

**DESTINATION MEDICAL CENTER CORPORATION
201 FOURTH STREET SE
ROCHESTER, MN 55904**

**REQUEST FOR PROPOSALS
(RFP)**

LEGAL SERVICES

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LEGAL SERVICES

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REQUEST FOR PROPOSALS LEGAL SERVICES

I. INTRODUCTION AND PROCUREMENT PROCESS

The Destination Medical Center Corporation (the "DMCC") is soliciting proposals for the provision of a full service, outside legal counsel to represent it in an on-going capacity as general counsel to a public, nonprofit corporation. The DMCC is a public, nonprofit corporation established by the City of Rochester under Minnesota Statutes, Sections 469.40 through 469.47, and Minnesota Statutes, Chapter 317A.

The issuance of this Request for Proposals ("RFP") constitutes only an invitation to submit proposals to the DMCC. It is not to be construed as an official and customary request for bids, but as a means by which the DMCC can facilitate the acquisition of information related to the purchase of services. Any proposal submitted as provided herein constitutes a suggestion to supply information/negotiate and NOT A BID.

The DMCC reserves the right to determine, in its sole and absolute discretion, whether any aspect of the proposal satisfactorily meets the criteria established in this RFP, the right to seek clarification from any Proposer(s), the right to negotiate with any Proposer(s) whether or not they submitted a proposal, the right to reject any or all proposals with or without cause, and the right to cancel and/or amend, in part or entirely, the RFP.

The RFP does not commit the DMCC either to award a contract or to pay for any costs incurred in the preparation of a proposal. Submission of a proposal as provided herein shall neither obligate nor entitle a prospective Proposer to enter into an Agreement with the DMCC.

It is understood that any proposal received and evaluated by the DMCC can be used as a basis for direct negotiation of the cost and terms of a contract between the DMCC and the particular firm submitting such a proposal. The DMCC reserves the right to negotiate pertinent contract terms concurrently with any number of firms as it deems in its best interest, whether or not such firm has submitted a proposal. In submitting this proposal, it is understood by the Proposer that the DMCC reserves the right to accept any proposal, to reject any and all proposals and to waive any irregularities or informalities that the DMCC deems is in its best interest.

Evaluation of proposals by staff or by any other group are advisory only; the DMCC may consider or reject such evaluation(s) for any or all proposals, such evaluations are for the sole benefit of the DMCC, and as such, they are not binding upon the DMCC nor may they be relied upon in any way by a Proposer.

In the event that this RFP is withdrawn by the DMCC for any reason, including but not limited to, the failure of any of those things or events set forth herein to occur, the DMCC shall have no liability to Proposer for any costs or expenses incurred in connection with this RFP or otherwise. Accordingly, each proposal should be submitted in the most

favorable terms of costs and programmatic considerations and in a complete and understandable form. The DMCC reserves the right to request additional data, oral discussion, or a presentation in support of the written proposal. The DMCC is not obligated to respond to any proposal submitted nor is it legally bound in any manner whatsoever by the submission of a proposal. It is the intention of the DMCC to enter into a contract with the firm(s) with which the DMCC can make the most satisfactory arrangements for its needs.

The DMCC has broad rights with respect to the procurement and contracting processes as detailed in this proposal. The DMCC may decide to contract with more than one entity to develop the services contemplated herein.

II. SCOPE OF SERVICES

The DMCC is soliciting proposals for the provision of a full service outside legal counsel to represent it in an ongoing capacity as general counsel to a public, nonprofit corporation. The DMCC may retain more than one firm. Counsel retained by the DMCC pursuant to this Request may not necessarily provide lead legal services in all of these areas.

A law firm responding to this request should demonstrate legal expertise in the following areas of the law:

- Nonprofit and tax-exempt organizations and the laws, procedures, and requirements relevant to the creation and operation of a public, nonprofit corporation, including but not limited to:
 - the Minnesota Data Practices Act;
 - the Minnesota Open Meeting law;
 - conflicts of interest;
 - director and officer liability;
 - tax compliance and maintenance of nonprofit status;
 - municipal law and financing, including public grant programs and public-private partnerships.
- Complex projects. Please describe any relevant experience with complex governance projects, e.g., examples of advising on governance matters in the context of legal structures involving multiple entities, governmental organizations, multiple constituencies, and/or multiple stakeholders.

