

Staff Summary Report

Council Meeting Date: 07-22-2008

Agenda Item Number: _____

SUBJECT: Request to award a three-year contract with two, one-year renewal options to International Soil Technologies, LLC for a dust control compound to be used on unpaved road surfaces and open areas.

DOCUMENT NAME: 20080722fstal1 **PURCHASES (1004-01)**

SUPPORTING DOCS: Yes

COMMENTS: (RFP #08-144) Total cost for this contract shall not exceed \$250,000 during the initial contract period.

PREPARED BY: Tony Allen, Procurement Officer, 480-350-8548

REVIEWED BY: Michael Greene, CPM, Central Services Administrator, 480-350-8516
Glenn Kephart, Public Works Manager, 480-350-8205
John Osgood, Field Operations Manger, 480-350-8949
Denise Brewer, Street Maintenance Superintendent, 480-350-8409

**LEGAL REVIEW AS
TO CONTRACT FORM
ONLY:** N/A

FISCAL NOTE: Sufficient funds have been appropriated in 3813-6432 and 5400-5499781.

RECOMMENDATION: Award the contract.

ADDITIONAL INFO: Request for Proposal 08-144 was issued to establish a contract to provide a dust control compound to reduce dust levels generated from unpaved roads and open areas to comply with current dust control requirements. Six responses were received. An evaluation committee comprised of Public Works, Environmental Services and Procurement reviewed the proposals. Demonstrations of three submitting firms products were requested and evaluations of the treated areas were completed. It is the recommendation of the committee to award the contract to International Soil Technologies, the overall high scorer.

Vendor's Proposal Offer

It is REQUIRED that Proposal Offeror COMPLETE, SIGN and SUBMIT the original of this form to the City Procurement Office with the proposal response offer. An unsigned "Vendor's Proposal Offer", late proposal response and/or a materially incomplete response will be considered non-responsive and rejected.

Proposal offeror is to type or legibly write in ink all information required below.

Proposal Offeror's Company Name	<u>International Soil Technologies, LLC</u>
Company Mailing Address	<u>681 N. Monterey Street, Gilbert AZ 85233</u>
Company Street Address	<u>681 N. Monterey Street, Gilbert AZ 85233</u>
Proposal Offeror Contact	<u>Shane Williams</u> Title <u>Sales Manager</u>
Contact's Phone No.	<u>480-289-3203</u> E-mail Address <u>Shane@Soilworks.com</u>
<u>Proposal Offeror's Company Tax Information:</u>	
Arizona Transaction Privilege (Sales) Tax No.	<u>07-680199-T</u> or
Arizona Use Tax No.	<u>N/A</u>
Federal I.D. No.	<u>55-0827719</u>
City & State Where Sales Tax is Paid	<u>Gilbert</u> , <u>Arizona</u>

THIS PROPOSAL IS OFFERED BY

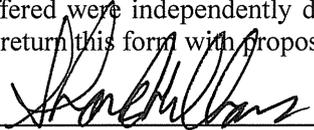
Authorized Proposal Offeror (Type or Print in ink) Shane Williams

Proposal Offeror's Title (Type of Print in ink) Sales Manager

Date 4-3-08

REQUIRED SIGNATURE OF AUTHORIZED PROPOSAL OFFEROR (Must Sign in Ink)

By signing this Proposal Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other offeror or potential offeror. Failure to sign and return this form with proposal offer will result in a non-responsive proposal.



Signature of Authorized Proposal Offeror

4-3-08

Date

INSTRUCTIONS TO PROPOSAL OFFERORS

Please note that these Instructions are to be read and followed by any proposal offeror and/or contracted vendor and that failure to follow these Instructions may result in rejection of a proposal offer for non-responsiveness or cancellation of contract if already awarded.

1. **Preparation of Proposal Response:** It is the offeror's responsibility to examine this entire Request For Proposal (RFP) document immediately upon its receipt and to seek clarification of any item or requirement that may not be clear and to check all proposal responses for completeness and accuracy before submitting a proposal. Concerns about any obvious errors, points of confusion and/or possible improprieties in this RFP that are apparent before the proposal opening date are to be filed with the City Procurement Office prior to the scheduled proposal opening date. Negligence in preparing a proposal response confers no right of withdrawal after proposal due date and time.

