

COUNTY OF PRINCE WILLIAM

1 County Complex Court, (MC 460) Prince William, Virginia 22192-9201
(703) 792-6770 Metro 631-1703, Ext. 6770 Fax: (703) 792-4611

FINANCE DEPARTMENT
Purchasing



CONTRACT: 10021BA0

SUBJECT: Captive Auto Parts and Service
(Ford Warranty Service)
(Ford Parts)

Between:

Prince William County Government
1 County Complex Court (MC460)
Prince William, Virginia 22192-9201
703-792-6770 metro 631-1703 ext 6770

and the Contractor:

Cowles Parkway Ford
13779 Noblewood Plaza
Woodbridge, VA 22193
Ph. 703-986-5603
Fx. 703-986-5655

This Contract is entered into this 1st day of August 2009, by and between the Board of County Supervisors of Prince William County, Virginia, or its authorized agents, and the Contractor identified above for supplies and/or services identified herein, on the following terms and conditions. This Contract is prepared in accordance with the Purchasing Regulations of Prince William County, which are incorporated herein by reference.

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SECTION I

SPECIAL PROVISIONS

I.1 Definitions

"County" shall mean the Board of County Supervisors of Prince William County, Virginia, or the requesting agency identified below and authorized by the Purchasing Regulations or other law to enter into Contracts.

"Requesting Agencies" for the purpose of this Contract shall mean Prince William County Public Works, Fleet Management Division.

"Contract Administrator" assigned to administer this Contract for the County is Mr. Cliff Whetsell who can be reached at 703-792-5938.

"Contractor" shall mean:

Cowles Parkway Ford
13779 Noblewood Plaza
Woodbridge, VA 22193

whose authorized representative is Mr. Michael Moran, General Manager, who is responsible for the performance obligation of the Contractor under this Contract.

I.2 Incorporation of Documents

The following documents are hereby incorporated by reference into this Contract:

1. Contractor's Bid Response dated June 04, 2009
2. County's Solicitation No. IFB090060, Issued on May 27, 2009.

In the event of an inconsistency between the above referenced documents the inconsistency shall be resolved by giving precedence to the following: Solicitation No. IFB090060. This Contract shall take precedence over all the above referenced documents.

I.3 Contract Period

The Contract period shall be for One (1) Year from Contract award date. There are no Contract renewal options awarded under this Contract.

I.4 Provision of Supplies and Services

The Contractor shall provide Ford Captive Auto Service–Warranty Work Only and Ford Captive Auto Parts, as defined herein for the County's Fleet Department for County owned vehicles. Goods and services shall be provided on an as needed basis. The Contractor agrees that there is a Contract awarded to another Contractor for Ford Captive Auto Service – Non-Warranty Work.

Parts required for County vehicles being serviced by the Contractor will be supplied by the same Contractor.

Specifications:

All deliveries shall be F.O.B. destination, freight full prepaid and allowed in Prince William County. No collect shipments will be accepted. Deliveries received between 9:00 AM-4:00 PM, Monday through Friday, less legal County holidays.

Receiving point: PWC Public Works Fleet Mgmt 14809 Dumfries Road Manassas, VA 20112

Parts shall be delivered within twenty-four (24) hours after the order has been placed, or when requested by the County common parts shall be ready for local (PWC County) pick-up by the County within eight (8) business hours after the order has been placed.

Parts shall be new manufacturer's original parts unless otherwise requested by the County. Services provided shall be performed in accordance with standard customary industry practices. Labor performed by the Contractor shall not exceed the specified labor hours as reflected in the current Chilton Labor Guide for task performed.

Service shall be completed within three (3) business days after receipt of parts.

Vehicles requiring service will be delivered by the County to the Contractor's local shop (local being within Prince William County) and picked-up from Contractor's local shop by the County when services are completed. Contractor's that are not local will be required to pick-up and deliver vehicles at no additional cost to the County.

Labor rates include all shop supplies and disposal fees.

Literature - The following shall be provided to the County within ten (10) business days after request from the County.

- Current Manufacturer's Published Retail Price List, 1/Set
- Current Parts Catalogs, 1/Set
- Manufacturer's/Contractor's Parts/Service Warranty Info, 2/Sets

Pricing

Parts sold to the County for County installation:

Shall be new manufacturer's original equipment parts. Manufacturer's discounts shall be firm and shall not change during the Contract period although manufacturer's price list may change. The price list used shall be the manufacturer's price list that is in effect at the time orders are placed.

