



## 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: 7055BA2

SUBJECT: Rental of Construction Equipment

Between:

PRINCE WILLIAM COUNTY  
1 COUNTY COMPLEX COURT (MC460)  
PRINCE WILLIAM, VA 22192-9201

703-792-6770 METRO 631-1703 EXT 6770

and the Contractor:

Neff Rental, Inc.  
4 Commerce Parkway  
Fredericksburg, VA 22406  
540-373-2136

This Contract is entered into this 16th day of January, 2007, 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 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 using department identified below and authorized by the Purchasing Regulations or other law to enter into Contracts.

For the purpose of this Contract the Department of Public Works is the main procuring Department for this Contract. Various Agencies under Public Works as well as other Prince William County Departments/ Agencies may utilize the Contract.

"Contract Administrators" assigned to administer this Contract for the are:

Mr. Al Roltsch, Construction Services Branch Chief  
Public Works Environmental Services  
703-792-6865

Mr. Hafez Al-Haj, Landfill Superintendent  
Public Works Solid Waste Landfill  
703-791-5844

"Contractor" shall mean:

Neff Rental, Inc.  
4 Commerce Parkway  
Fredericksburg, VA 22406  
540-373-2136

whose authorized representative is Mr. Shane Stahl, Branch 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 November 28, 2006.
2. County's Solicitation Number IFB070012 entitled Rental of Construction Equipment and dated November 09, 2006.

In the event of an inconsistency between the above referenced documents the inconsistency shall be resolved by giving precedence to the following: Solicitation No. IFB070012. This Contract shall take precedence over all the above referenced documents.

**I.3 Period of Contract**

The Contract period shall be for one (1) year from Contract award date. The County shall have the option to renew the Contract for two (2) additional one (1) year periods, contingent upon availability of funds for the purpose and the needs of the County.

**I.4 Provision of Supplies and Services**

The Contractor hereby agrees to rent to the County on an as needed basis only, construction equipment as described in Attachment B of this Contract. Construction equipment shall be rented to the County at the rental rates indicated in Attachment B of this Contract.

**I.5 Permits and Licenses**

The Contractor shall be solely responsible for complying with all applicable Federal, State and Municipal Laws, Codes and Regulations that may be required to operate and transport construction/heavy equipment.

**I.6 Delivery / Availability**

Delivery by the Contractor to Prince William County designated job sites within Prince William County shall be made within twelve (12) business hours after an order has been placed.

The County reserves the right to consider other reasonable delivery or availability times if it is in the best interest of the County.

Equipment may also be picked-up by the County at the County's option.

The Contractor shall make every effort to accommodate the County on emergency situations where equipment is needed immediately.

**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 two (2) days from date of issuance of notification to correct the deficiencies and resubmit the deliverable.

**I.9 Insurance**

The Contractor shall maintain insurance in an amount and form as set forth in Solicitation Number IFB070012, titled Rental of Construction Equipment.

**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.

**I.11 Hazardous Products**

Where applicable, the Contractor shall comply with all of the requirements of the Virginia Occupational Safety and Health Administration Hazard Communication Standard (1910.1200). Specifically, the Contractor or suppliers shall ensure that all products purchased by 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.

**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 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,

**II.8 (Continued)**

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.9 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.10 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

**II.10 (Continued)**

lower-tier subcontractor.

**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 Rider Clause**

The Contractor may extend this Contract to designated Government Agencies identified on the Rider Clause Form provided in this Contract. All Contract terms, provisions, and pricing shall apply to all Agencies utilizing this Contract.

The Contractor has the option to also extend this Contract to other Government Agencies that are not identified in this Contract but may be identified after Contract award, if mutually agreed to in writing, and the Agency name is added to the Rider Clause Form in this Contract by Contract Modification.

Other Government Agencies utilizing this Contract will place their own Purchase Order(s) directly with the Contractor. There shall be no obligation on the part of any other Government Agency to utilize this Contract awarded by Prince William County Government.

