANCE, Will CNM accept the following alternative language?

“Customer will have ten (10) days following the Awarded Vendor’s completion of installation of the Equipment to conduct appropriate inspection and testing to confirm that the Equipment meets Vendor’s published specifications for the Equipment. Upon completion of such inspection and/or testing, Customer must either reject or accept the Equipment. Customer may reject the Equipment only if it fails to meet the manufacturer's published specifications. If the Equipment is rejected, Vendor will proceed to correct any non-conformity. Upon Vendor’s completion of the corrective work, Customer will have another 10-day period to either accept or reject the Equipment.

If Vendor is unable to correct a material defect or non-conformity with the manufacturer’s published specifications, within a period of 30 days from the date of Customer’s written rejection of the system, Customer will have the option to request Vendor to remove the Equipment at Vendor’s cost and refund any monies previously paid by Customer for the Equipment. If Customer chooses to exercise this option, it must do so in writing no later than 20 days from the end of the above-mentioned 30-day period. In such case, Vendor will provide the refund no later than 60 days from the date of Customer’s written request. A defect or non-conformity will be deemed “material” if Customer is unable to use the Equipment for clinical purposes. Once Vendor refunds Customer’s monies, neither party shall have any further obligation or liability to the other under the Quotation or relating to the Equipment and both parties will be deemed to have released each other from any and all claims relating to such Equipment.

Customer's acceptance or rejection must be made in writing. If Customer fails to either accept or reject the Equipment in writing within the timelines specified above, Customer will be deemed to have accepted the Equipment. Once Customer provides Vendor with a rejection notice, it may not use the Equipment for clinical purposes. If Customer uses the Equipment, Customer will be deemed to have accepted the Equipment notwithstanding delivery of a rejection notice. "Acceptance Date" will be the earlier of (i) the date the Equipment is accepted or (ii) the date of first clinical use if such use occurs after Customer has provided Vendor with a rejection notice, or (iii) the expiration of the initial 10-day or subsequent acceptance periods if Customer does not either reject or accept the Equipment in writing.”
CNM’s Response: The equipment supplied against this Request for Bids is intended for instructional purposes, and will not be used in a clinical setting. Ten (10) days is insufficient time for CNM to accept or reject the provided good and/or service. Finally, the offered equipment must meet the minimum specifications as outlined in this Request for Bids; not a vendor’s specification sheet. CNM hereby replaces Section A, paragraph 1 as follows:

“Customer will have thirty (30) days following the Awarded Vendor’s completion of installation of the Equipment to conduct appropriate inspection and testing to confirm that the Equipment meets the minimum specifications identified in this Request for Bids. Upon completion of such inspection and/or testing, Customer must either reject or accept the Equipment. Customer may reject the Equipment only if it fails to meet the minimum Request for Bids specifications. If the Equipment is rejected, Vendor will proceed to correct any non-conformity. Upon Vendor's completion of the corrective work, Customer will have another thirty (30)-day period to either accept or reject the Equipment.

If Vendor is unable to correct a material defect or non-conformity with the Request for Bids specifications, within a period of 30 days from the date of Customer’s written rejection of the system, Customer will have the option to request Vendor to remove the Equipment at Vendor’s cost and refund any monies previously paid by Customer for the Equipment. If Customer chooses to exercise this option, it must do so in writing no later than 20 days from the end of the above-mentioned 30-day period. In such case, Vendor will provide the refund no later than 60 days from the date of Customer’s written request. A defect or non-conformity will be deemed “material” if Customer is unable to use the Equipment for clinical or instructional purposes. Once Vendor refunds Customer’s monies, neither party shall have any further obligation or liability to the other under the Quotation or relating to the Equipment and both parties will be deemed to have released each other from any and all claims relating to such Equipment.

Customer's acceptance or rejection must be made in writing. Customer’s acceptance of the System is the Customer’s approval and payment of the Vendor’s invoice. If Customer fails to either accept or reject the Equipment in writing within the timelines specified above, Customer will be deemed to have accepted the Equipment. Once Customer provides Vendor with a rejection notice, it may not use the Equipment for clinical or instructional purposes. If Customer uses the Equipment, Customer will be deemed to have accepted the Equipment notwithstanding delivery of a rejection notice. "Acceptance Date" will be the earlier of (i) the date the Equipment is accepted or (ii) the date of first clinical or instructional use if such use occurs after Customer has provided Vendor with a rejection notice, or (iii) the expiration of the initial 30-day or subsequent acceptance periods if Customer does not either reject or accept the Equipment in writing.”

2. QUESTION: SECTION A: STANDARD BID TERMS AND CONDITIONS, PARAGRAPH 9. CANCELLATION, Will CNM accept the following alternative language?