- General counsel legal services as requested by the Board including, but not limited to:
 - Attendance at Board and/or committee meetings upon request
 - Routine legal advice, telephone and personal consultations with the Board; or authorized DMCC representatives;
 - Review of governing documents to ensure legal compliance;
 - Representation of the DMCC in negotiations with the City of Rochester, Olmsted County, State of Minnesota, the Nonprofit Economic Development Agency, Mayo Clinic and others in connection with the DMCC activities;
 - Assistance in the preparation and review of resolutions, agreements, contracts, forms, notices, certificates, deeds and other documents requested by the Board;
 - Guidance on employment law and personnel matters, as requested;
 - Coordination of outside legal counsel, as needed and as directed by the Board;
 - Negotiation and preparation of complex service and other agreements;
 - Broad contract expertise involving multiple parties including indemnification, defaults and remedies; and
 - Experience in contracting with governmental authorities and bodies.
- Environmental Law & Land Use Management
- Real Estate Development, and Construction Law
- Litigation, including dispute resolution (e.g., mediation, arbitration, and trials) involving the above subjects. Government Relations, including working with governmental authorities (elected public bodies, staff, and in-house counsel).

III. SUBMISSION OF PROPOSALS

Each proposer must submit an original and five hard copies of the proposal and a copy in electronic format. The DMCC must receive proposals no later than 4:00 p.m., Central Time (CT), March 28, 2024, at the following address:

Patrick Seeb, Executive Director
 Destination Medical Center EDA
 195 Broadway Ave. South
 Rochester, MN 55904

RE: DMCC LEGAL SERVICES PROPOSAL

The DMCC will not accept proposals submitted by telegraph or facsimile. The DMCC is not responsible for delays or losses caused by the U.S. Postal Service or any other carrier or delivery service. The DMCC reserves the right to accept proposals after the date specified above.

IV. TIME LINE

- A. January 25, 2024 – Advertisement of Request for Proposals.
- B. March 14, 2024; 12:00 P.M.— Closing Date & Time for Written Questions.
- C. March 28, 2024; 4:00 P.M. –Proposals Due.

V. RULES GOVERNING RFP PROCESS

A. INSTRUCTIONS FOR PREPARING AND SUBMITTING PROPOSALS

1. **Proposal Status** - The issuance of this RFP constitutes only an invitation to submit proposals to the DMCC. It is to be distinguished from a bidding situation and is not to be construed as an official and customary request for bids, but as a means by which the DMCC can facilitate the acquisition of information related to the purchase of Consultant services. Any proposal submitted, as provided herein, constitutes a desire to negotiate and recognition that the proposal is not a bid and is not being submitted as part of a bid process.
2. **Economy of Preparation** - Proposals should be prepared as simply and economically as possible while providing straight-forward and concise delineation of the Proposer's capabilities to satisfy the requirements of the RFP. Fancy binding, colored displays, promotional material, etc., are neither necessary nor desired. Technical literature about the Proposer's experience and qualifications may be included. However, the emphasis should be on completeness and clarity of content. In order to expedite the evaluations, it is essential that specifications and instructions contained in this document be followed as closely as possible. Proposals shall be limited to 25 pages (8 ½ x 11 paper).
3. **Proposal Signature** - Each proposal shall be signed by a principal of the Proposer firm, or another person, who is fully authorized to act on behalf of the Proposer.
4. **Modification or Withdrawal of Proposal** - Unauthorized conditions, limitations, or provisions attached to a proposal may cause its rejection. No oral, telephonic, e-mail, or facsimile (FAX) proposals or modifications will be considered.

A Proposal may not be modified, withdrawn, or canceled by the Proposer for a period of three months following the time and date designated for receipt of Proposals. Each Proposer so agrees in submitting a Proposal. Any such modification, withdrawal or cancellation shall be submitted in writing to the Contact Person at the address contained in Section V (D) (1) herein.

Before the time and date designated for receipt of Proposals, no Proposal may be released or physically withdrawn, but any Proposal submitted may be modified, canceled, or withdrawn by written notice to said Contact Person at the place designated in Section V (D)(1), Contact Between Proposer and the DMCC - Questions. Such notice shall be in writing over the signature of Proposer. Written

withdrawal or cancellation by Proposer of a Proposal prior to the Proposal opening will nullify the Proposal. However, the original Proposal shall not be physically returned to the Proposer until after the time for receipt of the Proposals.

Withdrawn or canceled Proposals may be resubmitted up to the time designated for the receipt of Proposals, provided that the resubmitted proposal is in conformance with this RFP.

- 5. Extension of Time** - The DMCC reserves the right to extend the proposal due date. If a Proposer needs an extension of time to prepare the proposal a written request should be forwarded no later than two business days prior to the due date of this RFP. The request should be directed to the address noted in Section V (D) (1), Contact between Proposer and the DMCC - Questions. The granting of an extension will be based on the number of such requests, and the reason(s) for each request. The DMCC reserves the right to extend the submission deadline only at the discretion of the DMCC and not at the mere request of the Proposer(s). In the event of an extension, prospective Proposer(s) will be notified immediately and appropriate addenda will be issued.
- 6. Addenda** - The DMCC reserves the right to add, change, or delete any provision or statement in the RFP at any time prior to the proposal due date. If it becomes necessary to revise any part of the RFP, addenda to the RFP will be provided to all Proposers who received a copy of the RFP. It is the responsibility of each prospective Proposer to assure receipt of all addenda.
- 7. Right to Withdraw RFP** - The DMCC reserves the right to withdraw, cancel, and/or amend, in part or entirely, this RFP for any reason and at any time with no liability to any prospective Proposer for any costs or expenses incurred in connection with the RFP or otherwise.