The City will not reimburse the cost of developing, presenting or providing any proposal response to this RFP.

2. **Late, Unsigned and/or Incomplete Proposal Response:** A late, unsigned and/or materially incomplete proposal response will be considered non-responsive and rejected. The City will not accept a signed letter by proposal offeror in lieu of a signed "Vendor's Proposal Offer", Form 201-B (RFP) as provided in this RFP.
3. **Inquiries:** Questions regarding this RFP are to be directed only to the City Procurement Officer identified on the cover page of this document, Form 201-A (RFP); unless another City contact is specifically named in this RFP. Questions should be submitted in writing, when time permits. When sending correspondence related to this RFP identify within the letter, the appropriate RFP number, page and paragraph at issue. However, offeror (vendor) must not place the RFP number on the outside of an envelope containing questions, since the envelope may be identified as a sealed proposal response and not opened until the official proposal opening date and time. Inquiries and questions should be asked of the City Procurement Office not later than ten (10) days before proposal opening and those received within ten (10) days of proposal opening may not be answered.
4. **Proposal Conference:** If a Proposal Conference is scheduled, it is the offeror's responsibility to attend the conference, ask questions, seek clarifications and identify any points of confusion or requirements at issue.
5. **Withdrawal of Proposal:** At any time before the specified proposal opening date and time, an offeror may withdraw their proposal. Offeror must present identification and documentation to indicate their authority to withdraw a proposal response.
6. **Proposal Addendum(s):** Receipt and acceptance of a RFP Addendum is to be acknowledged by signing and returning the document either with the proposal response or by separate envelope prior to proposal opening date and time. Failure to sign and return an addendum prior to proposal opening time and date may make the proposal offer non-responsive to that portion of the RFP as materially affected by the respective addendum.
7. **Payment:** For a single requirement purchase, the City will make every effort to make payment within thirty (30) calendar days from receipt of acceptable products, materials and/or services and receipt of correct invoice. For ongoing term contract purchases, the City will make every effort to make payment within thirty (30) calendar days from receipt of monthly statement.
8. **Discounts:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
9. **Compliance with City Solicitation Requirements and Award of Contract:** Unless the offeror states otherwise or unless it states otherwise in this RFP, the City reserves the right to award by individual line item, by group of items, or as a total, whichever is most advantageous to the City. The City expressly reserves the right to waive any immaterial defect or informality, or reject any or all proposals, or portions thereof, or reissue this RFP.

A proposal response is an offer to contract with the City based on the terms, conditions and specifications contained in this RFP. An offeror does not become a Contractor unless they receive a formal contract award from the City Procurement Office. Unless this RFP includes a separate contract document or requires the offeror to submit a contract for review, a contract is formed when the City Procurement Office provides a written notice of award or a purchase order to the successful offeror. Proposal offers that take exception to the terms, conditions, specifications and/or other requirements stated within this RFP will cause the proposal offer to be considered as non-responsive. Exceptions will be evaluated on an individual basis to determine their compliance with the purpose and intent of the terms and conditions stated within this solicitation. The City shall be the sole judge as to whether an exception complies with the general purpose and intent of any term, condition and/or specification stated within this solicitation document.