“Customer may not cancel the order subject to this Agreement except with Vendor's prior written consent. In the event of such cancellation, Vendor will be entitled to recover any and all damages suffered by it caused by the cancellation as allowed by law, but in no event less than an amount equal to twenty percent (20%) of the purchase price for a restocking charge.”

CNM’s Response: No, CNM does not accept this alternative language for the following reason. Funding for this purchase is based on a grant that expires June 30, 2014. All equipment purchased as award against this RFB must be received at CNM’s shipping and receiving dock on or before June 30, 2014. Should an awarded vendor fail to deliver the products on or before June 14, 2014 during normal working hours, then CNM shall cancel the order with no penalty because funding will no longer be available.

3. QUESTION: SECTION A: STANDARD BID TERMS AND CONDITIONS, PARAGRAPH 12. CONTRACT, Will CNM accept the following alternative language?

“CNM’s purchase order and Vendor’s response to this RFP shall be considered the binding agreement/contract. In the event of any inconsistent or incompatible provisions, Vendor’s response to this RFP shall take precedence, followed by the provisions of the purchase order, and the provisions of the Invitation to Bid.”
CNM’s Response: No, CNM does not accept this alternative language. CNM’s Request for Bids is the procurement vehicle that allows CNM to make this purchase to be in accordance with the procurement regulations of the state of New Mexico. CNM is defined as a local public body within the state of New Mexico and must follow the procurement code as stipulated per New Mexico Statutes Annotated Chapter 13. Further, CNM’s Purchase Order is our contract; goods and services may not be provided without a valid purchase order in place. Since this RFP is CNM’s legal procurement vehicle that allows CNM to make this purchase, CNM may not accept Vendor terms and conditions that take precedence over CNM’s Request for Bids or CNM’s Purchase Order. Doing so could be viewed as giving one vendor an unbiased advantage over another vendor’s response. The terms and conditions of this Request for Bid and any resultant award must be the same for all vendors.

4. QUESTION: SECTION A: STANDARD BID TERMS AND CONDITIONS, PARAGRAPH 53. TERMINATION, Will CNM accept deletions of provisions relating to termination for convenience?

CNM’s Response: CNM accepts the deletion; however, failure by the awarded Vendor to deliver the products on or before June 30, 2014 at CNM’s Shipping & Receiving dock shall be considered termination for cause as described in the remaining first part of paragraph 53. This paragraph with this change now becomes:

“53. TERMINATION. Termination for cause. If the contractor, for any cause, fails or omits to carry out the work in an acceptable manner, CNM may give notice in writing of such failure or omission and of a reasonable time within which to cure the deficiency. Contractor shall be required to take corrective measures within such time. Contractor's failure to comply with such notice and to cure the deficiency as provided in the notice shall subject the Agreement to immediate termination by CNM. In the event of a for-cause termination, CNM shall terminate the Agreement by delivering to the Contractor a written notice of termination. The effective date of termination shall be the date stated in the notice or, if no date is stated, then the date of delivery of the notice. Upon delivery of such notice, Contractor shall have the right to receive payment for services performed prior to termination date, including reimbursement then due. Delivery for award made by the Vendor that is received at CNM’s Shipping and Receiving dock after June 30, 2014 shall be subject to Termination for Cause. CNM may cancel and reject the order with no penalty for deliveries received at CNM’s Shipping & Receiving dock after June 30, 2014. All deliveries must be during normal working hours.”

5. QUESTION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 2. Warranties. We wish to add the following language to this clause. Please confirm CNM’s acceptance.

“All warranties shall be limited to a term of 12 months from the date of completion of installation of the Equipment.”

CNM’s Response: CNM accepts this additional language. This paragraph with this change now becomes:

“2. Warranties. Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties, express and implied, are incorporated herein. All warranties shall be limited to a term of 12 months from the date of completion of installation of the Equipment.”

6. QUESTION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 3. Acceptance and Rejection. We wish the first two sentences of Section 3 are replaced with the following: “Section 1 of Section A, as modified by Seller, describes the process for acceptance and rejection of Equipment.” Please confirm CNM’s acceptance.

CNM’s Response: No, CNM does not accept this change. CNM hereby replaces the language in Section B, Paragraph 3 with the following language (same as per our response to Question # 1 above).
“Customer will have thirty (30) days following the Awarded Vendor’s completion of installation of the Equipment to conduct appropriate inspection and testing to confirm that the Equipment meets the minimum specifications identified in this Request for Bids. Upon completion of such inspection and/or testing, Customer must either reject or accept the Equipment. Customer may reject the Equipment only if it fails to meet the minimum Request for Bids specifications.

If the Equipment is rejected, Vendor will proceed to correct any non-conformity. Upon Vendor's completion of the corrective work, Customer will have another thirty (30)-day period to either accept or reject the Equipment.