B. PROPOSAL CONDITIONS

- 1. Public Record** - Proposals submitted become a matter of public record. For additional information regarding those portions of a proposal that the Proposer might regard as a trade secret or confidential, Proposer should review the pertinent provisions of Exhibit A, General Provisions, herein attached.
- 2. Service Method Variations** - It is recognized that each Proposer may have unique or typical methods of service delivery. It is not the intention of the RFP to disqualify a Proposer due to variations in service delivery that do not affect quality and performance. Any proposal offering professional services of quality and performance equivalent to or better than requested, which provides the necessary service, will receive full consideration for award.
- 3. Award** - The DMCC reserves the right not to award a contract to any Proposer. If the DMCC decides to award a contract(s), the DMCC will award a contract(s) to the qualified Proposer(s) whose proposal the DMCC determines best meets the needs of the DMCC. The DMCC reserves the right to award a contract(s) other than to the

lowest priced proposal. The DMCC reserves the right to award a contract(s) to a non-Proposer(s).

- 4. Ownership of Materials Submitted** - All material submitted becomes the property of the DMCC and will not be returned.
- 5. Proposers' Costs** - The DMCC shall not be responsible for any costs incurred by Proposers in connection with this RFP. Proposers shall bear all costs associated with proposal preparation, submission and attendance at presentation interviews, or any other activity associated with this RFP or otherwise.
- 6. Use of Proposal Ideas** - The DMCC reserves the right to use any or all Proposer service ideas presented. Selection or rejection of the proposal does not affect this right.
- 7. Sub consultants** - If the proposal represents offerings to be provided by different firms or other organizations, the contract will be solely with the Proposer (Consultant/Contractor), who will be required to assume responsibility for the total project. Any proposed sub consultant(s) will be subject to the DMCC's approval. The DMCC is soliciting and seeks RFP's from full service firms but recognizes that respondents may wish to supplement services from skilled specialty sub consultants.
- 8. Performance Standards** - If awarded the contract, the Proposer warrants and agrees to use its best efforts to perform all services in accordance with the contract terms and in accordance with generally accepted professional standards. The prospective Contractor further warrants and agrees that it shall employ whatever resources are necessary to meet the requirements specified in such contract.
- 9. Licenses and Permits** - The Consultant shall be required to obtain any necessary licenses and permits and shall comply with all Federal, State, and local laws, codes and ordinances without cost to the DMCC. By submitting a Proposal, the Proposer certifies that all attorneys who would work on behalf of the DMCC have a Minnesota attorney's license in good standing, or are otherwise authorized to practice law in Minnesota, and have no outstanding ethical investigations.
- 10. Insurance** - The Consultant or anyone providing services herein shall be required to comply with insurance provisions contained in the contract.

C. **CONTRACT AWARD AND CONTRACT**

1. **Award Discretion** - While the DMCC may ultimately decide to enter into a contract with that person or firm with which the DMCC can make the most satisfactory arrangement for meeting its needs, the DMCC is not obligated to award any contract or respond to proposals submitted, nor is it legally bound in any manner whatsoever by the submission of a proposal.
2. **Multiple Firms** - The DMCC may retain more than one firm. If a Proposal is limited to certain responsibilities, the Proposal must clearly state the work proposed to be performed, and the items not included in the Proposal.
3. **Submission of Contract Documents** - Within ten business days after receipt of contract award and receipt of the contract forms, the successful Proposer(s) shall execute two duplicate originals and return them to the DMCC. Such contract shall be prepared by the DMCC and the contract terms shall consist of this RFP (and any and all addenda thereto and all material attached to and made a part of the RFP), the terms of the Proposal as such terms are finally accepted by the DMCC, as well as all other provisions which the DMCC agrees may be included in the contract.
4. **Changes** - The DMCC shall have the right at all times to require changes in, additions to, or deletions from the work contemplated by the contract documents, and the same shall in no way make void the contract. Changes and additions resulting in increased costs shall be made only pursuant to a written contract amendment issued by the DMCC and bearing the acceptance endorsement of the Consultant. Deletions from the scope of work required may be made at the sole discretion of the DMCC.
5. **Failure to Execute Contract** - The DMCC reserves the right to award to another Proposer(s) if the successful Proposer fails to execute and return the contract (two duplicate originals) within ten days after receipt of said award notification and a receipt of contract forms. The re-award to another Proposer shall be in addition to any other right or remedy available to the DMCC under this RFP, contract law, statute, and/or in equity.
6. **General Provisions** - The General Provisions, which include the General Insurance Provisions for Consultant contracts, are included as Exhibit A and are herein incorporated by reference. If a Proposer has a concern or objection to any of these provisions, it should so indicate in its proposal. The DMCC reserves the right to require compliance with these provisions and to negotiate final terms, conditions, and requirements with the successful Proposer, at the DMCC's discretion.
7. **Non-Waiver of Defaults** - Any failure by the DMCC to enforce or require the strict keeping and performance of any of the terms and conditions of the contract shall not constitute a waiver of such terms and conditions, nor shall it affect or impair the right of the DMCC to avail itself of such remedies as may be available for any breach of the contract terms and conditions.

