

COURT ORDER

34

ORDER NO: 2008 0058

DATE: JANUARY 8, 2008

STATE OF TEXAS §

COUNTY OF DALLAS §

BE IT REMEMBERED, at a regular meeting of Commissioners Court of Dallas County, Texas, held on the 8th day of January, 2008, on

a motion made by Mike Cantrell, Commissioner of District No. 2, and seconded by Kenneth A. Mayfield, Commissioner of District No. 4, the following Court Order was adopted:

WHEREAS, on November 27, 2007 through Court Order 2007-2375, Commissioners Court awarded the national contract for RFP No. 2007-118-3034 Request for Proposals for Cleaning Chemicals and Supplies to Acuity Specialty Products, Inc. dba Zep Manufacturing Company; and

WHEREAS, the company has experienced a name change and requested that the award reflect the new name and signature authority; and

WHEREAS, the initial term of this contract is January 1, 2008 through December 31, 2009 with the option to renew for three (3) additional one (1) year periods

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Dallas County Commissioners Court does hereby amend Court Order 2007-2375 to reflect the name of awarded vendor as Acuity Specialty Products, Inc. d/b/a/ Zep Sales & Service as reflected in the attached master agreement for the period of January 1, 2008 through December 31, 2009 and authorizes the County Judge to sign the attached revised administration agreement, master agreement, and related documents.

DONE IN OPEN COURT this the 8th day of January, 2008.

[Signature]  
Earl Foster, County Judge

[Signature]  
Maurine Dickey, District #1

[Signature]  
Mike Cantrell, District #2

[Signature]  
John Wiley Price, District #3

[Signature]  
Kenneth A. Mayfield, District #4

Recommended by: [Signature]  
Shannon S. Brown, Purchasing Agent

**Master Agreement Between Dallas County, Texas and  
Acuity Specialty Products, Inc., d/b/a Zep Sales & Service  
For Cleaning Chemicals and Supplies**

This Contract is entered into by and between Dallas County (hereinafter, "COUNTY"), a government entity formed and existing under the laws of the State of Texas, acting by and through the Dallas County Commissioners Court, and Acuity Specialty Products, Inc. d/b/a Zep Sales & Service (hereinafter "SUPPLIER"), located at 1310 Seaboard Industrial Blvd NW, Atlanta, Georgia 30318, for the purpose of providing cleaning chemicals and supplies (hereinafter "PRODUCTS").

**WITNESSETH:**

**WHEREAS**, COUNTY seeks a supplier to provide cleaning chemicals and supplies; and

**WHEREAS**, SUPPLIER has proposed and County has accepted SUPPLIER'S offer to provide PRODUCTS in response to COUNTY'S Request for Proposals No. 2007-118-3034, issued in accordance with Chapter 262 of the Texas Local Government Code;

**NOW, THEREFORE**, COUNTY and SUPPLIER, in consideration of the terms, covenants, and conditions herein contained, do hereby contract as follows:

**SECTION 1. SCOPE OF SERVICES**

SUPPLIER agrees to provide PRODUCTS set forth in RFP No. 2007-118-3034, which is attached hereto and incorporated by reference as Exhibit A, and SUPPLIER'S response to RFP No. 2007-118-3034, which is attached hereto and incorporated by reference as Exhibit B.

**SECTION 2. TERM**

The initial term of this Contract is January 1, 2008 through December 31, 2009 with the option to renew annually for three (3) additional one (1) year periods. Renewal will be subject to the availability of funding, vendor performance, mutual agreement by all parties, and the approval of the Dallas County Commissioners Court. All renewals/extensions shall be based on existing terms, conditions, and price structures set forth in original bid award or as amended. COUNTY does not guarantee any quantities to be purchased under this contract.

