



TOWN COUNCIL AGENDA ITEM

MEETING DATE: October 10, 2023

Agenda Title/Category:	Paving Contract for Industrial Drive Approval			
Staff Contact/Presenter:	Chip Hill			
Meets Strategic Initiative or Approved Plan:	Yes X	No	If yes, list:	Approved FY 24 Budget paving of Industrial Drive
Background:	Originally RFP sent out mid-August, only received 2 bids. Resent the following week and received 4 bids.			
Discussion:	Red Clay was the lowest bidder at \$431,107. Are there any questions relating to the contract prior to its approval?			
Fiscal impact:	With an approved paving FY 24 budget of approx. \$500,000, the Town will have approx. \$68,000 for contingencies.			
Attachments:	Copy of Red Clay bid/proposal.			
Recommended Motion to be made by Council:	Approval to award Red Clay contract to proceed with paving.			



REQUEST FOR PROPOSALS

PROJECT: Paving Contract FY24

POSTING DATE: August 30, 2023

PROPOSALS DUE: September 6, 2023 @ 10:00 AM

Delivery: U.S. Mail/Messenger/Fed Ex/UPS all Formal Bids must be sealed and follow the instructions for delivery or bid will be rejected and not considered for review.

Opening of Bids: Public inspection of all bids will be available after the contract has been awarded. Submission of bids must meet the deadline stated above. Formal bids will require a public opening with a date, time and location of opening notice sent out before the bid closing date.

Main Telephone Number: (704-889-2291)

Physical Address: 505 Main Street
Pineville NC 28134

Mailing Address: PO Box 249
Pineville NC 28134

Town Manager: Ryan Spitzer
rspitzer@pinevillenc.gov

Public Works Director: Chip Hill
chill@pinevillenc.gov

The Town of Pineville is now accepting proposals for the project: Paving Contract FY24.

The Town of Pineville is now accepting proposals for the project: Paving Contract FY24.

Work must be completed no later than: November 15, 2023.

Included in this RFP are specifications for the project. Please review these carefully.

All parties interested in bidding for this RFP are requested to use e-mail for any communications and inquiries about this project to be mindful of public record laws.

Overview

The Town of Pineville has a long history of creating and implementing strategies to support and encourage local business growth. The Town of Pineville promotes diversity, inclusion, and local business opportunities within the Town's contracting and procurement process for Minority, Women, and Small Business Enterprises.

The Town of Pineville follows all North Carolina General Statutes requirements.

Compliance with Federal, State and Local Laws

Bidder certifies in submitting a bid and in the performance of an award as a result of the bid, which the Bidder has complied with, or will comply with, all applicable federal, state, and local laws, ordinances and all lawful orders, rules and regulations hereunder. The Bidder, by submitting the bid or performance that results from a contract awarded by The Town of Pineville, agrees not to discriminate against any employee or applicant based on an individual's race, color, religion, religious creed, ancestry, national origin, age (except minors), sex, sexual orientation, marital status, medical condition (cancer-related) and disability, and otherwise as required or permitted by law. Bidder further agrees that any sub-contract will contain a provision requiring non-discrimination in employment as specified above. Any breach of this provision may be regarded as a material breach of contract and cause for cancellation.

Qualification of Bidder

Bidder must possess the potential ability to perform successfully under the terms and conditions set forth in the RFP. Consideration shall be given to such matters as Bidder integrity; record of past performance; and financial and technical resources.

Town of Pineville, North Carolina
General Terms and Conditions

All Contractors and subcontractors (herein "Contractor") are advised of the Town's "General Terms and Conditions" set forth herein and agree that the following terms and conditions will be applicable.

