

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: 9052BA2

SUBJECT: Auctioneering Online Internet Service (eBay Motors)

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:

N.T. Arrington-Auctioneer
6219 Featherbed Lane
Manassas, Virginia 20109

Mailing Address/Contact Info:

N.T. Arrington-Auctioneer
P.O. Box 738
Gainesville, Virginia 20156
Ph. 703-966-8422
Fx. 703-754-9621
E-Mail. ntarrington@hughes.net

This Contract is entered into this 21st day of November 2008, 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 Agency" for the purpose of this Contract shall mean Public Works, Fleet Management Division. Other Prince William County agencies may utilize the Contract.

"Contract Administrator" assigned to administer this Contract for the County is Mr. Mike Clark, which can be reached at 703-792-5313.

"Contractor" shall mean:

N.T. Arrington-Auctioneer
6219 Featherbed Lane
Manassas, Virginia 20109

whose authorized representative is Mr. Nicholas T. Arrington, Owner, 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 October 14, 2008.
2. County's Solicitation Number IFB090021 and dated October 08, 2008.

In the event of an inconsistency between the above referenced documents the inconsistency shall be resolved by giving precedence to the following: Solicitation No. IFB090021. This Contract shall take precedence over all the documents referenced above.

I.3 Contract Period

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 periods of one (1) year, contingent upon availability of funds for the purpose and the needs of the County.

I.4 Provision of Supplies and/or Services

The Contractor shall provide all labor, equipment, and personnel, unless otherwise described in the Scope of Work, necessary to perform Online Internet Auctioneering Services as described in the Scope of Work.

I.5 Insurance

Insurance is required as described in IFB090021

An Insurance Certificate must be submitted to the County for review and acceptance before any services are performed by the Contractor. The same Insurance requirements will apply to any sub-contractor performing for the Contractor on County jobs.

I.6 Contract Amount

In return for the 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 Pricing Schedule.

I.7 Placement of Orders

A County Purchase Order shall be issued to the Contractor to provide the goods/services identified in this Contract. The Purchase Order indicates sufficient funds are budgeted and appropriated.

I.8 Performance Period

See Section III.2 Scope of Work/Pricing Schedule

I.9 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.10 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.11 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.12 Invoicing and Payments

See Section III.2 Scope of Work/Pricing Section, Sub-Section III-Post-auction for procedures.

I.13 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.14 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.15 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 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.

II.14 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.15 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 negligent acts of omission or willful misconduct 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.

III.2 Scope of Work/Pricing Schedule

Scope of Work:

The Contractor shall provide “Online Internet Auctioneering Services” to sell for the County, County surplus vehicles and related vehicle equipment and accessories, on an as needed basis.

The Contractor shall provide all labor, equipment, and personnel necessary to perform Online Internet Auctioneering Services, unless otherwise described herein this Scope of Work. The percentage rates reflects all labor, equipment, and personnel cost necessary to provide the services described herein this Scope of Work.

Other County surplus items may be added to this Contract by Contract Modifications if mutually agreed in writing.

The Contractor shall retain a valid Virginia Auctioneers License and provide proof to the County of being licensed and bonded as an Auctioneer in the State of Virginia.

The Contractor shall not apply a buyer’s premium on items for sale. A processing /administration fee may be charged to the buyer to cover or help cover eBay’s vehicle listing fee but must not exceed \$150.00 per auction item. An auction item may consist of a combined group of like items sold as a “lot”. This fee will be the responsibility of the buyer to pay to the Contractor.

The County will not be responsible for any transportation costs, fees, or removal of sold items. Removal of all sold items will be at the Contractor’s expense.

