



REQUEST FOR BIDS 700-FIN-2024-01

Bid Title: Landscaping Mulch

Notice is hereby given that the Town of Clayton is seeking sealed bids for furnishing and delivering, aged, double shredded Walnut Brown Designer Mulch, to Town of Clayton locations. Prices quoted shall be firm for a period of not less than 60 days. This solicitation does not commit the Town of Clayton to award a contract, to pay any costs incurred in the preparation of applications submitted, or to procure or contract for the services.

Bids will be accepted until Tuesday September 26, 2023 at 2:00 PM(EDT)

Bids should be addressed to:

Town of Clayton – Procurement Division
Attn: Derryel Anderson – Procurement Analyst

Hand-Deliver/UPS/FedEx: 111 East Second Street, 3rd floor, Clayton, NC 27620

or Mail to: PO Box 879, Clayton, NC 27528

*** UPS and FedEx will not deliver to a PO Box ***

The responsibility for submitting a response to this Bid at the Town of Clayton, Procurement Division on or before the stipulated time and date will be solely and strictly the responsibility of the bidder. Any bids received after the stipulated time and date will not be accepted, nor opened, and will be returned. The time clock located in the Procurement Division shall be the official time of receipt.

POSITIVELY NO BIDS CONSIDERED UNLESS SUBMITTED ON THIS DOCUMENT

Do the products submitted for bid meet the specifications listed herein? ☐ YES ☐ NO

COMPANY: _____ DATE: _____

AUTHORIZED SIGNATURE: _____ TITLE: _____



**TOWN OF CLAYTON
BIDDERS SIGNATURE PAGE**

DATE: _____

NOTICE TO BIDDERS: Do not include taxes in your bid pricing. All tax imposed upon any article on which you are bidding are only to be shown as separate line items on invoices, and in no case are taxes to be included with your bid price. Failure to comply with these conditions will be considered grounds for rejection.

In compliance with the above request for bids and subject to all the conditions thereof, the undersigned offers and agrees, if this bid be accepted within _____ days from the date of the opening, to furnish any or all the items upon which prices are quoted at the price set opposite each item within _____ days after receipt of order, unless otherwise specified.

COMPANY: _____ ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

AUTHORIZED SIGNATURE: _____ TITLE: _____

NAME PRINTED OR TYPED: _____

CONTACT NAME (if different than above): _____

TELEPHONE NO.: _____ EMAIL: _____

BIDDER'S CHECKLIST

- ☐ Be aware of the bid's opening date and time as indicated on the first page of this bid.
- ☐ You must submit a **sealed bid in hard copy format**. Ensure your bid is properly addressed and clearly marked with the appropriate bid number.
- ☐ All signatures must be by a company officer or agent who is authorized to enter and sign bid documents.
- ☐ Have you read and understood the "Terms and Conditions" and the "Instructions to Bidders" for submitting a bid to the Town?
- ☐ Have you read and do you completely understand all the specifications of this bid?
- ☐ Have you submitted the requested number of copies of your bid and included all the requested literature and specifications?
- ☐ Have you signed the enclosed Non-Discrimination Assurances statement?
- ☐ If an addendum to the specifications was issued, has it been signed and returned with this bid?
- ☐ Have you enclosed statements explaining any exceptions made to the specifications?



TOWN OF CLAYTON
NON-DISCRIMINATION ASSURANCES

To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner based on race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract. This provision is hereby incorporated into this Contract for the benefit of the Town of Clayton and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

SIGNATURE: _____
(President/Authorized Officer)

TITLE: _____ DATE: _____



TOWN OF CLAYTON INSTRUCTIONS TO BIDDERS

1. **PURPOSE:**

The purpose of this document is to provide general and specific information for the use by vendors in submitting a bid to supply the Town of Clayton with apparatus, supplies, material, and equipment, and /or services listed above. All bids and contracts are governed by Town of Clayton policy, and /or by Section 143-129 of the North Carolina General Statutes.

2. **BID SCHEDULE:**

Listed below are the dates and times by which stated actions must be taken or completed. The Town may determine, in its sole discretion, that it is necessary to change any of these dates and times. All listed times are Eastern standard times.

