

MEETING DATE/TYPE: VOTING MEETING 5-14-19

DEPARTMENT: Library

AGENDA ITEM: Approval of EBSCO Information Services Contract No. 2019-215 in the amount of \$12,500.00 per year. Funding is available in the General Fund.

FUNDING SOURCE: General Fund

Approved By: Michael Lamar, City Manager

Item Summary:

Prescott Public Library utilizes a periodicals vendor to provide library patrons with timely access to approximately 170 subscriptions to magazines and newspapers.

Consolidation of these subscriptions with one periodical vendor delegates tracking and renewal of these subscriptions to the vendor, and allows this resource to be managed through one vendor instead of 170 vendors.

Background:

Four bids were received in response to the Request for Proposal (RFP) for Periodical Subscription Services. The RFP indicated that the bidding parties submit their proposed percent below the cost of the publishers current list price. Avanti Enterprises, Inc. submitted the lowest discount percentage. Since this would be a new vendor for the library, a reference check was conducted. Staff contacted seven (7) references and found that: two (2) were disconnected phone numbers; one (1) did not return the phone call; three (3) indicated that they had not used Avanti for several years; one (1) indicated that the purchases to Avanti were primarily books and DVD/CDs, not periodicals. It should be noted that the references called upon were state governments and one school district, there were no public libraries listed as references. These are not comparable to the usage and needs of a public library. Therefore, Avanti is deemed a non- responsible bidder.

The determination of whether a bid is "responsive" is distinct from the determination of whether a bidder is "responsible." A bid is responsive if it materially conforms to the requirements of the solicitation, such as completion time, certifications, and licensing. See, e.g., *Marshall Found. v. Aronoff*, 159 Ariz. 337, 338-39, 767 P.2d 224, 225-26 (App. 1988). Requiring bids to be responsive allows

all bidders to have an equal opportunity to obtain the item for sale. When bids vary the terms of the offer, that opportunity is lost. Those who abided by the original terms are cheated of their opportunity if a bid varying the terms is accepted

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because they did not have the chance to compete on those terms.

Id.; see also *REM Constr., Inc. v. Houghton*, 162 Ariz. 322, 323, 783 P.2d 261, 262 (App. 1989).

In contrast, the determination of whether a bidder is responsible "embraces such elements as the bidder's integrity, skill, capacity, experience, and facilities for doing the wor[k] he is contracting to perform." *Brown v. City of Phoenix*, 77 Ariz. 368, 373, 272 P.2d 358, 361 (1954). The evaluation of a bidder's responsibility allows the municipality to "form an intelligent and sound opinion as to [the bidder's] fitness and qualifications to do the work." *Osborn v. Mitten*, 39 Ariz. 372, 377, 6 P.2d 902, 904 (1932).

A municipality has a duty not only to comply with the provisions of its own code but also "to act in the public interest, to be fair, honest, prudent and to exercise a wise discretion[.]" *Hertz Drive-Ur-Self System, Inc. v. Tucson Airport Authority*, 81 Ariz. 80, 85, 299 P.2d 1071, 1074 (1956); Prescott City Code § 1-27-4 (A) and (B) (city procurement code serves "to ensure fair competitive access to City procurement by responsible suppliers of goods and services" and requires City employees and officials to "conduct themselves in such a manner as to foster public confidence in the integrity of the City procurement organization").

As the Arizona Supreme Court has noted, "[t]he purpose of requiring competitive bidding is 'to prevent the plundering of the taxpayers.'" *Brown*, 77 Ariz. at 373, 272 P.2d at 361 (citing *Osborn*, 39 Ariz. at 382, 6 P.2d at 906). As long as the decision to reject a bidder as "non-responsible" is supported by sufficient evidence, it is not arbitrary or capricious.

The bids are listed here:

Avanti Enterprises, Inc.	22.5% discount
EBSCO Information Services	15.0% discount
Rivistas Subscription Services	7.0% discount
W.T. Cox Information Services	8.0% discount

Therefore, the successful responsible bidder is EBSCO Information Services. The library has used EBSCO Information Services for periodical subscription services for the past five years.

Financial Impact

The FY20 General Fund Budget includes funding for these subscriptions in the amount of \$12,500.00.

Recommended Action: MOVE to approve City Contract No. 2019-215 with EBSCO for 5 years with the option of two (2) one (1) year extensions.