**SECTION 3. PRICE AND PRICE ADJUSTMENTS**

SUPPLIER agrees to the pricing proposal included in SUPPLIER'S RFP response as detailed in Exhibit B under Section 11.3 Business Proposal Pricing will remain in effect for the first twelve (12) months of the Contract. Price adjustments will be considered based on the terms outlined in this section. An initial price adjustment can be requested after the first twelve (12) month period of the contract. Subsequent price adjustments can be submitted on an annual basis. Requests for price adjustments must be supported by appropriate written documentation by the manufacturer's

published price lists or similar documentary evidence. The reasonableness of the request will be determined by comparing the request with the Producer Price Index or by performing a market survey. If COUNTY agrees and approves the adjusted price terms, COUNTY shall issue written approval of the change and the effective date of the new pricing. Price adjustments/increases shall be presented as a percentage of increase/decrease, which will be used to adjust vendor pricing accordingly. The price increase shall not exceed five (5%) percent over a one (1) calendar year period and shall be limited to the actual increase incurred by SUPPLIER, whichever is the least amount of increase. Price adjustments/increases will not be retroactive. Price reduction or decreases are effective immediately.

#### **SECTION 4. GENERAL REQUIREMENTS**

##### **INDEMNIFICATION**

The SUPPLIER agrees that it will protect, defend, indemnify, and save whole and harmless the COUNTY and all of its officers, agents, and employees from and against all claims, demands, causes or action, damages, judgments, loss and expenses, including attorney's fees, of whatsoever nature, character, or description that any person or entity has or may have arising from or on account of any injuries or damages (including but not restricted to death) received or sustained by any person, persons, or property, on account of, arising out of, or in connection with any negligent act or omission and/or willful misconduct of the SUPPLIER or any agent, servant, employee or sub-contractor of the SUPPLIER in the execution or performance of this Contract. SUPPLIER further agrees to protect, indemnify and hold COUNTY harmless against and from any and all claims and against and from any and all loss, cost, damage, judgments or expense, including attorney's fees arising out the breach of any of the requirements and provisions of this contract of any failure of SUPPLIER, its employees, officers, agents, contractors, invitees, or assigns in any respect to comply with and perform all the requirements and provisions hereof.

##### **COLLUSION**

The successful Vendor may be required to provide an affidavit that he has not conspired with other potential suppliers in any manner to attempt to control competitive pricing. This paragraph does not however, preclude two or more suppliers of certain parts of the requirements from presenting a combined or joint Offer for the purpose of providing a complete Offer.

##### **MONETARY RESTITUTION**

In the event the contract is prematurely terminated due to non-performance and/or withdrawal by the Vendor, Dallas County reserves the right to seek monetary restitution (to include but not limited to; withholding of monies owed) from the Vendor to cover costs for interim services and/or to cover the difference of a higher cost (difference between termination Vendor's rate and new company's rate) beginning the date of Vendor's termination through the contract expiration date. In the event civil suit is filed to enforce this provision, Dallas County will seek its attorney's fees and cost of suit from the Vendor.

##### **FINANCIAL INTEREST**

No official or employee shall have any financial interest, direct or indirect, in any contract with the County or be financially interested, directly or indirectly, in the sale to the County of any land, materials, supplies or services, except on behalf of the County as an official or employee. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the County shall render the contract involved voidable by the Commissioners

Court of the County. It is the responsibility of the Bidder during all phases of the procurement process to notify the County in writing of any potential conflict of interest.

#### **GOVERNING LAW VENUE**

The laws of the State of Texas shall govern any proposed agreement, and all obligations of the parties created hereunder are performable in Dallas County, Texas. In any legal action arising from this Agreement, the laws of Texas shall apply and exclusive venue shall lie in Dallas County, Texas.

#### **FISCAL FUNDING**

Any agreement resulting from this RFP will be subject to the availability of governmental fiscal funding. If such funds become reduced or unavailable, any contract agreement shall be subject to immediate modifications, reduction or termination on the expiration date or date in which the funds have been eliminated.