Action	Date	Time
Bid issued	September 12, 2023	N/A
Pre-Bid Conference	N/A	N/A
Deadline for Questions	September 21, 2023	End of Business
Bids Due	September 26, 2023	2:00
Anticipated Award	October 4, 2023	End of Business

3. **BIDDER QUESTIONS:**

The Town of Clayton is not liable for interpretations/misinterpretations or other errors, or omissions made by the Bidder in responding to this bid. The Bidder shall examine this bid to determine if the Town of Clayton's requirements and terms and conditions are clearly stated. If, after examination of the various requirements and terms and conditions of this bid, the Bidder believes there are any requirements or terms and conditions which remain unclear or which restrict competition, the Bidder may request, in writing, that the Town clarify the requirement(s) and terms(s) and condition(s) specified by the Bidder. The Bidder must provide the Section(s), Subsection(s), Paragraph(s), and page number(s) that identify the requirements or conditions questioned by the Bidder.

Requests for clarification and technical questions regarding this bid must be received by the Town not later than the date shown above in Section 2, entitled "Bid Schedule", for the submittal of written inquiries. The Bidders' failure to request clarification and submit questions by the date in the bid schedule above shall be considered to constitute the Bidders' acceptance of all Town's requirements and terms and conditions. The Town shall issue addenda reflecting questions and answers to this bid, if any, and shall be posted to the eVP website at [NC Electronic Vendor Portal](#).

4. **BID CONTACT:**

All questions, concerns, or request for additional information shall be directed to the Town of Clayton, Procurement Division to the attention of the Bid Agent as indicated below:

Bid Agent: Derryel Anderson, Procurement Technician
danderson@townofclaytonnc.org

5. **HOW TO PREPARE BIDS:**

Bidders are encouraged to carefully review all provisions and attachments of this document prior to completion. Each bid constitutes an offer and may not be withdrawn except as provided herein. Also, prices are to remain firm for the period stated herein.

- a. **BID FORM:** Submit all prices and offers on the **BID FORM(s)** provided herein. All bids must be submitted and signed by the vendor or their authorized representative with all erasures or corrections initialed and dated by the authorized representative of the bid.

- b. **SIGNATURE:** All bids must be signed by an authorized official of the company on the Bidders Signature Page. A bid may be rejected if it shows omissions, alterations of form, additions not called for, conditional bid, or any irregularities.
- c. **TAXES:** Do not include taxes in your bid prices. Taxes must be itemized and added to invoices separately when invoicing the Town. The Town is required to pay sales tax. The Town is exempt from Federal Excise Tax and has a Federal Tax number.
- d. **NON-DISCRIMINATION:** The **NON-DISCRIMINATION ASSURANCES** form included in the bid package is a condition of the bid and must be completed and signed by the bidder.
- e. **MWBE POLICY:** Pursuant to General Statutes of North Carolina Sections 143-128 and 143-131 and, the Town of Clayton encourages and provides equal opportunity for Certified Minority and Women-Owned Business Enterprise (MWBE) businesses to participate in all aspects of the Town's contracting and procurement programs.
- f. **SUSTAINABILITY:** The Town has a commitment to promoting green practices that will promote an environmentally safe and desirable community for future generations. As such, we recognize our responsibility to minimize negative impacts on human health and the environment while supporting a diverse, equitable, and vibrant community and economy. The Town recognizes that the types of products and services the Town buys have inherent social, human health, environmental and economic impacts, and asks that all vendors and bidders providing and proposing products and services to the Town, be mindful of the Town's commitment to sustainability and provide and propose products and services that embody this commitment whenever possible.

6. **HOW TO SUBMIT BIDS:**

- a. **SUBMIT SEALED BIDS ON THE BID FORM PROVIDED HEREIN.**
- b. **Provide (2) complete sets of your bid on the BID FORM PROVIDED HEREIN in hard copy paper format, on 8-1/2" x 11" size paper, only bound with a single staple in the upper left corner or with a single removable clip—no 3-ring binders) and must be SEALED in an envelope. NO EMAIL OR FAX BIDS WILL BE ACCEPTED.** All Formal Bids (estimated to be greater than \$90,000) must be submitted in a sealed opaque envelope, plainly marked with the bid number, and date and time to be opened as shown below.
- c. All bids must be mailed or delivered as follows in sufficient time to ensure receipt by the Procurement Manager or Bid Agent on or before the time and the date specified on the Bid Form. Bids not received by the time and date specified on the Bid Form will not be opened or considered, unless the delay is a result of the negligence of the Town of Clayton, its agents, or assigns.