Section I - Pre-auction:

The Contractor shall:

- Conduct a visual site inspection at the County’s Fleet Management Complex.
- Verify County provided inventory list.
- Host online internet auctions within seven (7) business days of notice by posting inventory list on eBay motors.
- Hold auctions for approximately seven (7) calendar days.
- Advertise items as “sold as-is, no warranty”.
- Auction each vehicle separately. Each vehicle will be one auction item.
- Combine related equipment and accessories and sell as a “lot” auction item.
- Take a minimum of 6 high resolution jpeg format photographs for online auction item listing.
- Take pictures depicting all angles of view as well as interior and engine bay views. Document mileage, drivability, condition of tires, glass, chrome, interior, visible body damage, perforations, visible or noticeable leaks, and any noises for vehicles.
- Include such documentation of vehicle in online item description.

- Determine a fair market value of items for sale and set a minimum hidden reserve relative to that fair market value. Fair market values set by the Contractor shall be provided in written form to the County upon request.
- Post a reasonable open/outdoor bidder inspection date and a pick up date during normal operating hours in the auction description.

The County shall:

- Contact the Contractor with a minimum of 10 auction items available for sale.
- Provide to the Contractor an inventory list with Serial Numbers, Year, Make, and Model of vehicles and/or related equipment and accessories.
- Provide to the Contractor one (1) set of vehicle keys for the inventory inspection.

Section II - Auction:

The Contractor shall:

- Host a one (1) day open/outdoor bidder inspection day for a minimum of four (4) business hours set for any week day for all auction items to be inspected.
- Be on site during inspection day to answer all questions from perspective bidders pertaining to equipment inspections, overall condition, and terms during the one day open/outdoor inspection.
- Provide battery boost equipment necessary to start vehicles regardless of weather at open/outdoor inspection.
- Answer all online inquiries from perspective bidders pertaining to equipment inspections, overall condition, and terms in a timely manner.

The County shall:

- Provide for the Contractor a pre-designated area for open/outdoor bidder inspection on site at the County's Fleet Management Complex.
- Provide to the Contractor a general knowledge/history of the sale items to the Contractor.

Section III – Post-auction:

The Contractor shall:

- Collect payment from winning bidders.
- Oversee and assist in the removal of all sold items from County's property at Contractor's expense.
- Provide auction results to the County within forty-eight (48) hours after auction closes to include winning bidders of each auction item and its sale price.
- Make an escrow check payment to Prince William County for auction earnings within five (5) business days after sold items have been removed from County property.
- Provide a Report of Sale with said escrow check payment to include the following:
 1. Asset number
 2. Asset description
 3. Sale price of each auction item
 4. Commission percentage deducted (Contractor's fee per Contract)
 5. Net Proceeds.

The County shall:

- Provide vehicle titles to the successful bidder upon proof of payment.
- Titles exchange will be the responsibility of the County's Fleet Shop Superintendent, Jim Lambert, (703-792-5930).

Pricing Schedule:

The Contractor shall provide all labor, equipment, and personnel, unless otherwise described in the Scope of Work, necessary to perform Online Internet Auctioneering Services as described in the Scope of Work. The percentage rates reflects all labor, equipment, and personnel cost necessary to provide the services described in the Scope of Work.

An auction item is defined as 1) a single item (example-vehicle) or 2) may consist of a combined group of like items sold as a "lot" (example-combined bar lights).

The Contractor may deduct his portion of payment due for services rendered from the escrow check paid to the County.

Contract Base Year

The County shall pay the Contractor a flat percentage rate of **7.95 %** per auction item for providing auctioneering on-line internet services.

Contract Renewal Option Year I

The County shall pay the Contractor a flat percentage rate of **7.95%** per auction item for providing auctioneering on-line internet services.

Contract Renewal Option Year II

The County shall pay the Contractor a flat percentage rate of **8.95%** per auction item for providing auctioneering on-line internet services.

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

CONTRACTOR
N.T. ARRINGTON-AUCTIONEER

Tom Bruun, Public Works Director
County Representative Signature

Contractor's Representative Signature

Title

ATTEST:

Carol L. Scarton, Purchasing Manager

APPROVED AS TO FORM COUNTY ATTORNEY'S OFFICE

_____ Date: _____