Ford Parts: Electrical, Body, Engine and Components (less engine assemblies), Steering, Transmission and Components (less transmission assemblies), Suspension, Hub, Rotors, Brake Drums, Differential, Lamp Assemblies and Lenses, Drive Train, Frame and Spring Components = **25% Discount**

Ford Parts: Engine Assemblies and Transmission Assemblies = **15%Discount**

Warranty Service, and Parts required during warranty service:

Ford Cars/Vans/Light Trucks = **\$88.00/Hour Labor Rate**

Ford Trucks 1-Ton = **\$88.00/Hour Labor Rate**

Ford Trucks over 1-Ton = **\$98.00/Hour Labor Rate**

Ford Parts: Electrical, Body, Engine and Components (less engine assemblies), Steering, Transmission and Components (less transmission assemblies), Suspension, Hub, Rotors, Brake Drums, Differential, Lamp Assemblies and Lenses, Drive Train, Frame and Spring Components = **25% Discount**

Ford Parts: Engine Assemblies and Transmission Assemblies = **15%Discount**

I.5 Contract Amount

In return for the goods and services identified herein, and subject to the "Termination for Non-Appropriation of Funds" clause, the County shall compensate the Contractor in accordance with the Contract.

I.6 Placement of Orders

A County Purchase Order which may be accompanied by a Work Order shall be issued to the Contractor to provide the goods and/or services identified in the Contract. The Purchase Order indicates sufficient funds are budgeted and appropriated and shall compensate the Contractor in accordance with the Contract.

I.7 Emergency Procurements

In the event of a County emergency the County reserves the right to procure the contracted goods and/or services from other sources that can provide the goods and/or services sooner than the Contractor in order to meet the County's emergency needs. Emergency procurements are as defined in the County Purchasing Regulations.

I.8 Subcontractors

Contractors desiring to utilize subcontractors on County jobs must receive prior written County approval to do so before subcontractors perform any services for the County.

I.9 Time of the Essence and Completion

Time shall be of the essence, except where it is herein specifically provided to the contrary.

I.10 Delivery and Performance

See Specifications

I.11 Warranty

The Contractor warrants that (1) goods and services provided to the County are fit and sufficient for the purpose intended; (2) goods and services are merchantable, of good quality, and free from defects, whether patent or latent, in material or workmanship, and (3) goods and services provided to the County conform to the County's specified requirements.

I.12 Invoicing and Payments

Invoices shall be submitted to the "Invoice To" address as reflected on the County's Purchase Order. The Contractor shall submit detailed invoices listing the goods and/or services provided to the County.

As a minimum, invoices shall reflect the following:

- Contractor's Name and Address
- Contract Number and Purchase Order Number
- Work Order Number, if applicable
- Date Goods and/or Services were provided
- Receipts and/or Delivery Tickets, if applicable

The County shall make payment to the Contractor, net 30 days and may accept prompt payment discounts if offered, after receipt of an acceptable invoice and the requested goods and/or services have been received and accepted by the County.

I.13 Inspection and Acceptance

Goods and/or services (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, end products and work performed) shall be subject to inspection and testing by the County, to the extent practicable at all times and places including the place of manufacture, and in any event prior to acceptance.

In case goods are defective in material or workmanship or otherwise not in conformity with the County's requirements, the County shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Goods which have been rejected or required to be corrected shall be removed or, if permitted or required by the Purchasing Manager, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails to promptly remove such goods that are required to be removed or replaced or to correct such goods, the County either 1) may

by Contract or otherwise replace or correct such goods and charge to the Contractor the cost occasioned the County thereby; or 2) may terminate the Contract for default as provided by the "Termination for Default" Clause. Unless the Contractor corrects or replaces such goods within the specified delivery schedule, the Purchasing Manager may require the delivery of such goods to be provided at a reduction in price that is equitable under the circumstances.

Any and all services provided shall be conducted and completed in accordance with recognized and customarily accepted industry practices, unless otherwise specified by the County, and shall be considered complete when the services are approved as acceptable by the County's Contract Administrator or its designee. In the event of rejection of any services provided, the Contractor shall be notified and shall have three (3) calendar days from date of the deficiency notice to correct the deficiencies and resubmit for inspection.

I.14 Hazardous Products

Where applicable, the Contractor shall comply with all Virginia Occupational Safety and Health Administration Standards. Specifically, the Contractor shall ensure that all products provided to Prince William County are properly labeled and that Material Safety Data Sheets (MSDS) are provided for those products classified as "hazardous" by the Virginia Occupational Safety and Health Administration.