EXAMINATION OF CONDITIONS: It is understood and mutually agreed that by submitting a bid the bidder acknowledges that he/she has carefully examined all documents pertaining to the work, the location, accessibility and general character of the site of the work and all existing buildings and structures within and adjacent to the site, and has satisfied himself/herself as to the nature of the work, the condition of existing buildings and structures, the conformation of the ground, the character, quality and quantity of the material to be encountered, the character of the equipment, machinery, plant and any other facilities needed preliminary to and during prosecution of the work, the general and local conditions, the construction hazards, and all other matters, including, but not limited to, the labor situation which can in any way affect the work under the contract, and including all safety measures required by the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto. It is further mutually agreed that by submitting a proposal the bidder acknowledges that he has satisfied himself as to the feasibility and meaning of the plans, drawings, specifications and other contract documents for the construction of the work and that he accepts all the terms, conditions and stipulations contained therein; and that he is prepared to work in cooperation with other contractors performing work on the site.

Reference is made to contract documents for the identification of those surveys and investigation reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the work which has been relied upon by the designer in preparing the documents. The Town will make copies of all such surveys and reports available to the bidder upon request.

Each bidder may, at his own expense, make such additional surveys and investigations as he may deem necessary to determine his bid price for the performance of the work. Any on-site investigation shall be done at the convenience of the Town. Any reasonable request for access to the site will be honored by the Town.

ACCEPTANCE: Acceptance of this contract must be without qualifications. The Town hereby objects to and will not be bound by any different or additional terms and conditions contained in the acceptance unless each such different or additional term is expressly agreed to in writing by the Town. The contractor's action in (a) accepting this contract, (b) delivering materials, or (c) performing services called for hereunder shall constitute an acceptance of the terms and conditions below in this contract.

CONTRACTURAL RELATIONSHIP: Contractor shall perform the work described independently and not as an employee of the Town. The Town has no right to supervise, direct, or control the Contractor or the Contractor's officers or employees in the means, methods, or details of the work to be performed by Contractor. The Town and Contractor agree that Contractor will take proper care and precautions to ensure the safety of Contractor's officers, employees, and subcontractors.

PAYMENT TERMS: Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The final payment of retained amount due the Contractor on account of the contract shall not become due until the Contractor has furnished to the Town an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the contractor in connection with this contract. If the contractor cannot obtain similar affidavits from subcontractors to protect the contractor and the owner from possible liens or claims against the subcontractor, the contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of the Contractor's knowledge, and if any appear afterward, the contractor shall save the owner harmless.

ASSIGNMENT: No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted.

INSPECTION: The Town reserves the right to inspect the equipment/item, or facilities of a prospective Contractor prior to a contract award, and during the contract term as necessary for the Town to determine that such equipment, or facility conforms to the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.

INSURANCE: All insurance requirements applicable shall be fulfilled prior to the issuance of this Contract. Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall always comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract. The contractor is responsible for keeping the required insurance current until the contract term is complete.

During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract.

As a minimum, the contractor shall provide and maintain the following coverage and limits:

a. **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.

b. **Commercial General Liability** - Contractor shall maintain Commercial General Liability insurance, including coverage for products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than \$1,000,000.00 per occurrence, and \$1,000,000.00 annual aggregate. The limits may be satisfied by a combination of primary and excess insurance. The coverage shall be written on an occurrence basis. Defense costs shall be in excess of the limit of liability.

c. **Automobile** - At all times while the Contractor's representatives are conducting on-site work, the Contractor shall maintain Business Auto insurance for any owned, hired, rented, or borrowed vehicle with a limit of not less than \$1,000,000.00 per occurrence combined single limit for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance.

Certificate of Insurance shall be required of Contractor for but not limited to Commercial General Liability, Commercial Auto Liability, Workers Compensation, and Professional Liability Insurance, as determined necessary by the Town. Contractor agrees to provide complete copies of policies if requested. Failure of Contractor to provide timely evidence of insurance, or to place coverage with insurance, or to place coverage with insurance companies acceptable to the Town, shall be viewed as Contractor's delaying performance entitling the Town to all appropriate remedies under the law including termination of the contract.

Pineville shall be named as an additional insured under Contractor's automobile and general liability insurance. In the event of a loss arising out of or related to the Contractor's services performed under this Agreement, Contractor's Liability insurance shall be primary (pay first) with respect to any other insurance which may be available to the Town, regardless of how the "other insurance" provisions may read.

