



Legislation Details (With Text)

File #:	2021-168	Version:	1	Name:	
Type:	Consent	Status:		Agenda Ready	
File created:	2/17/2021	In control:		City Council	
On agenda:	3/16/2021	Final action:			
Title:	CONSIDER AWARDING A THREE-YEAR CONTRACT SERVICES AGREEMENT WITH ACTIVE NETWORK, LLC FOR ACTIVITY REGISTRATION AND FACILITY RESERVATION SOFTWARE SERVICES (CITY COUNCIL)				
Sponsors:	Community Services				
Indexes:					
Code sections:					
Attachments:	1. Exhibit 1 - Bid Registry RFP 20-029, 2. Exhibit 2 - RFP 20-029, 3. Exhibit 3 - Final Ranking and Scoring, 4. Exhibit 4 - Draft Contract with Active Network, LLC.				

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Report to Mayor and City Council

Tuesday, March 16, 2021

Consent

SUBJECT:

CONSIDER AWARDING A THREE-YEAR CONTRACT SERVICES AGREEMENT WITH ACTIVE NETWORK, LLC FOR ACTIVITY REGISTRATION AND FACILITY RESERVATION SOFTWARE SERVICES (CITY COUNCIL)

I. SUMMARY

This item was deferred at the February 16, 2021 City Council meeting.

On November 19, 2020, the City released a Request for Proposals (RFP) for an activity and facility reservation software for the Community Services Department. A total of three (3) firms submitted proposals (Exhibit No. 1). After reviewing and evaluating the submissions, Active Network, LLC was selected by staff as the recommended vendor, based on responsiveness to the RFP's proposal requirements and experience. Tonight, staff is seeking the City Council's approval to award a three-year contract, with three (3) two-year extensions at the City's discretion, with this firm.

II. RECOMMENDATION

1. APPROVE a three-year contract services agreement, with three (3) two-year extensions at the City's discretion, with Active Network, LLC to provide an activity

registration and facility reservation software platform in an amount not to exceed \$250,000.00 for the period March 2, 2021, through March 1, 2024 (Exhibit No. 4).

2. AUTHORIZE the Mayor to execute the agreement, following approval as to form by the City Attorney.

1.

III. ALTERNATIVES

1. REJECT the recommendation, and DIRECT staff to initiate a new RFP process.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

On November 19, 2020, the City issued RFP No. 20-029 (Exhibit No. 2) inviting interested firms to submit proposals for an activity registration and facility reservation software platform. Specifically, vendors would be required to provide a cloud-based program that facilitates recreation program registration, indoor and outdoor facility reservations, fitness and boxing program memberships, citywide youth sports league management, point-of-sale (POS), marketing, and financial and program statistics reporting.

In addition to advertising and posting the RFP on the standard bid boards and media notice locations, the RFP notice was also directly sent to the following software firms:

- Active Network, LLC
- Book King
- Civic Rec/Plus
- CVent
- My Rec
- Perfect Mind
- Rec Desk
- Rec Pro
- Reg Pack

A total of three (3) proposals were submitted by the RFP's closing date, December 14, 2020. The submission from each firm was reviewed by a Selection Committee comprised of staff from across several City Departments: Community Services Director, Human Services Manager, Community Center Manager, Transportation Supervisor, a Recreation Program Manager, Accounting Manager, and City Treasury Administrative Secretary.

Each submission was evaluated using qualification-based criteria that included the

following:

- 1) Understanding the Scope of Services
- 2) Demonstrate Professional Skills and Credentials
- 3) Related Experience
- 4) Quality of Proposal
- 5) Approach to Performing these Types of Services
- 6) Familiarity with City, County, and State Procedures
- 7) References / Satisfaction of Previous Clients

Per Section 2611(c) of the City's Municipal Code (CMC), the City is required to select certain professional services on the basis of demonstrated competence, and on the qualifications necessary for the satisfactory performance of the services required. Although costs are not irrelevant in the evaluation process, the CMC provides that qualifications are the primary competitive measure.