10. **Taxes:** Propose all materials (equipment/products) F.O.B. Tempe, prepaid. Unless specifically requested in this RFP, do not include any Sales, Use or Federal Excise Tax in your proposal pricing. The City is exempt from payment of Federal Excise Tax. For proposal evaluation, Transaction (Sales) Privilege Tax paid (returned) to the City is considered a pass-through cost, calculated as zero (0) expense. For information on City of Tempe Privilege (Sales) Tax, please contact the City's Tax and License Office at (480) 350-2955 or visit their web site at www.tempe.gov/salestax.
11. **Payment By City Procurement Card:** The City Procurement Office (only) may wish to make payment through the use of a City Procurement Card. It is requested that each offeror indicate on the Price Sheet (pricing section) of this RFP, their willingness to accept City Procurement Card payments. The inability to accept payment by City Procurement Card will not disqualify a proposal response.
12. **Proposal Results:** Offerors are invited to attend the scheduled proposal opening at which the name of each offeror will be publicly read (not prices). After award of proposal, an appointment may be made with the City Procurement Officer (identified on the cover page of this RFP) and the proposal documents may be reviewed with the Procurement Officer. Formal award recommendations will be placed on the Procurement Office web page (www.tempe.gov/purchasing) and posted at the front counter of the Procurement Office at the same time the award recommendation is forwarded for City Council review. Parties interested in the outcome of a proposal may check the City Procurement Office web page or check for posted awards at the Procurement Office front counter.
13. **Protests:** Any actual or prospective offeror who is aggrieved in conjunction with this RFP or award of a contract may protest to the City Procurement Office (City Procurement Officer contact). A protest based upon alleged improprieties in this RFP that are apparent before the proposal opening shall be filed before proposal opening. At least five (5) days before award of a contract, the City Procurement Office will post award recommendations on its web page (www.tempe.gov/purchasing) and at the Procurement Office front counter for public review. A protest concerning an award recommendation must be filed within 10 calendar days after the protester knows or should have known the facts and circumstances upon which the protest is based. A protest shall be in writing and include the protester's name, address and phone number, identification of the solicitation or contract being protested, a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and indication as to the form of relief requested. Protest is to be on the protester's company letterhead and signed.
14. **Request for Taxpayer I.D. Number and Certification, IRS W-9 Form:** An attached IRS W-9 form serves as the last page of this RFP and is to be completed by proposal offeror and submitted with the proposal response. Prior to any contract award, this IRS W-9 form must be completed and submitted to the City Procurement Office.

15. **Compliance of Proposal Offeror/Contractor Forms:** Any forms (for example, separate contract, maintenance agreement, training agreement) intended by the proposal offeror and/or contractor to be utilized in relationship to any resulting contract must be submitted with proposal offer. Proposal offeror and/or contractor forms that take exception to any of the terms, conditions, specifications and/or other requirements stated within this RFP may cause the proposal response to be considered as non-responsive and rejected from consideration or a contract award to be void. Absolutely no proposal offeror/contractor form will be considered unless submitted with proposal response and approved by the City Procurement Office. No City department is authorized to sign any proposal offeror and/or contracted vendor form(s) in relationship to this RFP and/or subsequent contract without the City Procurement Office first reviewing the document for compliance with the City's solicitation and stamping/initialing the document as being in compliance.
16. **Proposal, Offer and Contract:** Proposal offers that take exception to Special Terms & Conditions stated within this RFP may cause the proposal response to be considered as non-responsive. As set forth in this Special Terms and Conditions section, "vendor" means a person or firm in the business of selling or otherwise providing products, materials or services and "proposal offeror" means a vendor making a proposal offer in response to a RFP. "Contractor" means any person or firm who has a contract with the City. A successful "proposal offeror" who is awarded a contract with the City becomes a "Contractor".

Any language in proposal offers that takes exception or provides different or conflicting terms, conditions, obligations, specifications, and/or requirements than those contained in the City's Standard Terms and Conditions or Special Terms and Conditions are deemed rejected by the City and are not included in the contract unless expressly agreed to in writing by the City.

STANDARD TERMS & CONDITIONS

Please note that these Standard Terms & Conditions are to be read and complied with by proposal offeror and/or contracted vendor and that failure to follow these requirements may result in rejection of a proposal response for non-responsiveness or cancellation of any awarded contract.

1. **Certification:** By signing the “Vendor’s Proposal Offer”, Form 201-B (RFP), the offeror certifies:
 - A. The submission of the proposal offer response did not involve collusion or other anti-competitive practices.
 - B. The vendor shall not discriminate against any employee or applicant for employment in violation of Federal and Arizona State law and the vendor shall comply with the Americans with Disabilities Act (ADA). Suppliers of products and services to the City shall operate as an equal opportunity employer and shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual orientation, national origin, or because he or she has a physical or mental disability or because he or she is a disabled veteran or a veteran of the Vietnam era, including, without limitation, with respect to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