D. CONTACT BETWEEN PROPOSER AND THE DMCC

1. **Questions** - Inquiries concerning any aspect of this RFP and contract award should be submitted in writing to:

Contact Person: Patrick Seeb, Executive Director
Destination Medical Center Economic Development Agency
Email: info@dmc.mn

The DMCC will accept written inquiries by electronic mail. The closing date for receipt of written questions will be on March 14, 2024 at 12:00 P.M.

2. **Interpretation of Documents** - If any Proposer contemplating submission of a proposal is in doubt as to the true meaning of any part of the RFP or other proposed Contract Documents; the Proposer may submit to the DMCC, at the address noted in Section V (D)(1) above, a written request for an interpretation thereof. Replies to inquiries will be published in the form of addenda to the RFP. Proposers shall rely only on the RFP and addenda in preparing and submitting a Proposal.
3. **Errors** - Should the Proposer believe that an error appears in the RFP documents, Proposer shall notify the DMCC immediately, at the address noted in Section V (D)(1) above, in writing no later than January 5, 2024, by noon, CT.

VI. SELECTION OF PROPOSAL

A. PROPOSAL RECOMMENDATION

1. **Selection Committee** - The Board of Directors of the DMCC shall have final decision-making regarding the DMCC award of any and all contract(s) resulting from this RFP. The Chair may designate a Selection Committee to make a recommendation to the Board of Directors or Executive Committee of the DMCC.
2. **Evaluation of Proposals** - Evaluation of proposals by the Selection Committee, DMCC or Nonprofit Economic Development Agency staff, or by any other group, individual or entity, are advisory only. Such evaluations are for the sole benefit of the Directors of the DMCC and may not be relied upon by any Proposer.

B. SELECTION PROCESS

1. **Evaluation Factors** - Evaluation factors shall include, but are not limited to, the following:
 - Proposer's expertise and experience.
 - Proposer's key staff proposed to be assigned to perform work for the DMCC
 - Proposer's past performance.
 - Proposer's telephone, videoconference, or in-person interview, if requested
 - Hourly Billable Rate (Cost)
2. **Criteria Compliance** - The DMCC reserves the right to determine, in its sole and absolute discretion, whether any aspect of a Proposal satisfactorily meets the criteria established in this RFP.
3. **Submission of Alternatives** - Although this RFP specifies minimum requirements for representation and should be responded to in all respects, Proposers are invited and encouraged to submit alternatives that may be of interest to the DMCC.
4. **Additional Information Requests** - The DMCC reserves the right to request additional information from Proposers during any phase of the proposal evaluation process. During the evaluation and selection process, the DMCC may require the presence of Proposer's representatives to make presentations and answer specific questions. Notification of any such requirements will be given as necessary.
5. **Conditions of Award** - The DMCC may elect not to award a contract solely on the basis of this RFP, and will not pay for the information solicited or obtained. The information obtained will be used in determining the alternative that best meets the needs of the DMCC.

VII. CONTENT OF PROPOSAL

Proposals must include the following information, preferably in the following order:

A. QUALIFICATIONS (KNOWLEDGE, EXPERTISE, CAPABILITIES)

1. **Proposer History** - A statement giving a brief history of the Proposer's organization; how it is organized, and how its available resources will be utilized for the DMCC.
2. **Proposer Qualifications** - Information which highlights Proposer's particular expertise and experience to provide the legal representation as outlined in the Scope of Services section. Provide examples of similar projects in size and scope with the appropriate references.
3. **Assignment of Professional Staff** - The Proposer must identify the specific staff that will be responsible for the contemplated services.

B. BUDGET INFORMATION

1. **Fees** - Attach an hourly fee schedule (with any discount) for attorneys, legal assistants, and other individual staff who may be anticipated to represent the DMCC.
2. **Expenses** - Provide an itemized list of any and all other anticipated expenses which are not included in the hourly fee schedule.
3. **Cost Terms** - Each proposal should be submitted in the most favorable terms with respect to costs and in a complete and understandable form.