After an extensive review, the Selection Committee is recommending Active Network, LLC as the best qualified firm on the basis of demonstrated competence of the criteria dictated in the RFP. Active Network, LLC provided a competitive price based on industry and market rates staff surveyed from other public agencies that utilize comparable cloud-based software platforms. As a result, staff has determined Active Network's price to be fair and reasonable.

Active Network, LLC includes all the hardware, mobile apps for customers and staff, and full implementation and web-based training process for staff. Although the proposal cost for Univerus was lower than Active Network, Univerus did not provide hardware cost, but did provide implementation and a web-based training process. Additionally, staff's reference check for Univerus was unsatisfactory. It was also apparent that the bid proposal submitted by Hi-Giene was incomplete and did not address the RFP scope as a registration and reservation software platform. Instead, Hi-Giene submitted a bid proposal for temperature scanning units which did not fulfill the requirements of the RFP.

The Final Ranking and Scoring Sheet is attached under Exhibit No. 3 and also summarized as follows:

1. Active Network, LLC - 89.71 Points (\$ 242,074.21 Total Fees for 3 Years) - inclusive of \$17,200 in one-time hardware costs
2. Univerus - 78.71 Points (\$ 70,993.75 Total Fees for 3 Years) - excluding any hardware costs (not provided in bid proposal)
3. Hi-Giene, Inc. - 2.86 Points (\$1,500 per piece of Equipment)

Below is a summary of the cost for both the City and customers to utilize the Active Network platform:

Item	Year 1	Year 2	Year 3	Total
Hardware (one-time cost)	\$17,200.59	\$ -	\$ -	\$17,200.59
Software Licensing	\$54,155.75	\$56,371.21	\$58,696.66	\$169,223.62
Setup/Training (one-time cost)	\$55,650.00	\$ -	\$ -	\$55,650.00
Total	\$127,006.34	\$56,371.21	\$58,696.66	\$242,074.21

CC transaction 3%	3%	3%
echecks Transac0.5%	0.5%	0.5%
Cash/Check Rat0%	0%	0%

The addition of contingency charges plus a \$3,000 data export charge at the end of the contract term brings the total contract sum to \$250,000.

At the April 2, 2019, City Council meeting, staff presented a proposal for similar online services through a non-competitive vendor selection process. At that time, the City Council had instructed staff to pass on all processing fees to the customer. Staff has included this directive in the contract.

Legal Issues:

The City Attorney's office and Active Network, LLC, engaged in rigorous contract negotiations with the attached Exhibit 4. as the final product. Most issues were satisfactorily resolved; however, the City Attorney's Office has noted below areas for the City Council to be aware of. Staff is not concerned about these remaining issues as most software contracts have these limitations given the nature of the product (software).

Active Network, LLC has agreed to indemnify the City related to the services, but on narrower grounds than City generally requires. Specifically, Active Network, LLC's indemnification obligations are curtailed to exclude errors and omissions and to apply to other types of claims only to the extent they arise directly out of Active Network, LLC's negligent performance of the contracted services, and not including any negligent failure to perform the services or its negligent performance of activities related to the services.

Active Network, LLC also requires City to indemnify it on a broad range of topics, including: **(1)** City's provision of materials, products, or services, as part of its obligations under the agreement, that infringe intellectual property rights of any third party; **(2)** unauthorized disclosures by City employees or third parties to whom City has granted access to "Participant Information" (defined as any information collected by Active Network, LLC from end users of the software, or any information uploaded by City into the software), except as required by law; **(3)** all City use of "Participant Information," except as required by law; **(4)** all City use of the software in violation of the agreement, *irrespective* of whether they result of negligence or willful misconduct of the City; **(5)** claims for death or injury of persons participating in City events operated in connection with use of the software; and **(6)** claims for refunds, reversals or chargeback requests submitted by end users, except those arising from Active Network, LLC's failure to comply with the agreement or applicable law (although the agreement provides that Active Network, LLC will pay refunds or chargeback requests only where required by law, and may bill City for same; other such requests will be processed in accordance with the City's refund policy); and **(7)** for any City tax liabilities attributable to City's use of the software (e.g. sales taxes, if applicable). However, it should be noted that indemnification in favor of the consultant is more consistent with industry

standard in software contracts, such as this, than in more traditional City contracts, such as construction or services contracts.

