



COUNTY OF PRINCE WILLIAM

1 County Complex Court, (MC460) Prince William, Virginia 22192-9201
(703) 792-6770 Metro 631-1703, Ext. 6770 FAX: (703) 792-4611

FINANCE DEPARTMENT

Purchasing

CONTRACT: 5047BA4

SUBJECT: COLD STORAGE SERVICES

Between:

PRINCE WILLIAM-MANASSAS REGIONAL ADULT DETENTION CENTER
9320 LEE AVENUE
MANASSAS, VA 20110

and the Contractor:

MARTINI FOODS T/A STANLEY FOODS
9001 E. HAMPTON DRIVE
CAPITOL HEIGHTS, MD 20743
TEL. 301-336-4600
FAX 301-336-0239

This Contract is entered into this 1st day of December 2004, by and between the Prince William-Manassas Regional Adult Detention Center, or its authorized agents, and the Contractor identified above for 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.

An Equal Opportunity Employer

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SECTION I

SPECIAL PROVISIONS

I.1 Definitions

"County" shall mean the Prince William-Manassas Regional Adult Detention Center, or the using department identified below and authorized by the Purchasing Regulations or other law to enter into Contracts.

"Using Department" for the purpose of this Contract shall mean Prince William-Manassas Regional Adult Detention Center (PWMRADDC).

"Contract Administrator" assigned to administer this Contract for the County is Chris Kelly, Fiscal Officer.

"Contractor" shall mean:

Martini Foods T/A Stanley Foods
9001 E. Hampton Drive
Capitol Heights, MD 20743
Tel. 301-336-4600
FAX 301-336-0239

whose authorized representative is William Gholson, General Manager, who is responsible for the performance obligation of the Contractor under this Contract.

I.2 Contract Period

The term for this Contract shall be for one (1) year from date of execution. The County shall have the option to extend the Contract for four (4) additional one (1) year periods, contingent upon availability of funds for the purpose. The option to renew shall be exercised at the sole discretion of the County.

The County shall give the Contractor reasonable written notice of intent to renew prior to the expiration date of the current contract. In the absence of any notification to renew, the contract shall automatically terminate on the expiration date specified in the contract. Agreement to extend the contract term shall not be final until the Contractor provides written acknowledgement of the extension.

I.3 Incorporation of Documents

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

1. Contractor's Bid Response dated October 28, 2004
2. County's Solicitation Number IFB050015 entitled Cold Storage Services and dated September 24, 2004.

I.3 (Continued)

In the event of an inconsistency between the above referenced documents the inconsistency shall be resolved by giving precedence to the following: IFB050015. This Contract shall take precedence over all the documents referenced above.

I.4 Provision of Services

The Contractor hereby agrees to provide Cold Storage Services to the Prince William-Manassas Regional Adult Detention Center (PWMARADC) as described herein and further outlined in Section III, of the Invitation for Bid. The Scope of Work shall take precedence over the documents set forth in Provision, Incorporation of Documents, in the event of inconsistency.

I.5 Contract Amount

In return for the services identified above, and subject to the "Non-Appropriation of Funds" clause herein, the County certifies that sufficient funds are budgeted and appropriated and shall compensate the Contractor at the following rates:

Item No.	Description	Percentage Mark Up
1	For the Storage/Delivery of Second Market Food Products to Prince William-Manassas Regional Adult Detention Center	7.95%
2	For the Drop Shipped of Second Market Food Products to Prince William-Manassas Regional Adult Detention Center	4.00%

I.6 Method of Payment

The Contractor shall submit invoices listing the services performed and completed. The invoice should cite the Purchase Order Number, Contract Number and date of services or delivery of an end product.

The County will make payment to the Contractor, net 30 days or in Accordance with discount terms, if offered, after receipt of an acceptable invoice and satisfactory completion of each of the requested services.

I.7 Time of the Essence and Completion

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

I.8 Inspection and Acceptance

All work shall be conducted and completed in accordance with recognized and customarily accepted industry practices, and shall be considered complete when the services are approved as acceptable by the Contract Administrator. In the event of rejection of any deliverable, the Contractor shall be notified and shall have 24 hours from time of issuance of notification to correct the deficiencies.

I.9 Insurance

The Contractor shall maintain insurance in an amount and form as set forth in IFB050015.

I.10 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.

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

II.3 (Continued)

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

II.5 (Continued)

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:

II.6 (Continued)

- 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.

II.9 (Continued)

- 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,

II.10 (Continued)

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

This Contract and any disputes hereunder shall be governed by the laws of the Commonwealth of Virginia.

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 Extension of Contract To Other Jurisdictions

The Contractor may extend services to the following jurisdictions, to permit ordering of services or supplies at prices and terms in accordance with resulting contract. The contractor will deal directly with each jurisdiction concerning placement of orders, issuance of purchase order, discrepancies, invoice and payment. Prince William County acts only as the contracting agent.

Alexandria, Virginia	Maryland National Capital
Alexandria Public Schools	Park and Planning Commission
Alexandria Sanitation	Metropolitan Washington Airports
Authority	Authority
Arlington County, Virginia	Metropolitan Washington Council
Arlington Public Schools	of Governments
Bowie, Maryland	Montgomery Community College
Charles County, Maryland	Montgomery County, Maryland
Chevy Chase Village, Maryland	Montgomery County Public Schools
College Park, Maryland	Northern Virginia Community College
District of Columbia	Northern Virginia Planning District
Prince George's County Public	Prince George's County, Maryland
District of Columbia Schools	Schools
Fairfax County, Virginia	Prince William Park Authority
City of Fairfax, Virginia	Prince William County Public
Fairfax County Water Authority	Schools
Falls Church City Public	Prince William County Service
Schools	Authority
Falls Church, Virginia	Rockville, Maryland
Gaithersburg, Maryland	Shenandoah County Public Schools
Greenbelt, Maryland	Stafford County Public Schools

II.14 (Continued)

Herndon, Virginia	Takoma Park, Maryland
Loudoun County Public Schools	Town of Vienna, Virginia
Loudoun County, Virginia	Upper Occoquan Sewage Authority
Loudoun County Sanitation Authority	Virgina Railway Express
Manassas, Virginia	Washington Metropolitan Area Transit Authority
Manassas City Public Schools	Washington Suburban Sanitary Commission
Manassas Park Public Schools	

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

MARTINI FOODS T/A STANLEY FOODS

County Representative

Contractor Representative

Title

Title

ATTEST:

Purchasing Manager

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

Date: _____