Mailing Address:
Town of Clayton
Bid#_____ Date:_____ Time:_____
Procurement Division
PO Box 879
Clayton, NC 27620

Delivery Address:
Town of Clayton
Bid#_____ Date:_____ Time:_____
Procurement Division
111 East Second Street, 3rd Floor
Clayton, NC 27620

7. **BID OPENING:**

- a. All bids will be opened and read at the time and place shown on the enclosed Bid Form. No official award will be made at the Bid Opening. All bidders are welcome to attend the bid opening. **LATE BIDS WILL NOT BE OPENED OR ACCEPTED.**
- b. Bidders may not review or request copies of bids at the Bid Opening. A time must be scheduled to meet with the Procurement Manager and/or Bid Agent for this purpose.
- c. Bids will be examined by the Procurement Manager and/or Bid Agent and the using department officials promptly after the opening and an award made as soon as possible. No bids may be withdrawn after bid opening.

8. **AWARD OF BID:**

- a. **Standard of Bid Award Acceptance:** The Town of Clayton reserves the right to reject any or all bids and to waive any irregularities or technicalities in bids received whenever such rejection or waiver is in the best interest of the Town of Clayton. The award shall be made on a basis to the lowest, responsive, responsible bidder, or bidders, taking into consideration quality, performance and the time specified in the bid for the performance of the contract.
- b. **Bid Prices:** All items and products proposed in response to this Bid are to be new, in un-used condition unless otherwise noted in the Minimum Specifications. All prices proposed in response to this Bid are to include all transport, freight, and fuel surcharges, and be delivered **FOB destination, freight prepaid and allowed** to the location provided on the Town Purchase Order. All items are to be packaged, and shipped or delivered safely in a protective carton, fully assembled, and serviced, ready for use and operation. Bidders must submit product literature and manufacturer's specifications with their bid. All supplies, equipment, and apparatus must meet all Federal, State, and Local safety regulations, requirements, and guidelines, such as OSHA, EPA, US DOT, NC-DOT, NFPA, UL, etc., if so regulated.
- c. **Order of Precedence:** In cases of conflict between sections and provisions within the Bid document, the Order of Precedence will be 1) the Special Conditions section specific to the Bid; 2) the Minimum Specifications section specific to the Bid, 3) the Town of Clayton Terms and Conditions; and 4) the Instructions to Bidders section of the Bid document.
- d. **Payment Terms:** Payment terms of Net 30 days from the date of receipt of invoice, or upon acceptance of goods whichever is later, will apply to all invoices. Payment term discounts will be allowed for prompt payments but will not be a consideration for award. All invoices are to be emailed to invoice@townofclaytonnc.gov or delivered to **Town of Clayton, Accounts Payable Division, PO Box 879, Clayton, NC 27512.**
- e. **Bid Award Approval:** The Town Manager has delegated authority from the Town Council to award bids for supplies, equipment, and apparatus greater than \$90,000. Bids will be approved and awarded by the Town Manager upon the recommendation by the Procurement Manager.

9. **OBJECTION TO THE SPECIFICATIONS:**

It is not the intent of the bid specifications to exclude or limit competition or favor any vendor or product. If there is an objection to any of the specifications or requirements listed herein, the bidder must notify the Town of Clayton Procurement Manager, in writing, stating, and listing the specifications and objections, no later than five (5) working days prior to the bid opening date. If a pre-bid meeting has been scheduled, any objections must be presented in writing at that time. The objections stated must pertain both to the form and substance of the bid document. Failure to object in accordance with the above procedure shall constitute a waiver on the part of the bidder to protest the solicitation. All concerns, questions, clarifications, or other correspondence must be directed only to the Town of Clayton Procurement Manager. Information obtained from other sources will not be considered in the evaluation and award of this bid.

10. **SUBMITTING A PROTEST TO THE BID AWARD:**

A Bidder wishing to express a concern or complaint, and file a protest to a Bid Award, must submit in writing the reasons, information, and documentation for the protest, to the Procurement Manager within 48 hours (two business days) from the date of the Notice of Intent to Award. In the event of a protest, the Procurement Manager will notify the Finance Director and the Town Manager of the protest and provide the information for both the recommended award and the protest. The Town Manager will make a final decision for the bid award. The protesting bidder may appeal the decision to the Town Council.

11. **FAILURE TO BID:**

If the bid is not submitted, the bidder should return the attached "NO BID RESPONSE" sheet, stating the reasons therefore, and indicate whether the business should be retained or removed from the Town's Bidder's list.

12. **ERRORS IN BIDS:**

Bidders or their authorized representatives are expected to understand the conditions, requirements, and specifications before submitting bids. Failure to do so will be at the bidders own risk. In case of an error in the extension of prices on the bid, the unit price shall govern.