It is the Contractor's responsibility to notify other Government Agencies of the Contract availability.

RIDER CLAUSE FORM  
(Authorized Riders)

YES NO JURISDICTIONS

- Orange County Public Schools
- Culpeper County Public Schools
- Prince William County Park Authority
- Prince William County Public Schools
- Prince William County Service Authority
- City of Fairfax, Virginia
- Fairfax County Water Authority
- Fauquier County Schools
- Stafford County Public Schools
- Town of Vienna, Virginia
- Loudoun County Public Schools
- Loudoun County Local Government
- Loudoun County Sanitation Authority
- Manassas VA City Public Schools
- Manassas Park VA Public Schools
- Manassas VA Local Government

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BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VIRGINIA

Neff Rental, Inc.

\_\_\_\_\_  
County Representative

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Purchasing Manager

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT A  
SPECIFICATIONS**

The Contractor hereby agrees to rent to the County on an as needed basis only, construction equipment as described in this Contract. Construction equipment shall be rented to the County at the rental rates indicated in this Contract.

The Contractor shall provide rental equipment specified in the Schedule of Prices, equal or better. Equipment rented shall be safe and in good working condition.

Equipment must meet or exceed all Federal, Commonwealth of Virginia, and County Safety Standards, Regulations and Codes. Equipment must meet current OSHA/VOSHA Standards.

The Contractor shall immediately replace non-operating equipment. No additional delivery charges shall be incurred by the County to replace non-operating equipment or for equipment moved off the job at the desire of the Contractor.

Equipment rented which breaks down will be reported to the Contractor immediately. The County will not be responsible to pay for down time.

The delivery charge shall include the cost for delivery, set-up, and pick-up, anywhere within Prince William County, Virginia.

Billing time begins when equipment arrives on site. Billing will not begin prior to the time the County has requested for the equipment to be delivered.

Fuel will be paid by Prince William County on rental equipment furnished without operators. Maintenance shall be provided by the Contractor and paid for by the Contractor

The County will reimburse the Contractor for reasonable cost of blasting materials if blasting materials are required.

**ATTACHMENT B  
SCHEDULE OF PRICES**

**Contractor: Neff Rentals, Inc.**

**Section A-"Equipment Without Operators"**

**Section B-"No Award"**

**Section C-"Equipment not awarded under this Contract"**

**Section D-"Option Years"**

**SECTION A - EQUIPMENT WITHOUT OPERATORS**

DESCRIPTION	RENTAL RATE PER			DELIVERY CHARGE
	DAY	WEEK	MONTH	
IFB ITEM NUMBER				
17. Loader, Rubber Tire Cat 938/equivalent COST =	\$450	\$1,400	\$3,800	\$50
21. Excavator, Track 75,000 lb Cat 330/equivalent COST =	\$600	\$2,800	\$7,600	\$250
22. Excavator, Track 63,000 lb Cat 325/equivalent COST =	\$500	\$2,000	\$6,300	\$100

**SECTION C - CONSTRUCTION RENTAL EQUIPMENT NOT AWARDED UNDER THIS CONTRACT (USE - NON-MANDATORY BY THE COUNTY)**

1. Construction Rental Equipment items awarded under other County Contracts will be rented from those awarded Contracts with the following exception: Exception - Contractor's awarded Contract items are not available to the County when required by the County.

2. Rental of Non-Contract award items with an estimated annual expenditure of less than \$50,000, the following Provision shall apply:

The Contractor may provide a current price list upon request of all similar construction rental equipment available to the County. Price list will be compared against other price list from County Contract holders and if desired by the County price list from open market vendors also. Orders will be placed with the Contractor/Vendor offering the best rate to the County.

In the event of duplication of items between Contract items and Non-Contract items then the County Contract item prices shall prevail.

**SECTION D - OPTION YEARS**

Option Year I - There is a 5% increase on all items from the Base Contract Period.

Option Year II - There is a 5% increase on all items from Option Year I