C. ADDITIONAL PROPOSAL CONTENTS

1. **Insurance** - Ability to ensure appropriate malpractice coverage.
2. **Diversity** - Commitment to diversity as evidenced by such factors as the actual diversity among its existing or proposed legal and non-legal staff/employees or the existence of an affirmative action plan addressing the diversity issues in recruitment, retention, and promotion of legal and non-legal staff/employees.
3. **Conflict of Interest** - Any current relationships of the Proposer or its staff/employees with the Destination Medical Center Corporation, Non-profit Economic Development Agency, the City of Rochester, Olmsted County, Mayo Clinic, or other parties having an interest in the project that may be construed to be a conflict of interest.
4. **Exceptions to the General Provisions** - Proposer should identify any concern or objection to the General Provisions. The DMCC reserves the right to require compliance with these provisions and to negotiate final terms, conditions, and requirements with the successful Proposer, at the DMCC's discretion.
5. **Supplemental Information** - Any supplemental information which the Proposer thinks will be valuable to the DMCC in evaluating the qualifications of the Proposer and its individual personnel to provide services as described herein.
6. **Minnesota Affirmative Action Data Page (attached Exhibit B)** – Include form with proposal.

VIII. GENERAL PROVISIONS

A. CONFIDENTIALITY

Information supplied by the Proposer to the DMCC is subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Sections 13.01 et seq. Such information shall become public unless it falls within one of the exceptions in the Act, such as security information, trade secret information, or labor relations' information pursuant to Minnesota Statute Section 13.37. If the Proposer believes any non-public information will be supplied in response to the RFP, the Proposer shall take reasonable steps to identify and provide reasonable justification to the DMCC regarding which data, if any, falls within the Minnesota Government Data Practices Act exceptions. However, the

Proposer agrees as a condition of submitting a proposal that the DMCC will not be held liable or accountable for any loss or damage which may result from a breach of confidentiality as may be related to the responses submitted.

The DMCC will not consider any cost information and references submitted by the Proposer to be non-public, confidential or trade secret material. Simply stating that the document is confidential or making a blanket claim of confidentiality without proper supporting justification is also not a valid reason to declare the document confidential.

The language contained in Exhibit A, attached and incorporated herein by this reference, is mandatory language which will be included in any contract entered into between the DMCC and the successful Proposer(s).

EXHIBIT A

GENERAL PROVISIONS

1. Independent Contractor.

The Contractor shall select the means, method, and manner of performing the services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of a partnership or joint venture between the parties hereto or as constituting the Contractor as an employee of the DMCC for any purpose or in any manner whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this Agreement. The Contractor represents that it has or will secure at its own expense all personnel required in performing services under this Agreement. Any and all personnel of the Contractor or other persons while engaged in the performance of any work or services required by the Contractor under this Agreement shall have no contractual relationship with the DMCC, and shall not be considered employees of the DMCC. Any and all claims that may or might arise under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against the Contractor, its officers, agents, contractors, or employees shall in no way be the responsibility of the DMCC. The Contractor shall defend, indemnify, and hold harmless the DMCC, its officials, officers, agents, volunteers, and employees from any and all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the DMCC, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

2. Successors, Subcontracting and Assignment.

The Contractor binds itself, its partners, successors, assigns and legal representatives to the DMCC in respect to all covenants, agreements and obligations contained in the contract documents. The Contractor shall not assign, subcontract, transfer or pledge this Agreement and/or the services to be performed hereunder, whether in whole or in part, nor assign any monies due or to become due to it hereunder without the prior written consent of the DMCC.

Permission to subcontract, however, shall under no circumstances relieve the Contractor of its liabilities and obligations under the Agreement. Further, the Contractor shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the herein specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between the Contractor and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions herein specified. A consent to assign shall be accomplished by execution of a form prepared by the DMCC and signed by the Contractor, the assignee and the DMCC.