The workers compensation policy must contain a waiver of subrogation in favor of the Town.

The contractor shall be responsible for insuring all of his/her own personal property, improvements, and betterments.

PAYMENT AND CHANGES: The Town shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized on the contract or authorized by a duly approved amendment or change order, authorized in writing by the Town Manager, or his/her designated appointee. The Contractor shall submit an invoice to the Town after the product has shipped. The Town agrees to pay all approved invoices Net Thirty (30) days from the date received and approved.

TERMINATION FOR CONVENIENCE: The Town may terminate this contract at any time with five (5) days' notice in writing from the Town to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Town, become its property. If the contract is terminated by the Town as provided in this section, the Town shall pay for services satisfactorily completed by the Contractor, less payment or compensation previously made.

PERFORMANCE AND PAYMENT BOND: The Town requires performance bond or other acceptable alternative guarantees from each Contractor without expense to the Town. Each Contractor shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form bound by these specifications. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

If Contractor shall fail to fulfill in timely and proper manner the obligations under this contract, the Town shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under the contract prepared by the Contractor shall, at the option of the Town, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any acceptable work completed on such materials.

Notwithstanding, Contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of the contract, and the Town may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Town from such breach can be determined.

In case of default by the Contractor, the Town may procure the services necessary to complete performance hereunder from other sources and hold the Contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Contractor under this contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the Town may immediately cease doing business with the Contractor, immediately terminate this contract for cause, and may act to debar the Contractor from doing future business with the Town.

QUALITY CONTROL: Goods supplied as a result of this contract shall be subject to approval as to quality and must conform to the highest standard of manufacturing practice. Items found defective or not meeting

specifications shall be replaced at the Contractor's expense within a reasonable period. Payment for defective goods or goods failing to meet specifications is not due until 30 days after a satisfactory replacement has been made.

WARRANTY AND GUARANTEE: Contractor shall warrant that all items or services shall conform to the proposed specifications and all warranties as stated in the Town's Bid Documents and Specifications and shall be free from all defects in material, workmanship and title.

Contractor shall further unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work; and shall replace such defective materials or workmanship without cost to the Town.

Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The Contractor shall replace such defective equipment or materials, without cost to the Town, within the manufacturer's warranty period.

Additionally, the Town may bring an action for latent defects caused by the negligence of the Contractor which is hidden or not readily apparent to the Town at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

RISK OF LOSS: Risk of loss, damage, or destruction of materials covered by this contract, regardless of F.O.B. point, shall be and remain with the Contractor until the goods are delivered to the destination set out in the contract and accepted by the Town or Town's duly appointed designee.

DELIVERIES: Delivery shall not be made to any place other than the destination indicated on this contract.

CANCELLATIONS: The Town reserves the right to cancel contracts for failure on the part of the Contractor to deliver as promised, or within a reasonable time if no delivery commitment is made, unless acceptable notification of delay is given to the Town by the Contractor.

INDEMNIFICATION. To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the Town and its agents, officers and employees, from and against all charges that arise in any manner from, in connection with, or out of this contract as a result of the acts or omissions of the Contractor or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the negligence of the Town and its agents, officers or employees. In performing its duties under this section, the Contractor shall at its sole expense defend the Town of Pineville its agents, officers, and employees with legal counsel reasonably acceptable to the Town.

As used in this subsection "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney's fees, and amounts for alleged violations of any law, regulation, ordinance, rule, or order. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this transaction. This section is in addition to and should be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

CONFIDENTIALITY: Any Town information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Contractor under this contract shall be kept as confidential, used

only for the purpose(s) required to perform this contract and not divulged or made available to any individual or organization without the prior written approval of the Town.

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: The Contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.

APPLICABLE LAW AND VENUE: This transaction shall be deemed made in Mecklenburg County, North Carolina. This contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this purchase contract shall be the appropriate division of the North Carolina General Court of Justice, in Mecklenburg County.