If Vendor is unable to correct a material defect or non-conformity with the Request for Bids specifications, within a period of 30 days from the date of Customer’s written rejection of the system, Customer will have the option to request Vendor to remove the Equipment at Vendor’s cost and refund any monies previously paid by Customer for the Equipment. If Customer chooses to exercise this option, it must do so in writing no later than 20 days from the end of the above-mentioned 30-day period. In such case, Vendor will provide the refund no later than 60 days from the date of Customer’s written request. A defect or non-conformity will be deemed “material” if Customer is unable to use the Equipment for clinical or instructional purposes. Once Vendor refunds Customer’s monies, neither party shall have any further obligation or liability to the other under the Quotation or relating to the Equipment and both parties will be deemed to have released each other from any and all claims relating to such Equipment.

Customer's acceptance or rejection must be made in writing. Customer’s acceptance of the System is the Customer’s approval and payment of the Vendor’s invoice. If Customer fails to either accept or reject the Equipment in writing within the timelines specified above, Customer will be deemed to have accepted the Equipment. Once Customer provides Vendor with a rejection notice, it may not use the Equipment for clinical or instructional purposes. If Customer uses the Equipment, Customer will be deemed to have accepted the Equipment notwithstanding delivery of a rejection notice. "Acceptance Date" will be the earlier of (i) the date the Equipment is accepted or (ii) the date of first clinical or instructional use if such use occurs after Customer has provided Vendor with a rejection notice, or (iii) the expiration of the initial 30-day or subsequent acceptance periods if Customer does not either reject or accept the Equipment in writing.”

7. QUESTION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 4. Assignment. Will CNM accept the following alternative language?

“Neither party may assign this Agreement without the prior written consent of the other party.”

CNM’s Response: We accept this alternative language. Section B, paragraph 4 with this change now becomes,

“4. Assignment. Neither party may assign this Agreement without the prior written consent of the other party.”

8. QUESTION: SECTION B: GENERAL TERMS AND CONDITIONS, PARAGRAPH 6. Termination and Delays. Will CNM accept the following alternative language?

“All terminations shall be made in accordance with Section 53 of Section A, as modified by Seller.”

CNM’s Response: No, CNM does not accept the alternative language. We do however agree to replace Section B, paragraph 6 with the revised language for Section A, paragraph 53 as described in CNM’s response to question # 4 per this Amendment. Section B, paragraph 6 with this change now becomes,

“53. TERMINATION. Termination for cause. If the contractor, for any cause, fails or omits to carry out the work in an acceptable manner, CNM may give notice in writing of such failure or omission and of a reasonable time within which to cure the deficiency. Contractor shall be required to take corrective measures within such time. Contractor's failure to comply with such notice and to cure the deficiency as provided in the notice shall subject the Agreement to immediate termination by CNM.”
In the event of a for-cause termination, CNM shall terminate the Agreement by delivering to the Contractor a written notice of termination. The effective date of termination shall be the date stated in the notice or, if no date is stated, then the date of delivery of the notice. Upon delivery of such notice, Contractor shall have the right to receive payment for services performed prior to termination date, including reimbursement then due. Delivery for award made by the Vendor that is received at CNM’s Shipping and Receiving dock after June 30, 2014 shall be subject for Termination for Cause. CNM may cancel and reject the order with no penalty for deliveries received at CNM’s Shipping & Receiving dock after June 30, 2014. All deliveries must be made during normal working hours.”

9. **CLARIFICATION:** CNM has changed the due date for vendor questions on this RFB.

**WAS:**
All requests for clarification or exception to instructions, terms and conditions, specifications, requirements, scope, insurance, or bid preparation, etc. must be made in writing, addressed to the Buyer and submitted no later than five (5) days prior to the bid due date.

**IS NOW:**
All requests for clarification or exception to instructions, terms and conditions, specifications, requirements, scope, insurance, or bid preparation, etc. must be made in writing, addressed to the Buyer and submitted for receipt by the Buyer on or before 4:00 PM Mountain Time, February 24, 2014.

10. **CLARIFICATION:** Payment terms are net 30 days upon approved invoice.

11. **CLARIFICATION:** The resultant award must ship complete. Partial deliveries are not accepted.

**BIDDERS ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF ALL AMENDMENTS IN THE SPACES PROVIDED IN SECTION E, SIGNATURE OF FIRM’S AUTHORIZED REPRESENTATIVE.**

All other specifications, terms and conditions remain unchanged. This amendment may also be downloaded from CNM’s website [http://www.cnm.edu/depts/purchasing/request-for-bids](http://www.cnm.edu/depts/purchasing/request-for-bids). The due date and time of on or before 4:00 PM, March 3, 2014 remains unchanged.