The City Procurement Office is committed to fair and equal procurement opportunities for all firms wishing to do business with the City and encourages the participation of small and disadvantaged businesses in all proposals and contracting activities conducted by the City.
 - C. The vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to sign the “Vendor’s Proposal Offer” , Form 201-B (RFP) or signing it with a false statement shall void the submitted proposal offer and/or any resulting contract. In addition, the vendor may be debarred from future proposal and bidding participation with the City and may be subject to such actions as permitted by law.
 - D. The vendor agrees to promote and offer to the City only those materials and/or services as stated and allowed by this RFP and resultant contract award. Violation of this condition will be grounds for contract termination by the City.
2. **Gratuities:** The City may, by written notice to the contractor, cancel any resultant contract, if it is found that gratuities in any form were offered or given by the contractor or agent or representative of the contractor, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from contractor the amount of gratuity.
3. **Applicable Law:** This contract shall be governed by, and the City and contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this RFP and resultant contract or in statutes or ordinances pertaining specifically to the City. This contract shall be governed by State of Arizona law and suits pertaining to this contract may only be brought in courts located in Maricopa County, Arizona.

4. **Dispute Resolution:** This contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the contractor will meet and/or consult with each other in good faith to resolve any disputes arising out of the contract. If good faith efforts fail, then the City and contractor may attempt to resolve any disputes through mediation. If mediation is utilized, the City and contractor mutually will agree upon a mediator whose fees will be shared equally by the City and Contractor.
5. **Contract Formation:** This contract shall consist of this RFP document and the proposal offer response submitted by the vendor, as may be found responsive and approved by the City. In the event of a conflict in language between the two documents, the provisions of the City's RFP shall govern. The City's RFP shall govern in all other matters not affected by a written contract. All previous contracts between the offeror and the City are not applicable to this contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the contract.
6. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of this contract is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the City for any payment may arise for performance under this contract beyond the current fiscal year until funds are made available for performance of this contract.
7. **Contract Modifications:** This contract may only be modified by a written Contract Modification issued by the City Procurement Office and counter-signed by the contractor.
8. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract will forthwith be physically amended to make such insertion or correction.
9. **Severability:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application to the extent that the material provisions of this RFP and contract are not materially vitiated.
10. **Relationship of Parties:** It is clearly understood that each party to this contract will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
11. **Interpretation of Parol Evidence:** This contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the contract, unless the signing of a subsequent contract is specifically called for in this RFP. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of the contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
12. **Contract Assignment:** No right or interest in this contract shall be assigned by contractor and no delegation of any duty of contractor shall be made without prior written permission of the City Procurement Office.
13. **Rights and Remedies:** No provisions of this RFP document or in the vendor's proposal response offer shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, shall not release the contractor from any responsibilities or obligations imposed by the contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the contract.

14. **Overcharges By Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the contract.

15. **Force Majeure:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the contract if and to the extent that such party's performance of the contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

Force majeure shall not include the following occurrences:

- A. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- B. Late performance by a subcontractor unless the delay arises from a force majeure occurrence in accordance with this force majeure clause.

Any delay or failure in performance by either party shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via Certified Mail - Return Receipt Requested and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or Certified Mail - Return Receipt Requested when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the contract.

16. **Preparation of Specifications By Persons Other Than City Personnel:** No person preparing specifications for this RFP shall receive any direct or indirect benefit from the use of these specification.

17. **Public Record:** After award of contract, proposal responses shall be considered public record and subject to review. If an offeror believes a specific section of its proposal response is confidential, the offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The offeror shall include a written statement as to the basis for considering the marked pages confidential and the City Procurement Office will review the material and make a determination.

18. **Conflict of Interest:** This contract is subject to the cancellation provisions of A.R.S. Section 38.511.

SPECIAL TERMS AND CONDITIONS

Proposal offers that take exception to Special Terms & Conditions stated within this RFP may cause the proposal response to be considered as non-responsive. As set forth in this Special Terms and Conditions section, “vendor” means a person or firm in the business of selling or otherwise providing products, materials or services and “proposal offeror” means a vendor making a proposal offer in response to a RFP. “Contractor” means any person or firm who has a contract with the City. A successful “proposal offeror” who is awarded a contract with the City becomes a “Contractor”.