13. **ALTERNATE BIDS:**

DO NOT submit alternate bids unless called for on the bid form. Alternate bids are those that are not identical by manufacturer and model to what is specified or have substantially different specifications. When alternate bids are requested, the bidder must submit documentation as a part of the bid to show that the product is comparable to the item(s) referred to in the specifications. Bidders may submit multiple bids on various manufacturers' brands/models meeting specifications if no specific manufacturer/model has been specified.

14. **BID OPTIONS:**

The Town reserves the right to request pricing on optional equipment or additional items along with the pricing for the main or primary product or items. At the discretion of the Town, some or all the options requested may or may not be added and purchased based upon necessity and the availability of budgeted funds. The Bid Award will be made to the lowest responsible bidder for the main or primary product or items listed on the Bid Form. Pricing for any additional options will be requested in a separate section of the bid and will not be included in the determination of the Bid Award.

15. **QUANTITIES:**

The Town of Clayton reserves the right to adjust quantities as needed, and to add additional items and/or products as needed, as determined to be in the best interest of the Town. The quantities stated herein, for term or multi-year contracts are estimated, and may change to be less or more over the term of the contract.

16. **PRICE ADJUSTMENTS:**

For Bids with fixed price contract periods, it is the **Town's** intent to contract at a fixed price for a period of one (1) year, with an option to extend the contract for three (3) additional one (1) year periods. The price proposed by the Bidder is to remain fixed for the first 1-year (12-month) period of the contract.

Any requested price increase must be fully documented and submitted to the Bid Agent or the Procurement Manager at least sixty (60) days prior to the bid contract expiration date. Any approved price adjustment (increase or decrease) will then become effective beginning the next term period.

Any price increase or decrease will be adjusted to the latest yearly percentage increase in the All-Urban Consumers Price Index (CPI-U) (National) as published by the Bureau of Labor Statistics, U.S. Dept. of Labor, or other appropriate agreed upon price index. The Town reserves the right to accept or to refuse any documented price adjustment submitted by the vendor/bidder for any reason as determined to be in the best interest of the Town.

18. **TRADE SECRETS:**

This Bid document and all Bidders' responses and bids received are considered public information, except for trade secrets specifically identified in writing by the Bidder, which will be handled according to 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 an envelope clearly marked "**TRADE SECRET INFORMATION- DO NOT DISCLOSE.**" The Town shall make a good faith effort to protect such confidential information.

19. **BID TABULATIONS:**

Bidders wishing to obtain a bid tabulation prior to the award of the bid may view and download tabulations from the North Carolina Electronic Vendor Portal (eVP) website at [North Carolina Electronic Vendor Portal](#). Tabulations should be posted within 48 hours (two workdays) after the public bid opening. Enter the desired bid number and select Search. Bid tabulations only reflect the bids as read at the time of the bid opening and should not be considered an award. It is the Town's policy to furnish bid tabulations to all bidders.

20. **TERMS AND CONDITIONS:**

Acceptance of the Town's Purchase Order includes acceptance of all applicable Terms and Conditions. The Town's Purchase Order Terms & Conditions are provided below for your information.



