

**Jennifer Whitaker**

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**From:** Mark Fendig [mfendig@aisva.net]  
**Sent:** Thursday, April 29, 2004 9:10 AM  
**To:** jwhitaker@rivanna.org  
**Subject:** Re: Dredging Survey In The RWSA

Jennifer,

I have done a survey of the area in the upper reach of the SFRR last week and have good data on exactly how much sediment and the quality of the sediment there. We have also determined several de-watering sites that could not only support dewatering but also stockpiling the material until it is hauled away. Our proposal will eliminate the disposal cost projected in the Gannett Fleming review up to a certain volume per year. We feel our proposal will get into your mix. When do you want us to submit our proposal? and what about the RWSA policy on this type of proposal? Will you be required to bid our proposal out? I have not been able to reach you by phone lately is there a good time to catch you in your office during the week?

Thanks,

Mark Fendig

----- Original Message -----

**From:** Jennifer Whitaker  
**To:** 'Mark Fendig'  
**Sent:** Sunday, April 18, 2004 5:24 AM  
**Subject:** RE: Dredging Survey In The RWSA

Mark,

I will discuss these issues with the staff here. There are no motorized boats allowed on the reservoir, only electric motors. I will get back to you on these issues as soon as possible.

Thanks  
Jennifer

Jennifer Whitaker  
Rivanna Water & Sewer Authority  
Chief Engineer

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**From:** Mark Fendig [mailto:mfendig@aisva.net]  
**Sent:** Sunday, April 18, 2004 12:09 AM  
**To:** jwhitaker@rivanna.org  
**Cc:** mitchking@oldmillpower.com  
**Subject:** Dredging Survey In The RWSA

Jennifer,

Both Mitch King and Myself are needing to get some Bathymetric Depth Data on the Upper Reach Areas of the SFRR. We are planning to come to Charlottesville next week with a boat to survey the bottom depths and sediment depths in the upper reaches. Do you have any data from earlier surveys that can be of use for us and have any maps showing the buffers lands that RWSA owns and which we could use for dewatering and stockpiling sediment? Also, Do you know if RWSA currently has a policy for handling un-solicited proposals? If so could you forward a copy to us to review before we submit our proposal? We would also like to know if it is ok for us to put a small engine on our Jon boat we plan to use in order to survey the bottom area of the SFRR? Thanks for your help and assistance with our questions.

Sincerely,

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Blue Ridge Sand, Inc.

**Mark Fendig**  
Vice President

9916 Wilson Highway  
Mouth of Wilson, VA 24363  
(276) 579-2007  
(276) 773-3289  
mfendig@aisva.net

May 19, 2004

To: Jennifer A. Whitaker, P. E.  
Chief Engineer  
Rivanna Water and Sewer Authority  
695 Moores Creek Lane  
Charlottesville, VA 22902-9016

RE: Unsolicited Proposal: Agreement for Dredging the South Fork Rivanna Reservoir

Dear Ms. Whitaker:

Blue Ridge Sand, Inc. (BRS) is pleased to submit this unsolicited proposal for dredging the South Fork Rivanna Reservoir (SFRR). The proposed work will prevent the future loss of 375,000 cubic yards (450,000 tons, 90.9 MG) of storage capacity and would restore a total of 320,000 cubic yards (384,000 tons, 77.6 MG) of storage capacity. The total amount of material removed from the SFRR during the proposed 63-month project would be 695,000 cubic yards (834,000 tons, 168.5 MG) at a total project cost of \$4.6M.

The cost per gallon of material removed from the SFRR would be \$.0272/gal, which is only 49% of the cost per gallon of material removed from the SFRR estimated by Gannett Fleming in a recent letter report<sup>1</sup>.

Please note that BRS considers the proposed Project Area and the cost per gallon of material removed to be Competitively Sensitive Information.

The 63-month project duration is proposed because that's the time BRS estimates it will take to remove and dispose of all of the sediment in the proposed Project Area without leasing or purchasing any land near the reservoir not already controlled by RWSA. Although more material could be removed by expanding the proposed Project Area or working in other reaches of the reservoir, such options could only be implemented at a

<sup>1</sup> Thomas B. Pursel Letter Report, Community Water Supply Capital Program South Fork Rivanna Reservoir Dredging Review, Gannett Fleming, December 31, 2003, Page 4 and Table 3. The Gannett Fleming letter report estimated a cost of \$41.7 M to remove 3.7 M cubic yards (750 M gallons) over a 20-year period (\$.0556/gal).

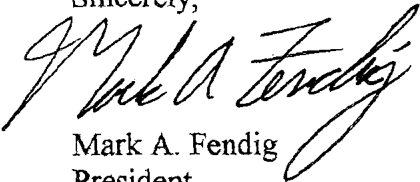
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higher cost per gallon of material removed, and would probably require leasing or purchasing additional buffer land for material handling and temporary storage.

Please have the appropriate officials at RWSA review our proposal and let us know if RWSA would like us to proceed with the proposed work. If anyone at RWSA has any questions about the proposal, please give me a ring at 1-276-579-2007. I look forward to hearing from you soon.