I.15 Law Compliance

The Contractor shall be solely responsible for complying with all applicable federal, state and municipal laws, codes and regulations relating to this procurement.

I.16 Tax Exemption

Prince William County Government is exempt from the payment of any Federal excise or Virginia sales tax. However, when under established trade practice any such tax is included in Contractor's list price, the Contractor shall show the list price and shall show separately the amount of tax as a flat sum that will not be paid by the County.

I.17 Rider Clause

The contract may be extended, with the authorization of the Contractor, to other public bodies, public agencies, or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms and conditions of the contract. The Contractor shall deal directly with public bodies utilizing the contract concerning issuance of purchase orders, contractual disputes, invoicing and payment. Prince William County Government acts only as the "Contracting Agent" for these public bodies. It is the Contractor's responsibility to notify public bodies of the availability of the contract. Other public bodies desiring to use the contract shall make their own legal determination as to whether the use of the contract is consistent with their laws, regulations, and other policies. Other public bodies if mutually agreed may add terms and conditions required by their statute, ordinances, and regulations, to the extent that they do not conflict with the contract's terms and conditions.

Prince William County shall not be held liable for any costs or damages incurred by other public bodies as a result of any contract extended to other public bodies by the Contractor.

SECTION II

GENERAL PROVISIONS

II.1 Assignability of Contract

Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of the County.

II.2 Modifications or Changes to the Contract

All modifications and changes to the Contract shall be in writing.

The Head of the Using Department of this Contract, with the concurrence of the Purchasing Manager (except as otherwise provided by the Purchasing Regulations), shall, without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order." Such orders shall be limited to reasonable changes in the services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed Contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

The Contractor need not perform any work described in any change order unless it has received a certification from the County that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

The Contractor shall make a demand for payment for completed changed work within 30 days of receipt of a change order, unless such time period is extended in writing, or unless the Purchasing Manager requires submission of a cost proposal prior to the initiation of any changed work or supplies. Later notification shall not bar the honoring of such claim or demand unless the County is prejudiced by such delay.

No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

II.3 Employment Discrimination for Contracts Over \$10,000

1. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every Subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each Subcontractor or Contractor.

II.4 Drug-free Workplace to be Maintained by Contractor for Contracts over \$10,000.00

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every Subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each Subcontractor or Contractor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of this Contract.

II.5 Claims/Disputes

In accordance with Section 2.2-4363, VA Code Ann., this provision shall be followed for consideration and handling of all claims by the Contractor under this contract. Section 2.2-4365, VA Code Ann., is not applicable to this Contract, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by Section 2.2-4365, VA Code Ann.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) days after the occurrence of the event giving rise to the claim, or within ten (10) days of discovering the condition giving rise to the claim, whichever is later. In no event, shall any claim arising out of this Contract be filed after the submission of the request for Final Payment by the Contractor.

Claims by the Contractor with respect to this Contract shall be submitted in writing in the first instance for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within forty-five (45) days from the receipt of the claim from the Contractor. If the Contractor is not satisfied with the decision or resolution of the Contract Administrator, the Contractor may file a formal dispute with regards to the claim with the Prince William County Director of Finance, which claim shall be received within thirty (30) days of the date of decision of the Contract Administrator. The Director of Finance shall reduce his or her decision to writing and shall mail or otherwise furnish a copy of this decision to the Contractor within forty-five (45) days of the receipt of the claim from the Contractor. The decision of the Director of Finance shall be final on behalf of Prince William County unless the Contractor submits the claim to the County Executive within thirty (30) days

of the Director of Finance's decision. The Contractor may submit the claim to the County Executive by mailing or otherwise furnishing the Purchasing Manager a copy of the claim and a request for the County Executive's determination.

The County Executive's decision on the claim shall be rendered in writing to the Contractor within forty-five (45) days of the Purchasing Manager's receipt of the request from the Contractor, and shall be final and binding on behalf of Prince William County, unless the Contractor submits the claim for determination by the Board of County Supervisors by mailing or otherwise furnishing the Purchasing Manager a copy of the claim, along with a request for determination by the Board within thirty (30) days of the County Executive's decision. The Board shall consider the claim and render a decision within forty-five (45) days of the date on which the Board hears the claim in open meeting. The Board's procedure in considering claims under this Contract shall be the same as that for other decisions of the Board on claims made under Section 15.2-1245 et seq., VA Code Ann. The decision of the Board shall be final.

Should any decision-maker designated under this procedure fail to make a decision within the time period specified, then the claim is deemed to have been denied by the decision-maker.

Pending a final determination of a claim, the Contractor shall proceed diligently with the performance of the Work under the Contract.