Contractor shall notify the DMCC in writing if another person/entity acquires, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for

directors of the Contractor. Notice shall be given within ten days of such acquisition and shall specify the name and business address of the acquiring person/entity. The DMCC reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

3. Default and Cancellation

- a. If the Contractor fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, this shall constitute a default. Unless the Contractor's default is excused by the DMCC, the DMCC may upon written notice immediately cancel this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for the DMCC for delaying payment until the Contractor's compliance. In the event of a decision to withhold payment, the DMCC shall furnish prior written notice to the Contractor.
- b. Upon cancellation or termination of this Agreement:
 1. At the discretion of the DMCC and as specified in writing by the Contract Administrator, Contractor, to the extent permitted by statute and rule, shall deliver to the Contract Administrator copies of all writings so specified by the DMCC and prepared by the Contractor pursuant to this Agreement. The term "writings" shall be construed to mean and include:

Handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording, including electronic media, any form of communication or representation, including letters, works, pictures, drawings, sounds, or symbols, or combinations thereof.
 2. The DMCC shall have full ownership and control of all such writings. The Contractor shall have the right to retain copies of said writings. However, it is agreed that the Contractor without the advance written consent of the DMCC shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such writings; and shall not do anything that in the opinion of the DMCC would affect the DMCC's ownership and/or control of such writings.
- c. Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the DMCC for damages sustained by the DMCC by virtue of any breach of this Agreement by the Contractor. Upon notice to the Contractor of the claimed breach and the amount of the claimed damage, the DMCC may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the DMCC from the Contractor is determined. Following notice from the DMCC of the claimed breach and damage, the Contractor and the DMCC shall attempt to resolve the dispute in good faith.
- d. The above remedies shall be in addition to any other right or remedy available to the DMCC under this Agreement, law, statute, rule, and/or equity.
- e. The DMCC's failure to insist upon strict performance of any provision or to exercise any right

under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.

- f. This Agreement may be canceled with or without cause by either party upon thirty (30) calendar days' written notice.

4. Indemnification and Insurance

- a. Contractor agrees to defend, indemnify, and hold harmless the DMCC, its officials, representatives, officers, agents, volunteers and employees and their heirs, executors, legal representatives, and assigns from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of the Contractor, including its former partners, lawyers and employees, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of the Contractor to perform fully, in any respect, all obligations under this contract.
- b. In order to protect the Contractor and those listed above under the indemnification provision, the Contractor agrees at all times during the term of this Agreement, and beyond such term when so required, to have and keep in force the following minimum insurance coverage's:

Limits

- (1) Commercial General Liability on an occurrence basis with contractual liability coverage:

General Aggregate – per project (The full limits of coverage must be dedicated to apply to this project, per ISO form CG2501, or equivalent.)	\$3,000,000
Products - Completed Operations Aggregate	3,000,000
Personal and Advertising Injury	3,000,000
Each Occurrence - Combined Bodily Injury and Property Damage	3,000,000

- (2) Workers' Compensation and Employer's Liability:

Workers' Compensation If the Contractor is based outside the State of Minnesota, coverage must apply to Minnesota law	Statutory
Employer's Liability. Bodily injury by: Accident—	
Each Accident	500,000
Disease—Policy Limit	500,000
Disease—Each Employee	500,000

- (3) Professional Liability—Per Claim and Annual Aggregate* (*Aggregate shall be unimpaired as Respects DMCC contract) 3,000,000

The professional liability insurance must be maintained continuously for a period of two years after the termination of this Agreement.

- c. An umbrella or excess policy over primary liability insurance coverages is an acceptable method to provide the required insurance limits.

The above establishes minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of insurance policies shall be promptly submitted to the DMCC upon written request.

The Contractor shall not commence work until it has obtained required insurance and filed with the DMCC, a properly executed Certificate of Insurance which clearly evidences required insurance coverages. The certificate(s) shall name DMCC as the certificate holder and as an additional insured for the liability coverage(s) with respect to operations covered under the Agreement.

The Contractor shall furnish to the DMCC updated certificates during the term of this Agreement as insurance policies expire. If the Contractor fails to furnish proof of insurance coverages, the DMCC may withhold payments and/or pursue any other right or remedy allowed under the contract, law, equity, and/or statute. The DMCC does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section.

- d. Duty to Notify. The Contractor shall promptly notify the DMCC of any claim, action, cause of action or litigation brought against Contractor, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement. The Contractor shall also notify the DMCC whenever Contractor has a reasonable basis for believing that Contractor and/or its employees, officers, agents or subcontractors, and/or the DMCC, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement. Failure to provide the notices required by this section is a material violation of the terms and conditions of this Agreement.

5. Data Privacy

Contractor, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended. If Contractor creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the DMCC pursuant to this Agreement, then Contractor must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance. Contractor agrees to defend, indemnify and hold harmless the DMCC, its officials, officers, agents, employees, and volunteers from any claims resulting from Contractor's

officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. Contractor agrees to promptly notify the DMCC if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.

If Proposer desires that any data be kept confidential, it shall clearly state on the cover of the first page of such document the words "Trade Secret" or "Non-public" information. It is understood and agreed that for purposes of this RFP and the contract resulting here from, the terms "Trade Secret" and "non-public" shall be construed to be equivalent with respect to the DMCC's obligation under the Minnesota Data Privacy Act, this RFP, and the contract. The DMCC must independently assess its obligations under the MGDPA, and it cannot guarantee that information marked as "non-public," "confidential," or "trade secret" will remain inaccessible to the public. Nothing herein shall preclude a Proposer at any time from exercising its rights under applicable Minnesota law to protect its trade secret data from public access.