The agreement contains significant limitation of liability provisions (Section 5.5). Except for warranting that it will provide the services consistent with industry standards, make commercially reasonable efforts to ensure functionality, and provide technical service in accordance with its service package, Active Network, LLC disclaims any implied warranties, including that: **(1)** the products are error-free or “bug”-free, accurate, secure, or reliable; **(2)** the products will operate without interruption; **(3)** all errors will be corrected; **(4)** the products will comply with any law, rule, or regulation, or will meet the City’s requirements; or **(5)** the products are fit for any particular purpose of the City. Active Network, LLC also disclaims any liability for indirect consequential, punitive, exemplary, or special damages of City resulting from use of the software which arise from circumstances beyond Active Network, LLC’s reasonable control. These provisions limit City’s potential recovery of any damages that it may suffer from use of the software or services provided under the agreement, including interference with City computer systems or interruption of City business. However, these provisions are mutual, in that the City is also granted these protections (though it already enjoys some of them, such as immunity from punitive damages, under state law). Additionally, such provisions are fairly standard in software service contracts.

Another issue relates to Active Network, LLC’s refusal to agree to strict timing obligations in the agreement. The City’s standard provision is that “time is of the essence,” but Active Network, LLC has insisted on changing that provision in Section 3.1 to “time is of material importance,” and defining “default” in Section 7.2 to include only material violations of the Agreement. Active Network, LLC’s intent behind these changes is to avoid triggering an immediate right of City to terminate the agreement and seek damages in the event Active Network, LLC fails to meet a deadline. This could affect City’s remedies for enforcement of deadlines such as, without limitation, initial setup/implementation and provision of maintenance or support services.

Finally, the agreement provides for City to pay an early termination fee of \$20,000 if City attempts to terminate the agreement prior to expiration of its term for any reason other than a material default of Active Network, LLC. However, the risks to City associated with this provision are somewhat mitigated by the structure of the agreement’s term (an initial three-year term followed by three optional two-year extension periods), which gives the City the opportunity to walk away from the agreement at the end the contract term or each extension period without being subject to the early termination fee.

Tonight, staff is recommending that the City Council approve a three-year contract, with three (3) two-year extensions at the City’s discretion, with Active Network, LLC to provide an activity and facility reservation software for the Community Services Department. As this program will be used throughout the Department, each Division has and will continue to contribute funding for the software. Any additional IT equipment that will be needed to facilitate staff’s operation of the software will use Fiscal Year 2020/21 funds to purchase, and will be brought back to the City Council for approval.

V. FISCAL IMPACT

Should the City Council approve staff’s recommendation, funds from each Division in Community Services will be used to support the platform. Funding is available in current

Fiscal Year 2020/21 operating budgets for Year One of the contract:

Administration	101-90-901-100-6004	\$10,000.00
Community Center	101-90-930-101-6004	\$20,000.00
Transportation	218-90-940-180-6004	\$10,000.00
Recreation	101-90-950-101-6004	\$65,000.00
<u>Human Services</u>	<u>101-90-980-400-6004</u>	<u>\$25,000.00</u>
Total		\$130,000.00

Funding for future costs of the contract will be included in Fiscal Year 2021-2022 proposed budget.

VI. EXHIBITS

1. Bid Register (pg. 7)
2. RFP 20-029 (pgs. 8 - 22)
3. Final Ranking and Scoring Sheet (pg. 23)
4. Draft Contract with Active Network, LLC. (pgs. 24-81)

Prepared by: Bobby Grove - Recreation Program Manager