ENTIRE AGREEMENT: This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. The RFP, any addenda thereto, and the Contractor's proposal are incorporated herein by reference as though set forth verbatim. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

AMENDMENTS: This contract may be amended only by written amendments duly executed by the Town and the Contractor.

WAIVER: The failure to enforce or the waiver by the Town of any right or of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

IMMUNITY: Notwithstanding any other term or provision in this contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of immunity that otherwise would be available to the Town under applicable law.

E-VERIFY: E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law, in accordance with NCGS 64-25. For any transaction that qualifies as a Formal Bid under North Carolina statutes, Contractor affirms compliance with state and federal laws related to E-Verify and agrees to attest to such with the E-Verify Affidavit.

INSTRUCTIONS TO ALL BIDDERS:

The Town of Pineville will receive bids to provide the services as specified in this Request for Proposals (RFP) for the project PAVING CONTRACT FY24 until:

DATE: Wednesday, September 6 2023, Time: 10:00 am

Bids must be submitted showing prices detailed on the Bid Sheet.
The bid response can be mailed to **PO Box 249 Pineville NC 28134**
or delivered to the Town Hall office located upstairs at **505 Main St Pineville NC 28134**.
The bid price should not include any sales or use taxes.

All bids shall be notarized. Bidders responding to this RFP are hereby notified that NC General Statutes relating to opening of bids will be observed in receiving bids and awarding contracts.

The Town of Pineville reserves the right to reject any or all bids.

This RFP and all Bidder responses are considered public information, except for trade secrets specifically identified in writing by the Bidder, which will be managed according to North Carolina State Statute or other laws. Any section of the Bidder's response package that is deemed to be a trade secret by the Bidder shall be submitted in a separate envelope clearly marked with:
"TRADE SECRET INFORMATION - DO NOT DISCLOSE."

Town of Pineville Paving Scope 2023-2024

Date September 6, 2023

1 Industrial Drive:	Length	Width LFT	FDR 10" 50#/SY	Mill Inch	Overlay Inch	Adj MH	Adj G	Adj W	Patching Sq. Ft.	Storm Inlet Adj.	Price Per Street
Railroad to Railroad FDR	4,362	(TBD)	YES	0	3	13	0	7	0	1	
											\$349,467.50

2 Industrial Drive:	Length LFT	Width LFT	FDR	Mill Inch	Overlay Inch	Adj MH	Adj G	Adj W	Patching Sq. Ft.	Storm Inlet Adj.	Price Per Street
Railroad to N. Polk Street Mill & Overlay	589	(TBD)	NO	1.5	1.5	1	0	2	300 Ton 6"	0	
											\$81,639.50

Total Project Price

\$ 431,107.00

- *FDR - 10 inches deep/with 50 lbs per sq. yard
- * Patching will be 6 inch in depth + overlay
- * Densities/Stripping/Thermoplastic Striping /Traffic Control/Mobilization should be included in quote
- * Mill: P=Profile L=Length D=Depth
- * (Speed Bump Specs.) 18-inch-wide base/3 inch high
- * Contractor responsible for contacting NCDOT and repair/replacement of traffic loops
- * Total Project Price to be lump sum price
- * TBD-Width determination is contractor's responsibility

DETAILS OF SERVICE:

Project will be completed by November 15, 2023.
Contractor responsible for all testing.

The undersigned, as the bidder, hereby declares that this bid is made without connection to any other person, company, or parties making a similar bid or proposal and that the bid is in all respects fair and in good faith, without collusion or fraud.

The bidder has carefully examined the specifications and instructions to bidders and hereby declares that bidder will furnish the equipment called for in the manner prescribed in the specifications and instructions to bidders for the following price:

Red Clay Industries
Name of Business Submitting Proposal
Jim Littleton, Vice President
Signature of Authorized Representative/Title
Jim Littleton
Print Name
P.O. Box 241689
Address
Charlotte, NC 28224

Print or Type Name: Jim Littleton
State of North Carolina County of Mecklenburg

Signed and sworn to (or affirmed) before me, this the 6th
day of September, 2023

My Commission Expires:

9/01/2026
Joseph L. Deaton
Notary Public