1. **City Procurement Document:** This RFP is issued by the City Procurement Office. No alteration of any portion of this RFP document by an offeror is permitted and any attempt to do so shall result in offeror’s proposal response being considered non-responsive. No alteration of any portion of a resultant contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be a violation of the contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires an offer in response to this RFP to be valid and irrevocable for ninety (90) days after the proposal opening time and date.
3. **Contract Type:** Term with justifiable price adjustment allowed, indefinite quantity.
4. **Term of Contract:** The term of any resultant contract shall commence on the date of award and shall continue for a period of thirty-six (36) month(s) thereafter, unless terminated, canceled or extended as otherwise provided herein. Resultant contract is non-transferable and can not be assigned by the contractor without the approval of the City Procurement Office, and then only when all prices, discounts, terms and conditions of the original proposal documents and contract award remain unchanged.
5. **Contract Renewal:** The City reserves the right to unilaterally extend the period of any resultant contract for ninety (90) days beyond the stated expiration date. In addition, by mutual agreement in the form of a written Contract Modification, any resultant contract may be renewed for supplemental periods of up to a maximum of twenty-four (24) additional months. The period for any single renewal increment shall be determined by the City Procurement Office. Such increment shall not be for more than a period of twelve (12) months each, unless the City is eligible to obtain a significant cost and/or supply advantage by a longer contract renewal period.
6. **Cooperative Use of Contract:** In addition to the City of Tempe this contract may be extended for use by other municipalities and government agencies of the State of Arizona. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity. Any public agencies not identified within this RFP who wish to cooperatively use the contract are subject to the approval of Contractor(s).
7. **Cancellation of Term Contract:** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation, term or condition of the contract. The City will issue written notice to the Contractor for acting or failing to act as follows:
 - A. The Contractor provides material that does not meet the specifications of the contract;
 - B. The Contractor fails to adequately perform the services set forth in the specifications of the contract;
 - C. The Contractor fails to complete the work required or furnish the materials required within the time stipulated in the contract;
 - D. The Contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.

Upon receipt of the written notice of concern, the Contractor shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of the Contractor to adequately address all issues of concern may result in the City resorting to any one or to any combination of the following remedies:

- A. Cancel any contract;
- B. Reserve all rights or claims to damage for breach of any covenants of the contract;
- C. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliance with the specifications, the actual expense of testing shall be borne by the Contractor;
- D. In case of default, the City reserves the right to purchase materials and/or services, or to complete the required work in accordance with the needs of the City. The City may recover any actual excess costs from the Contractor by:
 - i) Deduction from an unpaid balance;
 - ii) Collection against the bid and/or performance bond, or;
 - iii) Any combination of the above remedies or any other remedies as provided by law.

- 8. **Contracts Administration:** Contractor must notify the City Procurement Office (designated Procurement Officer Contact) for guidance or direction of matters of contract interpretation or problems regarding the terms, conditions or scope of this contract.
- 9. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection.
- 10. **Three Hundred Sixty-five Day Price Adjustment:** The City Procurement Office will review fully documented requests for price increases after the contract has been in effect for three hundred sixty-five (365) days. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. The City Procurement Office will determine whether the requested price increase, or an alternative option, is in the best interest of the City. Advanced thirty (30) day written notification by Contractor is required for any price changes. All price adjustments will be effective on the first day of the month following approval or acceptance by the City Procurement Office.

Price increase requests must be acknowledged in writing by the City Procurement Office before becoming effective. If not acknowledged within thirty (30) days, it is the Contractor's responsibility to contact the City Procurement Office to assure the price increase request was received.

Once a price adjustment increase is approved the contractor will not be approved for any additional price increase adjustment until 365 days has elapsed from the effective date of the previous approved price increase. Contractor shall be required to submit sufficient information (30 days in advance) that supports each price increase request over the five year term of agreement. The City reserves the right to reject any price increase request that is not considered reasonable or negotiate a more acceptable price adjustment with the contractor. In the event the two parties are unable to agree on price terms, the contract will automatically terminate 90 days from the date of the City's letter to the contractor documenting the impasse. During the final 90 day term, all pricing shall remain as agreed to under the most recently approved price agreement.

The Contractor shall likewise offer any published price reduction or if applicable to contract, profit sharing price advantage to the City concurrent with its announcement to other customers. A price reduction or profit sharing price advantage may be offered at any time during the terms of an awarded contract and shall become effective upon notice and acceptance. The City shall likewise take advantage of any special sales discounts offered to the general public, which exceed contracted price discounts extended to the City by the Contractor.