After execution of the contract by the successful Proposer, upon request of a Proposer, all documents labeled as Trade Secret shall be returned to that requesting Proposer.

All trade secret designation of data by Proposer shall also be subject to the following additional provisions:

The Proposer is advised that for purposes of this RFP, Minnesota law permits data to be labeled and treated as trade secret information only if the information is the subject of the Proposer's efforts that are reasonable under the circumstances to maintain its secrecy and derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.

No portion of the Proposal or any attachments thereto may be designated as trade secret information unless the Proposer in good faith determines that such designation is clearly allowed by the foregoing trade secret criteria. In this regard, Proposer is advised that in Minnesota nearly all – if not all – bid/proposal information submitted by Proposers are open to the public scrutiny after the date set for receipt. (Generally, data in such bid/proposal documents usually considered to be public include--but are not limited to--price, description and type of commodity and/or service and quantity and quality thereof, warranty, maintenance, support, indemnification, delivery, time frame, specification compliance, equipment title, and software title or licensing.) The DMCC reserves the right to decline any such designation by Proposer if upon evaluation by the DMCC; the DMCC determines that the information so designated is clearly and commonly regarded as public data in the State of Minnesota.

If the Proposer designated data as trade secret, Proposer shall attach to such data an explanatory document that identifies the data and in careful detail sets forth the factual and/or legal justification for such treatment of the data.

In addition to the Proposer's indemnity obligations set forth in the contract documents, the Proposer shall defend, indemnify and hold harmless the DMCC, its members, officers, agents, volunteers, and employees against and from any costs, damages, judgments, expenses (including reasonable attorney fees) arising from, directly or indirectly, any challenge or request made or suit brought by

any person in connection with any effort in any type of proceeding or hearing whatsoever to obtain or access data designated as trade secret by the Proposer.

Proposer, at its sole expense, shall at all times be responsible for promptly defending and/or responding to any request for access to and/or copies of data designated by Proposer as trade secret, provided that the DMCC shall inform persons seeking such data of its trade secret designation and promptly notify proposer of the fact of such request and the DMCC's response thereto.

Failure of the Proposer to so defend, respond to any request or DMCC notification (as aforesaid), and/or to pursue its rights in a timely manner shall relieve the DMCC from any and all liability whatsoever (including without limitation liability under any statute, the common-law or equity) with respect to any aspect of the disclosure or furnishing to any person any such trade secret designated data. Further, the DMCC shall not in any manner be liable for the disclosure or furnishing to any person any trade secret designated data when such disclosure or furnishing is pursuant to the DMCC's independent determination of its obligations, or a ruling or order of any pertinent tribunal, agency, board, commission, panel, court, or other entity or person determining such matter.

6. Non-Discrimination

- a. In accordance with the DMCC's policies against discrimination, Contractor agrees that it shall not exclude any person from full employment rights or participation in, or the benefits of, any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin; and no person who is protected by applicable Federal or State laws against discrimination shall be otherwise subjected to discrimination.
- b. Contractor will provide any current Certificates of Compliance as approved by the Minnesota Department of Human Rights. Contractor shall maintain that Certificate of Compliance. If any change in status occurs, the Contractor shall promptly notify the Authority of that change.

7. Records — Availability/Access

Subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5 (as may be amended), the Contractor agrees that the DMCC, the Legislative Auditor or any of their duly authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Contractor and involve representation under this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the Agreement and for six years after its termination or cancellation.

8. Notice. Any notice or demand, which may or must be given or made by a party hereto, under the terms of this Agreement or any statute or ordinance, shall be in writing and shall be sent registered or certified mail to the other party addressed as follows:

To Contractor: (Information to be inserted upon contract award)
To DMCC: Pamela Wheelock, Chair

C/O Executive Director
Destination Medical Center Economic Development Agency
195 Broadway Ave. South
Rochester, MN 55904

Any party may designate a different addressee or address at any time by giving written notice thereof, as above provided. Any notice, if mailed, properly addressed, postage prepaid, registered or certified mail, shall be deemed dispatched on the registered date or that stamped on the certified mail receipt and shall be deemed received within the third business day thereafter or when it is actually received, whichever is sooner. Any notice delivered by hand shall be deemed received upon actual delivery.