TOWN OF CLAYTON PURCHASE ORDER TERMS & CONDITIONS

10/12/2021

1. **Vendor quotes or proposals are referenced for scope only.** Town of Clayton Purchase Order Terms & Conditions exclusively governs this purchase.
2. All invoices are to be sent by email to: invoice@townofclaytonnc.org. Or mail or deliver all invoices to the **Town of Clayton, Accounts Payable, PO Box 879, Clayton, NC 27528.**
3. **Important: All invoices must include a unique invoice number and this Purchase Order number.** Invoices submitted without the unique invoice number or without the correct purchase order number will result in delayed payment.
4. Invoices for partial deliveries must be indicated as such.
5. The Vendor must provide separate invoices for each Purchase Order number.
6. **Town of Clayton is not exempt from North Carolina State Sales Tax, Wake County Sales Tax, and Wake County Prepared Meals and Hotel Room Taxes.** These taxes must be correctly invoiced to the Town for payment. Taxes shown on the purchase order are approximate.
7. The Town of Clayton is exempt from Federal Excise Tax. If any form of such tax is billed on the invoice, it must be shown as a separate item. Tax Exemption Certificates will be furnished upon request.
8. Payment term discounts will be deducted as provided for on the front of this Purchase Order or in accordance with the terms of your official quotation or bid. **Net purchases will be paid 30 days from the date of your invoice, or upon acceptance of goods whichever is later.**
9. **Important: All packages must bear the correct Purchase Order number on the outside of each package or shipping container.**
10. The Town of Clayton will not be responsible for any goods delivered without a Purchase Order having been issued.
11. The conditions of this order cannot be modified except by written amendment in the form of a "Corrected Purchase Order" which has been approved by the Town of Clayton's Purchasing Manager.
12. Any rejected materials will be returned to the Vendor at the Vendor's risk and expense.
13. In the event of a vendor's failure to deliver or perform as specified, the reserves the right to cancel the order or any part thereof, without prejudice to its other rights. The Vendor agrees that the Town may return part or all of any shipment and may charge the vendor with all reasonable losses or expenses sustained as a result of such failure to deliver or perform.
14. In case of default of the bidder, the Town may procure the articles or services from other sources and charge the Vendor damages for any excess costs or other damages caused by the default.
15. It is agreed that the goods, materials, equipment or services provided shall comply with all Federal, State or local laws, and that the Vendor shall defend actions or claims brought, and save harmless the Town, and/or its officials or employees, from loss, cost or damage by reason of actual or alleged failure to comply with such laws.
16. All prices must be F.O.B. Destination and delivered to the destination indicated on the front of the purchase order. Where specific purchase is quoted or negotiated F.O.B. Shipping Point, the vendor is to prepay the shipping charges and add them to the invoice.
17. The risk of loss and damage to the goods which are the subject of this order shall be the Vendor's until the goods are delivered to the destination set out in the order and accepted by the purchaser or its representative.
18. The Vendor acknowledges that it is the policy of the Town of Clayton to avoid commercial promotion of products used by the Town or the vendors of such products. The Vendor accordingly agrees not to solicit, use, or disseminate commercial advertisement founded upon the Town's purchase and/or use of the goods which are the subject of this order, and specifically agrees not to seek or use for advertising purposes the endorsement of goods or products by Town officers or employees.
19. The Town may, at any time, insist upon strict compliance with these terms and conditions, notwithstanding any previous customer, practice or course of dealing to the contrary. **Acceptance of the order includes acceptance of all terms, conditions, prices, delivery instructions and specifications as shown on this order or attached to and made a part of this order.**
20. All matters relating to this Purchase Order shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.
21. Notwithstanding any other provisions of this Purchase Order, this Purchase Order and all materials submitted to the Town by the Vendor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Vendor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the Town. Vendor understands and agrees that the Town may take all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Purchase Order. To the extent that any other provisions of this Purchase Order conflict with this paragraph, the provisions of this section shall control.

22. **Non-discrimination** - To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner based on race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract. The parties further agree, to the extent permitted by law, to conform with the provisions and intent of Town of Clayton Ordinance 1969-889, as amended. This provision is hereby incorporated into this Contract for the benefit of the Town of Clayton and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.
23. **Insurance** – If performing services under this Purchase Order the Vendor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Purchase Order the following coverages and limits. The requirements contained herein, as well as Town’s review or acceptance of insurance maintained by Vendor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Purchase Order:
- a. **Workers’ Compensation Insurance** - Vendor agrees to maintain Worker’s Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with limits of no less than \$1,000,000 each accident, each employee and policy limit.
 - b. **Commercial General Liability** - Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
 - c. **Commercial Automobile Liability** - Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Vendor does not own automobiles, Vendor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Purchase Order and/or are brought on a COR site.
 - d. **Additional Insured** - Vendor agrees to endorse the Town as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘Town of Clayton as its interest may appear’.
 - e. **Umbrella or Excess Liability** - Vendor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Vendor agrees to endorse Town of Clayton as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.
 - f. **Professional Liability** - Limits of no less than \$1,000,000 each claim. This coverage is only necessary for professional services such as engineering, architecture or when otherwise required by the Town.
The Town reserves the right to require a Certificate of Insurance meeting the minimum coverage and requirements of this section. Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Vendor’s insurer. If Vendor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Vendor agrees to notify the Town within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The certificate holder address should read: Town of Clayton
PO Box 879, Clayton, NC 27528
All insurance companies must be authorized to do business in North Carolina and be acceptable to the Town of Clayton.
24. **Indemnity** – To the fullest extent permitted by law, except to the extent caused by the sole negligence or willful misconduct of the Town, the Vendor shall indemnify and hold and save the Town, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Purchase Order, and from any and all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this Purchase Order. This representation and warranty shall survive the termination or expiration of this Purchase Order. The Vendor shall indemnify and hold and save the Town, its officers, agents and employees, harmless from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Purchase Order.
25. **Intellectual Property** - All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of services under this Purchase Order shall be the property of the Town. Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Vendor’s performance of services under this Purchase Order shall vest in the Town. Works of authorship and contributions to works of authorship created by the Vendor’s performance of services under this Purchase Order are hereby agreed to be ‘works made for hire’ within the meaning of 17 U.S.C. 201.
26. **Force Majeure** - Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Purchase Order, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Purchase Order must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Purchase Order by this provision.