Sincerely,



Mark A. Fendig  
President

2 Encl:

1. Unsolicited Proposal
2. Competitively Sensitive Information Supplement

COMPETITIVELY SENSITIVE INFORMATION

# **Unsolicited Proposal**

## **Agreement for Dredging the South Fork Rivanna Reservoir**

**Submitted by**

**Blue Ridge Sand, Inc.  
P. O. Box 87  
Mouth of Wilson, VA 24363**

**Office: 1-276-579-2007  
Fax: 1-276-773-3289  
Email: [mfendig@aisva.net](mailto:mfendig@aisva.net)**

**May 19, 2004**

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## **Un-Solicited Proposal**

### **Agreement for Dredging the South Fork Rivanna Reservoir**

This agreement for dredging services (the "Agreement") is offered by Blue Ridge Sand, Inc. ("BRS" or "Seller"), a Virginia corporation and small business, to Rivanna Water and Sewer Authority ("RWSA", or "Buyer") a Virginia chartered public service authority (each, individually, a "Party", and, collectively, the "Parties"), as of this 18<sup>th</sup> day of June, 2004 and requires BRS to sell and RWSA to buy dredging services for the South Fork Rivanna Reservoir (SFRR) in accordance with the terms and conditions contained herein.

#### **1. PROBLEM STATEMENT**

The SFRR was constructed in 1966. Since then (over the past 35 years) the SFRR has seen a 40% reduction in storage capacity due to sediment accumulation<sup>1</sup>. BRS proposes: 1) to stop the on-going loss of useful storage capacity by performing maintenance dredging; and 2) to restore as much of the original useful storage capacity as possible by performing restoration dredging. This document contains the publicly releasable portions of BRS's proposal. The competitively sensitive portions of BRS's proposal are contained in the Competitively Sensitive Information Supplement.

#### **2. STATEMENT OF WORK**

BRS has identified a reach of the SFRR (the Project Area) indicated in Figure 1 of the Competitively Sensitive Information Supplement that is suitable for hydraulic dredging using equipment that BRS already owns and routinely operates. The BRS proposal involves the removal of approximately 75,000 cubic yards (90,000 tons, 18.2 MG) of sediment per year as maintenance dredging and 64,000 cubic yards (76,800 tons, 15.5 MG) of sediment per year as restoration dredging, a total of 139,000 cubic yards (166,800 tons, 33.7 MG) per year over a 63-month period. The 63-month project duration is proposed because that's the time BRS estimates it will take to remove all of the sediment in the proposed Project Area, based on estimates of the amount of material in the SFRR provided by the Gannett Fleming Letter Report<sup>1</sup>, on the proportion of the SFRR represented by the Project Area, and on the amount of material in the Project Area estimated by BRS by manually probing the sediments in that area. The proposed work will prevent the future loss of 375,000 cubic yards (450,00 tons, 90.9 MG) of storage capacity and would restore a total of 320,000 cubic yards (384,000 tons, 77.6 MG) of storage capacity.

If there is less removable material in the Project Area than expected, BRS will dredge within the Project Area until all of the removable material has been removed and will then demobilize unless this contract is modified to the mutual satisfaction of both Parties to include other Project Areas not currently part of the proposed work.

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<sup>1</sup> Thomas B. Pursel Letter Report, Community Water Supply Capital Program South Fork Rivanna Reservoir Dredging Review, Gannett Fleming, December 31, 2003.

Any non-sediment material dredged from SFRR shall be stockpiled by BRS and disposed of by RWSA.

BRS shall perform all setup and removal of its equipment at the work site. BRS shall build access roads, temporary dewatering basins, temporary stockpile areas, loading areas and truck turn-arounds as needed to dredge, store, load, and haul all material removed from SFRR.

### **3. COST**

All costs for the proposed work are as listed in the Competitively Sensitive Information Supplement.

The costs for mobilization, site preparation, setup, teardown, site reclamation, and demobilization are fixed costs. Site preparation includes tree removal, site grading, construction of unpaved access roads with gates, construction of a site drainage system, preparation of dewatering/sorting/classifying facilities, installation of silt fencing, and construction of temporary material storage areas, loading areas, and truck turn-arounds.

The unit cost for material removed shall be fixed per ton<sup>2</sup>, but the total cost for material removed shall vary monthly as a function of the amount of material removed from the work site.

### **4. LIST OF DELIVERABLES FROM RWSA**

RWSA shall provide in a timely manner all necessary Federal, State and Local permits required for dredging which may include permits from VMRC, Army Corps of Engineering, DMME, and DEQ, and all necessary permits from VDOT for ingress to and egress from all RWSA-owned or RWSA-controlled roads and properties required for the proposed work. RWSA shall provide BRS written confirmation of permission for BRS to access to all City of Charlottesville-owned property adjacent to the reservoir as shown in Figure 1 of the Competitively Sensitive Information Supplement for dewatering and stockpiling of sediment and for other activities in support of this Agreement. RWSA shall provide any and all laboratory testing of sediments for PCB's, hydrocarbons, mercury, pesticides or any other contaminants that could be present in material removed from SFRR, if any such testing is required by any regulatory agency or permitting authority. If any material removed from the SFRR as part of the proposed work is reasonably determined by BRS to be contaminated or otherwise unsuitable for disposal by being spread upon land without any further treatment, RWSA may elect: 1) to pay for all cleanup costs associated with removing contaminants from such material; or 2) may decline to pay for such cleanup. If RWSA elects to decline to cleanup any material removed from the SFRR as part of the proposed work and reasonably determined by BRS