In accordance with the provisions of Section 2.2-4363, VA Code Ann., full compliance with this procedure set forth in the provision shall be a precondition to the filing of any lawsuit by the Contractor against the Board of County Supervisors of Prince William County arising out of this Contract.

II.6 Termination for Convenience of the County

The parties agree that the County may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or in part, whenever the County Executive of Prince William County shall determine that such termination is in the best interests of the County.

Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the County Executive or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.

Upon receipt of such Notice, the Contractor shall:

1. Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
2. Place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
3. Terminate all subcontracts except those made with respect to Contract performance not subject to the Notice;
4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Purchasing Manager of Prince William County; and
5. Use its best efforts to mitigate any damages which may be sustained by it as a consequence of termination under this clause.

After complying with the foregoing provisions, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of its termination, unless an extension is granted by the Purchasing Manager.

The Purchasing Manager, with the approval of the County's signatory to this Contract, shall pay from the using department's budget reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to Notice of Termination and further reduced by the price of the supplies not delivered, or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Purchasing Manager shall pay to the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

1. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - a. Cost of work performed or supplies delivered;
 - b. The cost of settling and paying any reasonable claims as provided in subparagraph (4), above;
 - c. A sum as profit on (a) determined by the Purchasing Manager to be fair and reasonable.
2. The total sum to be paid under (a) above shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of work or supplies not provided.

In the event that the Contractor is not satisfied with any payments which the Purchasing Manager shall determine to be due under this clause, the Contractor may appeal any claim to the Board of County Supervisors in accordance with the "Claims/Disputes" clause of this Contract.

The Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the County whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

II.7 Termination for Default

Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

II.8 Termination for Non-Appropriation of Funds

If funds are not appropriated for any succeeding fiscal year subsequent to the one in which this Contract is entered into, for the purposes of this Contract, then the County may terminate this Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the County shall be liable only for payments due through the date of termination.

II.9 Payments to Subcontractors

In the event that the Contractor utilizes a subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:

1. The Contractor shall take one (1) of the two (2) following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by a subcontractor under the Contract.
 - a. Pay a subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by that subcontractor under the Contract; or
 - b. Notify the agency and any subcontractors, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by a subcontractor under the Contract, except for amounts withheld under Subsection 1 b. of this section. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section may not be construed to be an obligation by the County. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.
3. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.
4. The Contractor is hereby required to include in each of its subcontracts a provision requiring each subcontractor to otherwise be subject to the same payment and interest requirements set forth in subsection 2. and 3. of this section with respect to each lower-tier subcontractor.

II.10 Examination of Records

The Contractor agrees that the County, or any duly authorized representative, shall, until the expiration of three (3) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the County or any duly authorized representative shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such Contractor involved in transactions related to such subcontract, or this Contract. The term "subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this Contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

II.11 Ethics in Public Contracting

The Contractor hereby certifies that it has familiarized itself with Article 6 of Title 2.2 of the Virginia Public Procurement Act, Sections 2.2-4367 through 2.2-4377, VA Code Ann., and that all amounts received by it, pursuant to this Procurement, are proper and in accordance therewith.

II.12 Governing Law and Choice of Forum

This Contract and any disputes hereunder shall be governed by the laws of the Commonwealth of Virginia. It is further agreed that all disputes and matters whatsoever arising under, in connection with or incident to this Contract, shall be litigated, if at all, in and before a state Court located in the County of Prince William in the Commonwealth of Virginia or a federal Court located in the Eastern District of Virginia, and any appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, country or other jurisdiction.

II.13 Integration

This Contract shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

II.14 Hold Harmless

The Contractor hereby agrees to indemnify and hold harmless Prince William County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for property damage, bodily injuries and personal injuries to the public, including cost of investigation, all reasonable attorneys fees, and the cost of appeals arising out of any such claims or suits, because of any and all acts of omission or commission of the Contractor, including its agents, Subcontractors, employees and volunteers, in connection with Work under this Contract.

It is understood and agreed that the Contractor is at all times herein acting as an independent Contractor

II.15 Immigration Reform and Control Act of 1986

The Contractor certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986 which prohibits employment of illegal aliens. The Contractor agrees that its employment of any person without legal status may subject it to termination of this contract for default and agrees to include a similar provision in any subcontract.

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

COWLES PARKWAY FORD

County Representative Signature

Mr. Tom Bruun
Director of Public Works

Authorized Representative Signature

Name

Title

ATTEST

Carol L. Scarton
Purchasing Manager

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

_____ Date: _____