#### **ASSIGNMENT**

Firms shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the Dallas County Commissioners Court. Should the County authorize the original awardee to subcontract (assign) any portion of this contract, the original awardee will maintain the ultimate legal responsibility for all services according to contract specifications. In the event of a subcontract, the original awardee must maintain a continuous effective business relationship with the subcontractor(s) including, but not limited to, regular payments of all monies owed to any subcontractor. Failure to comply with these requirements, in whole or part, will result in termination of this contract and/or legal ramifications, due to nonperformance. Should the County authorize the original contractor to transfer this contract, in whole or part, the secondary contractor will maintain all the legal responsibilities set forth in the context of this contract; and the original contractor will continue to be responsible for the performance of the secondary contractor. However, in the event of the assignment or sale of original awardee's assets, Dallas County, at its option, may terminate or renegotiate the terms of this Contract.

#### **INSURANCE REQUIREMENTS**

Any vendor that conducts business with Dallas County, whether it is for goods and/or services, must maintain lawful worker's compensation/self insured employee coverage requirements and adequate liability limitations.

The Contractor, at its own expenses, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed to do business in the State of Texas, possessing a current A.M. Best, Inc. Rating of "A" or better.

The policies may provide coverage, which contain deductible or self-insured retention. Such deductible and/or self-insured retention shall not be applicable with respect to the coverage provided to Dallas County under such policies. The Contractor shall be solely responsible for all deductibles and/or self-insured retention.

Within ten (10) days after contract award and prior to the commencement of any work or delivery, the Purchasing Agent requires the successful vendor(s) to submit verification of the following coverage. The insurance coverages, except Workers Compensation and Professional Liability, required by this Contract, shall name Dallas County and its officers, employees and elected officials as additional insured(s) (as the interest of each insured may appear).

All insurance required herein shall be maintained in full force and effect through out the term of this contract, including all extensions.

Commercial General Liability: Contractor shall maintain Commercial General Liability Insurance with a limit not less than \$1,000,000.00 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage.

Crime Policy: Contractor shall maintain a Crime Policy for Employee Dishonesty with a limit not less than \$1,000,000.00. Coverage shall include provision for Theft, Disappearance and Destruction.

Vendors and/or their freight contractors must be prepared to show coverage verification prior to entering upon Dallas County premises.

Failure to comply with lawful requirements or adequate liability requirements may result in delay of payments, subject to the orders of the Commissioners Court, not to exceed a period of up to two years from the termination of the contract, or cancellation of the contract or both. (Court Order 2003-1792, September 30, 2003)

Submitted responses/RFP's shall become the property of Dallas County and shall be subject to any applicable open records statutes. The content of all RFP's submitted shall remain in effect for a minimum period of 180 days.

Information requested in the RFP deemed by the responding firm to be privileged and confidential must be marked "Privileged and Confidential Information." The County will endeavor to protect such information from disclosure to competitors to the extent allowable by law. Responding firms are advised that responses are subject to the Texas Public Information Act (Texas Open Records Act), Chapter 552, Texas Government Code.

### **INSURANCE LAPSES**

In the event successful firm fails to maintain insurance as required by this contract, successful firm shall immediately cure such lapse in insurance coverage at successful firm's sole expense, and pay County in full for all costs and expenses incurred by County under this contract as a result of such failure to maintain insurance by successful firm, including costs and reasonable attorney's fees relating to County's attempt to cure such lapse in insurance coverage. Such costs and attorney's fees, not to exceed fifteen hundred and 00/100 dollars (\$1,500.00), shall be automatically deducted from monies or payments owed to successful firm by County. Moreover, the County shall retain five percent (5%) of the value of the Contract that shall be placed into an

account from monies or payments owed to Contractor by County to cover County's potential exposure to liability during the period of such lapse. The retainage shall be held by County until six (6) months after the term of the Contract has ended or has otherwise been terminated, cancelled or expired and shall be released if no claims are received or lawsuits filed against County for any matter that should have been covered by the required insurance.