11. **Responsiveness To Specifications:** Performance or feature requirements which are designated as mandatory or minimums are needed in order to satisfy an identified task or performance need. A description is given for each designated feature. This description shall be used to determine if offeror's proposed product(s) and/or service(s) is/are capable of performing the function.

It is recognized that more than one method may be used to accomplish the sought after task functionality. If the offeror has an alternate method of performing functional tasks, then such method is to be listed as an "alternate", and described in full detail within the written proposal response. The City shall be the sole judge as to whether any alternate methodology will be accepted.

"Must", "shall", "will", "minimum", "required" and/or "mandatory" performance/feature statements must be met or exceeded by a responsive offeror. Should no offeror be found totally responsive to all designated RFP requirements, the City at its option, may either award the contract to the most responsive offeror or cancel the RFP and issue another RFP for the need under revised specifications.

12. **Estimated Quantities:** This RFP references quantities as a general indication of the City needs; The City anticipates considerable activity resulting from contracts that will be awarded as a result of this RFP; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired. No commitment of any kind is made concerning quantities and that fact should be taken into consideration by each offeror.
13. **Descriptive Literature:** Offeror is to include complete manufacturers' descriptive literature regarding the materials (equipment/products) they propose to furnish. Literature shall be sufficient in detail to allow for full and fair evaluation of the offer submitted. Failure to include required information needed to determine the qualities and acceptability of the proposal offer within the proposal response, will result in the offer being rejected.
14. **Local Inventory Stocking:** In order to assure that any ensuing contracts will provide the necessary delivery support required for the items specified, each offeror must have local a inventory warehouse facility. Each facility must be staffed by trained personnel and have sufficient inventory in order to provide quality service on a timely basis. The City Procurement Office may inspect the Warehouse facility to determine adequacy.
15. **Licenses:** Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.
16. **Insurance:** Prior to commencing any work or services under this contract, Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the contractor, his agents, representatives, employees, or subcontractors.

A Contract Award Notice or Purchase Order will not be issued to an awarded vendor until receipt of all required insurance documents by the City Procurement Office and such documents must meet all requirements of this Insurance clause. In addition, before any contract is renewed for additional time periods, all required insurance must be in force and on file with the City Procurement Office. An awarded vendor or contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another vendor selected for award.

Minimum Limits Of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products, completed operations, and product liability. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.
3. Workers' Compensation and Employers Liability: Workers' Compensation and Employers Liability statutory limits as required by the State of Arizona.
4. Other Insurance: (If applicable, see supplement.)

Deductibles And Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, and volunteers, or the contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage:
 - a. The City, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the contractor including the insured's general supervision of the contractor; products and completed operations of the contractor; premises owned, occupied or used by the contractor, or automobiles owned, leased, hired or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
 - b. The Contractor's insurance coverage shall be primary as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the contractor's insurance and shall not contribute to it. The amount and type of insurance coverage required by this contract shall not limit the scope of the indemnity provided by this contract.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.
 - d. Coverage shall state that the contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the contractor for the City.

3. All Coverages

Each insurance policy required by this contract shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Other Insurance Requirements: Contractor shall:

1. Prior to commencement of services, furnish the City with certificates of insurance, in form and with insurers acceptable to the City which shall clearly evidence all insurance required in this contract and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on 30 days prior written notice to and approval by the City, and in accord with stated insurance requirements of this Request For Proposal. City shall not be obligated, however, to review same or to advise contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve contractor from, or be deemed waiver of City's right to insist on, strict fulfillment of contractor's obligations under this contract.
2. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
4. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may at its sole option, terminate this contract effective on the date of such lapse of insurance.
5. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a Best's rating of no less than A-VII.
6. Maintain such coverage continuously throughout the term of this contract and without lapse for a period of two (2) years beyond the contract expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the contract term give rise to the claims made after expiration of the contract, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.

Subcontractors and Sub-Subcontractors

Contractor shall include all subcontractors and sub-subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for the contractor.

Safety

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations set forth therein.