9. License and Permits. The Contractor shall be required to obtain any necessary licenses, certifications and permits. The Contractor hereby certifies that all attorneys who would work on behalf of the DMCC have a Minnesota attorney's license in good standing, or are otherwise authorized to practice law in Minnesota, and have no outstanding ethical investigations.
10. Compliance with Applicable Law. The Contractor shall comply with all applicable Federal, State and local laws or ordinances, and all applicable rules, regulations, and standards established by the DMCC, which are now or hereafter promulgated insofar as they relate to the Contractor's performance of the provisions of this Agreement.
11. Conflict of Interest. The Contractor affirms that, to the best of Contractor's knowledge, Contractor's involvement in this contract does not result in a conflict of interest with any party or entity which may be affected by the terms of this contract. The Contractor agrees that, should any conflict or potential conflict of interest become known to Contractor, Contractor will immediately notify the DMCC of the conflict or potential conflict, specifying the part of this contract giving rise to the conflict or potential conflict, and will advise the DMCC whether Contractor will or will not resign from the other engagement or representation.
12. Governing Law/Jurisdiction. The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the herein parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located within the County of Olmsted, State of Minnesota. Litigation, however, in the federal courts involving the herein parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.
13. Time Importance. Time is of the essence of this Agreement.
14. Promotional Literature. Contractor agrees that the term "DMCC" or any derivative thereof shall not be utilized in any promotional literature, advertisements or client lists without the express prior written consent of the DMCC.
15. Headings. Any descriptive heading used in the Agreement is for purposes of convenience only and does not constitute a part of the Agreement.
16. Remedies Not Exclusive. It is agreed that any right or remedy of the DMCC shall not be considered

as its exclusive right or remedy for any default in any respect by the Contractor; but such right or remedy shall be considered to be in addition to any other right or remedy allowed under this RFP, the contract, law, equity, or statute.

17. Non-waiver of Rights. DMCC's failure to insist upon strict performance of any covenant, agreement, or stipulation of the contract or to exercise any right herein contained shall not be a waiver or relinquishment of the future of such covenant, agreement, stipulation, or right, unless the DMCC consents thereto in writing. Any such written consent shall not constitute a waiver or relinquishment of the future of such covenant, agreement, stipulation, or right.

EXHIBIT B

State Of Minnesota – Affirmative Action Data Page (For responses in excess of \$100,000 only)

If your response to this solicitation is in excess of \$100,000, please complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363.073) certification requirement, and to provide documentation of compliance if necessary. *It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract.*

How to determine which boxes to complete on this form:

Then you must complete these boxes...	BOX A	BOX B	BOX C	BOX D
On any single working day within the past 12 months, if your company...				
Employed more than 40 full-time employees in Minnesota	• <input type="checkbox"/>			• <input type="checkbox"/>
Did not employ more than 40 full-time employees in Minnesota, but did employ more than 40 full-time employees in the state where you have your primary place of business		• <input type="checkbox"/>		• <input type="checkbox"/>
Did not employ more than 40 full-time employees in Minnesota or in the state where you have your primary place of business.			• <input type="checkbox"/>	• <input type="checkbox"/>

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX D.** Include a copy of your certificate with your response.
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date) at _____ (time). [If you do not know when the Department received your Plan, contact the Department.] We acknowledge that the plan must be approved by the MDHR before any contract or agreement can be executed. **Proceed to BOX D.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. *We acknowledge that our response will be rejected.* **Proceed to BOX D. Call the Minnesota Department of Human Rights for assistance.**

Please note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For companies which *have not* had more than 40 full-time employees in Minnesota but *have* employed more than 40 full-time employees on any single working day during the previous 12 months in the state where they have their primary place of business

You may achieve compliance with the Minnesota Human Rights Act by certifying that you are in compliance with applicable Federal Affirmative Action requirements.

Check one of the following statements if you have not employed more than 40 full-time employees in Minnesota but you have employed more than 40 full-time employees on any single working day during the previous 12 months in the state where you have your primary place of business:

- We are not subject to Federal Affirmative Action requirements. **Proceed to BOX D.**
- We are subject to Federal Affirmative Action requirements, and we are in compliance with those requirements. **Proceed to BOX D.**

BOX C – For those companies not described in BOX A or BOX B

Check below. You are not subject to the Minnesota Human Rights Act certification requirement.

- We have not employed more than 40 full-time employees on any single working day in Minnesota or in the state of our primary place of business within the previous 12 months. **Proceed to BOX D**

BOX D – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder.

Name _____ of _____ Company: _____

_____ Authorized

Signature: _____

Printed _____ Name: _____

_____ Title: _____

_____ Date: _____

_____ Telephone number: _____

For further information regarding Minnesota Human Rights Act requirements, contact:

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5th Street, Suite 700
St. Paul, MN 55101

Website: www.humanrights.state.mn.us

Email: employerinfo@therightsplace.net

Metro: (651) 296-5663
Toll Free: 800-657-3704
Fax: (651) 296-9042
TTY: (651) 296-1283