27. **Cancellation** - The Town may terminate this Purchase Order at any time by providing written notice to the Vendor. Vendor shall cease performance immediately upon receipt of such notice. In the event of early termination, Vendor shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the Town. Notwithstanding the foregoing, in no event will the total amount due to Vendor under this section exceed the total amount due Vendor under this Purchase Order.
28. **Miscellaneous** - The Vendor shall be responsible for the proper custody and care of any property furnished or purchased by the Town for use in connection with the performance of this Purchase Order and will reimburse the Town for the replacement value of its loss or damage. The Vendor shall be an Independent Bidder and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Purchase Order. Such employees shall not be employees of or have any individual contractual relationship with the Town.
29. **E-Verify** - I understand that 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 et seq. I am aware of and in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. To the best of my knowledge, any subbidders employed by me as a part of this contract are following the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes.
30. **Iran Divestment Act Certification** – Bidder certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, *et seq.* In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, Bidder shall not utilize in the performance of the contract any subbidder that is identified on the Final Divestment List.
31. **Companies Boycotting Israel Divestment Act Certification** - Bidder certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

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MINIMUM SPECIFICATIONS

1. GENERAL:

DEFECTIVE MATERIALS

- a. All materials furnished hereunder shall be subject to the inspection, tests, and approval of the town, and the vendor shall furnish all information required concerning the nature and source of any materials.
- b. The bidder must guarantee materials and workmanship against defects due to faulty materials or faulty workmanship or negligence for a minimum period of 12 months following acceptance of materials and or completion of work. Bidder must make good on such defective materials or workmanship and any damage resulting therefrom without cost to the Town of Clayton.
- c. The materials and equipment furnished hereunder shall become the property of the Town when delivered at the point to which shipment is to be made, provided, however, that the Town may reject any such materials and equipment that do not comply with the specifications for materials and equipment and warranties of the bidder and manufacturers. Recognition and subsequent rejection of any defective materials and equipment may occur either before or after incorporation of such materials and equipment within one (1) year of the date of delivery of the materials and equipment. Upon any such rejection, the bidder shall replace the rejected materials and equipment with materials and equipment complying with the specifications for materials, equipment, and warranties, f.o.b. truck at suitable destination. The Town shall return the rejected materials, f.o.b. truck at the same destination. In the event of the failure of the bidder to so replace rejected materials and equipment, the town may make such replacement and the cost and expense thereof shall be paid by and recoverable from the bidder.

2. BID SPECIFICATION COMPLETION INSTRUCTIONS:

All text fields or blanks must be complete in the returned bid specifications. **Failure to complete this information will indicate a non-responsive bid.**

MEETS OR EXCEEDS SPECIFICATIONS:

3. Please check the appropriate "YES" ☐ or "NO" ☐ box in the right column, or where requested, indicating that the items bid do meet or do not meet the specification as written. Checking the "NO" field indicates that the bidder does not meet the specification as requested and is taking an exception. All exceptions must be explained in detail as per below.

4. EXCEPTIONS TAKEN TO SPECIFICATIONS:

Bidders must clearly note any, and all exceptions taken to the specifications as an attachment. The specifications were not written to intentionally eliminate any one bidder, but to be used as a guide for the size and quality of the equipment requested. In some instances, a particular manufacturer and model may be specified with or without an approved equal. It is noted that different manufacturers will have differences in engineering and design of equipment. Bidders must note these differences as an "Exception" and attach detail information explaining how the exception is "equal to" or "exceeds" the intent of the specification. All exceptions and items submitted as an equal will be evaluated. The Town reserves the right to reject all bids and to waive any irregularities or technicalities in bids received whenever such rejection or waiver is in the best interest of the Town of Clayton. All Exceptions taken to the specifications by checking the "NO" field must be explained in detail on an attached sheet and submitted with your bid.

5. BID SPECIFICATION COMPLETION INSTRUCTIONS:

If requested, please complete and fill-in any text fields (or blanks) such as _____, as indicated within the specifications below. These text fields have been inserted into the specifications for bidders to respond to specific requests for information. All text fields or blanks must be complete in the returned bid specifications. **Failure to complete this information will indicate a non-responsive bid.**

6. ALTERNATES OR EXCEPTIONS TO SPECIFICATIONS:

Any alternates or exceptions to the specifications herein must be clearly noted within the submitted bid or attached on a separate sheet to the bid.