17. **Proposal Opening:** Proposals shall be opened at the time and place designated on the cover page of this document. The name of each offeror and the identity of the RFP for which the proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals, modifications and all other information received in response to this RFP shall be shown only to City Personnel having a legitimate interest in the evaluation. "**PRICES SHALL NOT BE READ**". After contract award, the proposals and the evaluation documentation shall be open for public inspection.
18. **Proposal Evaluation:** In competitive Sealed Proposals, awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City taking into consideration the evaluation factors set forth in the RFP. The City shall be the sole judge as to the acceptability of the products and/or services offered.
19. **Discussion with Responsible Offerors and Revisions to Proposal:** Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. The City may ask to obtain pertinent information for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Should the City elect to call for 'best and final' offers, offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The purposes of such discussions shall be to:
 - A. Determine in greater detail such offeror's qualifications;
 - B. Explore with the offeror the scope and nature of the project, the offeror's proposed method of performance, and the relative utility of alternate methods of approach;
 - C. Determine that the offeror will make available the necessary personnel and facilities to perform within the required time; and
 - D. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.
20. **Payments - After Monthly Statement:** Payment in full shall be made to the successful contractor within thirty (30) days after receipt and acceptance of monthly-itemized statement. Unless terms other than net thirty (30) days are offered as a discount.
21. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the negligent acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by Contractor or any employee of the Contractor, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph.

22. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. Any City bidder, contractor or subcontractor is to honor this requirement at all times and failure to honor this requirement will result in contract cancellation. This requirement also applies to persons who maintain a concealed weapon's permit. In addition to contract cancellation, anyone carrying a firearm or explosive device will be subject to police and legal action.

Scope

The City of Tempe is soliciting proposals for providing dust abatement product for Citywide use.

Initial contract will be for a three-year period with renewals as specified in the Special Terms and Conditions section of this Request for Proposal (RFP).

Compound will be utilized for dust control of road aggregate, recycled asphalt pavement alleys and open fields.

The City of Tempe is requesting costs for application service.

Specifications

Product must meet all federal guidelines.

Product shall be:

- Environmentally friendly
- Bio degradable
- Non carcinogenic
- Non hazardous
- Non toxic
- Non flammable
- Non volatile
- Non corrosive

Product must be able to penetrate and bind the soil after a topical application with a distributor truck, or other application method, and control airborne dust to the degree that it cannot be readily seen by the naked eye.

The City realizes that the overall performance of the product will depend on the base profile, penetration, traffic volume and pattern of wear, however, durability after application shall be approximately 1 year.

It is preferred that the product be available locally.

Product must be available within 24 hours of order.

Product shall cure within 4 hours of application

Proposal Questionnaire

Firm shall answer and submit the following information with their proposal. The City of Tempe will use its discretion in reviewing answers to these questions in determining a firm's responsiveness and responsibility.

1. Please list the address for your company.

International Soil Technologies, LLC

681 N. Monterey Street

Gilbert, AZ 85233

2. Does your product meet all specifications set forth in this Request for Proposal?

Yes No

3. Will you comply with all Terms and Conditions of this Request for Proposal?

Yes No

4. Is product available locally?

Yes No

5. Provide local address

International Soil Technologies, LLC

681 N. Monterey Street

Gilbert, AZ 85233

6. Will product be available within 24 hours of order?

Yes No

7. What is your minimum order quantity?

275 Gallons

8. Can the City of Tempe pick up product at your facility in volumes of approximately 1,000 gallons?

Yes X No _____

9. Do you provide application service of your product?

Yes X No _____

10. Please provide complete information on your product. Include at a minimum sales literature and MSDS.

See Letter of Introduction for Gorilla-Snot. The MSDS is
 included on pages 14 - 17 of the Letter of Introduction.

Yes X No _____

11. What is the cure time for your product?

Cures within 4 hours depending on temperature.

12. What application methods can be utilized with your product?

Product can be Topically Applied or Mixed in. Any Equipment capable of spraying
 water may apply Gorilla-Snot.

13. Please list three references for which you have provided similar services.

Company	Contact Person	Phone Number
Sunland Asphalt	Kevin Smith	602-705-1041
Town of Queen Creek	Luis Padilla	480-797-0735
Windswept Organix	Joe LaGuardia	480-980-0549

Proposal Checklist For Submittals

- One signed and complete original of the proposal response, including "Vendor's Proposal Offer" (Form 201-B).
- Four (4) additional copies of proposal response.
- Proposal questionnaire answered and included.
- Descriptive literature included.
- MSDS included.
- Any addendum(s) have been included.