SUCCESSFUL FIRM FURTHER AGREES TO INDEMNIFY COUNTY FOR ANY PENALTIES, FINES, JURY AWARDS, COURT COSTS, LITIGATION EXPENSES, AND ATTORNEYS' FEES INCURRED BY COUNTY DUE TO SUCCESSFUL FIRM'S FAILURE TO MAINTAIN THE REQUIRED INSURANCE AT ALL TIMES DURING THE TERM OF THIS CONTRACT. SUCCESSFUL BIDDER(S), AT ITS OWN EXPENSE WITH COUNSEL OF COUNTY'S CHOICE, WILL DEFEND AND HOLD COUNTY HARMLESS IN ANY CLAIM OR ACTION AGAINST COUNTY THAT OCCURRED AS A DIRECT OR INDIRECT RESULT OF SUCCESSFUL FIRM'S FAILURE TO MAINTAIN INSURANCE AT ALL TIMES DURING THE TERM OF THIS CONTRACT. WITHOUT WAIVING ANY RIGHTS UNDER SOVEREIGN IMMUNITY, THE COUNTY SHALL COOPERATE WITH AND MAY MONITOR SUCCESSFUL BIDDER(S) IN THE DEFENSE OF ANY CLAIM, ACTION, OR PROCEEDING AND WILL, IF APPROPRIATE, MAKE EMPLOYEES AVAILABLE AS SUCCESSFUL FIRM MAY REASONABLY REQUEST WITH REGARD TO SUCH DEFENSE, SUBJECT TO THE REIMBURSEMENT BY SUCCESSFUL FIRM OF ALL COSTS AND EXPENSES OCCASIONED BY THE COUNTY'S COOPERATION IN SUCH DEFENSE. SUCCESSFUL FIRM AGREES NOT TO SETTLE ANY SUCH CLAIM WITHOUT THE COUNTY'S CONSENT, WITH CONSENT WILL NOT BE UNREASONABLY WITHHELD OR DELAYED.

**DISCLOSURE FORM CIQ**

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of Dallas County no later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. The questionnaire is included in this solicitation. By submitting a response to this request, the vendor represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code. Please send completed forms to the Dallas County Clerk at 509 Main Street, 2nd Floor, Dallas, Texas 75202.

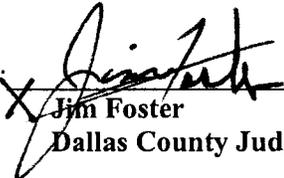
**SIGNATORY WARRANTY**

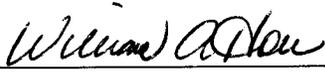
The parties represent that each has the full right, power and authority to enter and perform this Contract in accordance with all of the terms and conditions, and that the execution and delivery of this Contract has been made by authorized representatives of the parties to validly and legally bind the parties to all terms, performances and provisions set forth in this Contract.

EXECUTED THIS 8th DAY OF January 2008.

**DALLAS COUNTY**

**Acuity Specialty Products, Inc.  
d/b/a Zep Sales & Service**

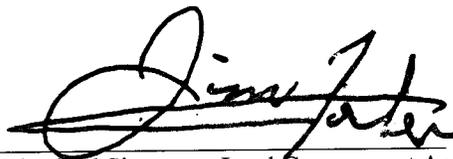
By:   
\_\_\_\_\_  
**Jim Foster**  
**Dallas County Judge**

By:   
\_\_\_\_\_  
**Bill Holl**  
**Chief Commercial Officer**

## LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of the Dallas County, TX. (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement (MICPA) regulating the use of the Master Agreements and purchase of Products that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.

A handwritten signature in black ink, appearing to read "Jim Fater", written over a horizontal line.

Authorized Signature, Lead Government Agency

November 27, 2007  
Date