These specifications were not written to intentionally eliminate any one bidder, but to be used as a guide for the quality of the product requested. In some instances, a manufacturer and may be specified with or without an approved equal.

Bidders must note any differences as an "Exception" and attach detailed information explaining how the exception is "equal to" or "exceeds" the intent of the specification. All exceptions and items submitted as an equal will be evaluated.

7. BID AWARD AND CONTRACT TERM OPTIONS:

The Town intends to award a Contract to a single Vendor for all line items. The Town reserves the right to make separate awards to different Vendors for one or more-line items, to not award any portion of the goods or services or to cancel this IFB in its entirety without awarding a contract, if it is most advantageous to the Town to do so, to the lowest responsive responsible bidder for each item listed on the Bid Form. The Town reserves the right to award some or all the Items within the Bid, or any combination of the Items, as determined to be in the best interest of the Town. Bidders are not required to submit pricing for all the Items listed on the Bid Form.

8. QUANTITY:

The Town reserves the right to order the quantity of products as required for the operations of the Town.

9. REGULATORY REQUIREMENTS:

All products/items, supplies, equipment, and apparatus must meet all Federal, State, and Local safety regulations, specifications, requirements, and guidelines. All equipment and materials covered by these specifications and all tests applied thereto shall, unless otherwise stated herein, be in accordance with the applicable provisions of the latest editions of the standards of the A.S.T.M., A.N.S.I., A.E.I.C., N.E.M.A., I.P.C.E.A., and I.E.E.E.

10. INSURANCE REQUIREMENTS:

- a.** The bidder must provide a Certificate of Insurance with their bid submittal as evidence of a minimum of \$5,000,000 Liability coverage: for General and Environmental liability.

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SCOPE OF MATERIALS

Landscaping Mulch rejected by the Town of Clayton for defects and/or non-adherence to specifications shall be returned to the vendor freight collect for a full refund.

1. SPECIFICATIONS

- a. The initial term of the Agreement shall be for one (1) year. The Town reserves the right to extend the Agreement if the Town determines the extension is in its best interest; said extension will be on an annual basis and shall not exceed two (2) additional one (1) year periods.
- b. The selected bidder shall furnish and apply approximately 875 cubic yards of aged, double shredded Walnut Brown Designer Mulch in specified areas at 11 sites (Attachment A) throughout the Town of Clayton.
- c. The selected bidder will obtain all requisite permits prior to beginning work.
- d. The selected bidder is required to provide all labor, materials, equipment, and supervision necessary for furnishing and delivery of aged, double shredded Walnut Brown Designer Mulch for Town of Clayton.
- e. The mulch should be clean and free of dirt, weeds and other foreign materials and be a consistent color from one delivery to the next. A Town of Clayton representative will call the selected bidder when mulch is required. no guarantees.
- f. Successful bidder will furnish certifications or be able to demonstrate that all measuring or metering equipment regarding the amount of mulch being applied to the ground by a specific device has been inspected, calibrated and is accurate. The successful bidder will provide estimates of the mulch used at each site within contract parameters prior to beginning work.
- g. Quantities of mulch provided on Attachment A are estimates. The actual orders may be less or more depending on the needs of the Town. The Town of Clayton reserves the right to consider the delivery time offered as a factor in the award of this bid.

2. DELIVERY

- a. Mulch is to be applied with a truck containing mulch blowing apparatus no deeper than two inches over existing mulch layer.
- b. The selected bidder will be required to complete delivery within 72 hours after being contacted.
- c. The mulch ordered will be delivered to specified sites throughout the Town of Clayton. The locations as provided in Attachment A.
- d. Any delivery of material not meeting Town specifications and requirements may be rejected at bidders' expense.
- e. The selected bidder must be able to supply their own inventory as stockpiling deliveries on Town property will not be permitted.

- f. All dust and debris from application operations will be removed immediately following application and before leaving site.

3. **SAMPLES**

Samples of items being offered are required with the bid response. Samples shall be furnished, free of expense, and if not destroyed will, upon request, be returned at the Vendor's expense. A written request for return shall be made no later than thirty (30) days after the bid award, and Vendor shall provide a prepaid, pre-addressed shipping label suitable for return of the sample(s). Otherwise, the samples shall become the Town's property to be used or disposed of at the Town's discretion. Each individual sample shall be labeled with the Vendor's name, bid number, and item number. A sample on which an award is made will be retained until the contract is completed, and then returned, if requested as specified above. Bids which do not comply with the sample requirements will be rejected. In addition, periodically a sample of the items will be required from the awarded bidder to determine if the items meet the Town requirements and specifications. These will be provided at no cost to the Town.