Evaluation

An evaluation committee composed of Public Works and Procurement staff will review the proposals and score them according to the criteria shown below. The answers provided on the included questionnaire will provided the basis for the evaluation

In determining a firm's responsibility, the City of Tempe may consider other information, whether or not specifically provided by the offerer in response to this RFP. A firm's responsiveness and responsibility to this solicitation shall be determined by the City of Tempe.

Award Criteria	Weight	X	Rating	=	Value
1. Compliance with proposal specifications	5	x	_____	=	_____
2. Suitability of product for City of Tempe use	5	x	_____	=	_____
3. References and availability of product	4	x	_____	=	_____
4. Cost	4	x	_____	=	_____
5. Overall responsibility to the RFP and ability of offeror to comply with all Terms and Conditions	3	x	_____	=	_____
			Total		_____

This proposal will be evaluated on a cumulative point system.

Scoring

Outstanding	.	.	7
Good	.	.	5
Average	.	.	3
Poor	.	.	1
Not Addressed or Unacceptable			0

Company Name: International Soil Technologies, LLC

PRICE SHEET

Quantity is an annual estimate. This volume will be utilized for evaluation purposes – actual ordered quantity will vary.

ITEM NO.	DESCRIPTION	QTY	COST	EXTENDED COST
1.	Dust control compound	45,000 gal	<u>\$ 1.75 / gal</u>	<u>\$ \$ 78,750</u>
	Name of compound			Bulk Pricing, FOB Soilworks
	<u>Gorilla-Snot</u>			
Application Service				
		Cost	Per	
2.	Cost for application service	<u>\$ \$ 0.12</u>	<u>Square Yard</u>	
				1)
			Total	<u>\$ 2)</u>
	1) Total Cost is dependent on the cities choice of application rate.			
	2) Please refer to our enclosed application rate chart on page 3 of the letter of introduction.			
	* Applicable Tax _____ %			

* State correct jurisdiction to receive sales tax on the Vendor's Bid Offer, form CS-P201 (B) included in this Invitation for Bid document.

Less prompt payments discount terms of 1 % 10 days/ or Net 30 days. (To apply after receipt and acceptance of an itemized monthly statement.) For bid evaluation purposes, the City cannot utilize pricing discounts based upon payments being made in less than 30 days from receipt of statement.

Ordering and Invoice Instructions

In order to facilitate internal control and accounting, each City Department will order and must be invoiced separately. Monthly invoices must be segregated by City Department number and mailed or delivered directly to the City Customer Department. For most materials, there will be between three - (3) and six - (6) ordering departments. At the time an order is placed, the contractor must obtain the ordering department's cost center numbers for billing purposes. The use of the department's cost center numbers will be in addition to the purchase order number. Once a month, the contractor shall submit a consolidated statement which shall itemize the invoice numbers, invoice date, invoice amounts, and the total amount billed to Accounting. Discount offering will be based upon days from receipt of the consolidated monthly statement. Invoice(s) shall not show previous balances.

Invoices shall include:

1. Listing Of All Delivery/Pickup Receipt Numbers Being Invoiced.
2. Total Cost Per Item.
3. Applicable Tax.
4. Payment Terms.
5. Blanket Purchase Order Number.

Invoices that do not follow the above minimum invoicing requirements will not be paid. Payment must be applied to only invoices referenced on check/payment stub. The City reserves the right to bill contracted vendor for researching invoices that have been paid, but not properly applied by vendor account receivables office.

Statement mailing address: City of Tempe
Accounting (see below for your contact)
P.O. Box 5002
Tempe, Arizona 85280

Accounting Contacts:	Cecilia Miller	Letters A-C
	Ramona Zapien	Letters D-O
	Penny Brophy	Letters P-Z

(H:/RFP3-2002)

Request for Taxpayer Identification Number and Certification

Give form to the
 requester. Do not
 send to the IRS.

Print or type
 See Specific Instructions on page 2.

Name (as shown on your income tax return) International Soil Technologies, LLC	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (Disregarded entity, C-corporation, Partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or state no.) 681 N. Monterey	Requester's name and address (optional)
City, state, and ZIP code Gilbert, AZ 85233	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
or
Employer identification number 55 : 0827719

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶ 4 - 3 - 08
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,