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PRICING AND DELIVERY

1. Blown Landscaping Mulch

Aged, double shredded Walnut Brown Designer Mulch.

ITEM 1 PRICING

Price, per cubic yard, blown-in, walnut-dyed, hardwood mulch:

Per Cu. Yd. \$ _____

Labor:

Price Per Hour \$ _____

Delivery:

Price Per delivery \$ _____

If applicable: Minimum Cu. Yds. per delivery: _____

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REFERENCES

Provide at least three (3) references, for which your company has provided goods and services of substantially the same features and quantity as those solicited herein. References shall be checked during the evaluation period to determine that the goods provided are substantially like those bid for herein and that the vendor's performance has been satisfactory. Information obtained will be considered in evaluation of the bids. Bidders are cautioned to provide accurate information. Misleading information presented in the references may result in a rejection of the proposal.

1. Agency or Company Name: _____

Business Address: _____

Contact Person: _____

Contact Telephone Number: _____

Contact E-Mail Address: _____

2. Agency or Company Name: _____

Business Address: _____

Contact Person: _____

Contact Telephone Number: _____

Contact E-Mail Address: _____

3. Agency or Company Name: _____

Business Address: _____

Contact Person: _____

Contact Telephone Number: _____

Contact E-Mail Address: _____



CONTACT INFORMATION

Please provide (use to specify additional contacts other than the bidder's information above) contact information below (see Specification or Requirement #, page). Bidders must provide the contact information below (list of reason additional information is needed).

Manufacturer Name: _____

Location Address: _____

Mailing Address (if different than above): _____

Town: _____

State: _____ Zip Code: _____

Primary Contact's Name: _____

Title/Position: _____

Office Phone Number: _____ Fax Number: _____

Cell/Mobile Phone Number: _____

E-Mail Address: _____

Secondary Contact's Name: _____

Title/Position: _____

Office Phone Number: _____ Fax Number: _____

Cell/Mobile Phone Number: _____

E-Mail Address: _____



“NO BID” RESPONSE

If you are not submitting a bid, please complete this form and email it to danderson@townofclaytonnc.org as soon as possible. This information will help the Town understand why you are unable to submit a bid and help identify if changes are necessary to the bid document and/or the specifications for future bids. Please indicate below whether you wish to remain on the Town of Clayton’s Bidders list for this item(s). Please check all that apply.

- ☐ Cannot meet specifications as written.
- ☐ Did not have enough time to prepare for a bid.
- ☐ Did not have enough time to acquire Bid Bond (only if required).
- ☐ Bid was emailed to wrong address, person, or location.
- ☐ Company does not provide Bid Bonds (only if required)
- ☐ The company does not sell or distribute the item(s) included in this bid.
- ☐ The company does not sell direct to end users.
- ☐ The company cannot sell in a protected area where another distributor has exclusive sales rights.
- ☐ Do not agree with the Town of Clayton’s “Terms and Conditions.”
- ☐ Do not agree with the Town of Clayton’s Non-Discrimination Policy
- ☐ Do not feel the company can offer a competitive price for what is being specified.
- ☐ Other: Please explain: _____
- ☐ Please keep us on your Bidder’s List
- ☐ **PLEASE REMOVE** us from your Bidder’s List for this item.

BID NO: _____ BID NAME: _____

COMPANY NAME: _____ DATE: _____

CONTACT NAME: _____ TITLE: _____

TELEPHONE NO.: _____ EMAIL: _____



ATTACHMENT A

TOWN OF CLAYTON LOCATIONS:

The locations below are areas located on Town of Clayton property that will receive aged, double shredded Walnut Brown Designer Mulch throughout the year. The amount of mulch will be determined on a quarterly basis by Town Facilities and Maintenance Staff.

LOCATION	ADDRESS	ESTIMATED CUBIC YARDS
Town Hall	111 East 2 nd Street	100
Town Square	100 West Main Street	50
Horne Square	348 East Main Street	40
Police Department	315 East 2 nd Street	30
Library	100 South Church Street	20
Operation	653 NC-42	30
Fire Station 1	325 West Horne Street	80
Fire Station 2	800 NC-42	50
Municipal Park	325 McCuller Street	250
East Clayton Community Park	1075 Amelia Church Road	150
Sinclair/Claytin Community Center/Legend/Trails, etc.	Various Location (will be determined in detail with successful bidder)	75