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<sup>2</sup> BRS's equipment measures the amount of dewatered material removed in tons, thus the billing determinant for the amount of material removed is tons.

to be contaminated or otherwise unsuitable for disposal by being spread upon land without any further treatment, BRS reserves the right to terminate this contract with RWSA. In the event of such termination, RWSA shall reimburse BRS for all mobilization and demobilization costs that were incurred prior to, and as a result of, such termination.

## **5. LIST OF DELIVERABLES FROM BRS**

BRS shall provide all equipment necessary to perform the proposed work including a 10" Hydraulic Dredge, 10" booster pump, 10" piping and floats, pipe fusion machine, dredge tender, anchors, loader, hydraulic excavator, screening and classifying equipment, fuel and oil, as well as labor for operating and maintaining such equipment. BRS will also provide RWSA a progress report every month indicating the total amount of material removed, measured in tons and estimated in cubic yards.

## **6. SCHEDULE**

Assuming two months for mobilization, site preparation, and setup, one month for site reclamation and demobilization, and 60 months of maintenance and restoration dredging, the total project duration is 63 months.

## **7. TERMINATION OF AGREEMENT**

Either Party may terminate this Agreement upon failure of the other Party materially to comply with or to perform any material responsibility defined in this Agreement by providing thirty (30) days' prior written notice to the other Party; provided, however, such termination shall not relieve either Party of any obligation incurred in accordance with the provisions of this Agreement prior to the date of termination. Both Parties agree that in the event of a default of a responsibility as defined in this Agreement, notice of such default shall be given by the Party harmed via certified mail or overnight delivery. The Party that receives such notice shall have thirty (30) days to remedy the default and shall do so using diligent efforts to remedy the default as quickly as reasonably possible.

If the Party that has received notice fails to remedy the default or has not used diligent efforts to remedy the default as quickly as reasonably possible on or before the thirtieth day after written notice of such default was received, then this Agreement may be terminated at the option of the Party harmed, unless the default is of such a nature that it cannot reasonably and with diligent efforts be remedied within the thirty day period and on condition that the offending Party continues to use diligent efforts to remedy the default as quickly as possible.

Except as otherwise provided herein, in the event of termination of this Agreement, all responsibilities defined within this Agreement cease as of the date such termination becomes effective and each Party is thereafter and forever relieved of its responsibilities as defined herein, except that if this Agreement is terminated for a material default by either Party, then the non-defaulting Party shall be entitled to compensation calculated in a commercially reasonable manner pursuant to Section 10.



**8. BILLING AND PAYMENT**

The calendar month shall be the standard period for all accounting under this Agreement.

Seller shall render all invoices by the 10<sup>th</sup> day of the month next following the period to which they are applicable, or as soon thereafter as practicable.

All such invoices shall be due and payable by the Buyer by the 10<sup>th</sup> day after such invoice is received, or the 20<sup>th</sup> day of the calendar month immediately following the period in which the applicable Output was delivered, whichever is later. All amounts owed shall be paid by the due date except when the due date falls on a weekend or banking holiday, in which event the invoice shall be paid on the next business day.

Invoices not paid when due shall accrue interest to be computed in accordance with 18 CFR §35.19a (as may be amended) from the date payment is due to the date of actual payment.

All invoices rendered by the Seller shall be sent by **facsimile transmission** to:

[Buyer to insert its Accounts Payable Agent's name]

[Buyer to insert its full company name]

[Buyer to insert its Accounts Payable Agent's voice phone number]

[Buyer to insert its Accounts Payable Agent's fax number]

All payments to the Seller shall be sent by **Automated Clearing House wire transfer** to:

Wachovia Bank

Atlanta, GA

ABA ; Acct

Beneficiary: Blue Ridge Sand, Inc.

In the event that an invoice or any portion thereof is in dispute, the undisputed portion of the invoice shall be paid when due. The Parties shall use their best efforts to promptly resolve such disputes. Upon resolution of any billing dispute, the proper adjustment shall be made and the appropriate amount shall be paid by the Buyer or refunded by the Seller in accordance with such resolution, together with interest accrued on such amount at the rate set forth in Section 4.4, computed from the date payment is first due until the date of actual payment.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement through netting, in which case all amounts owed by one Party to the other Party during any given month (a "Transaction Month"), including any liquidated damages, interest, and/or credits, shall be offset against each other so that only the Party owing the greater amount shall pay the difference to the other Party.

Prior to the 10<sup>th</sup> day of each calendar month in which there are offsetting transactions, the Parties shall confer by reasonable means (telephone, facsimile, or electronic data interchange) and compare/confirm offsetting invoice amounts and account balances owed by and/or to each other with regard to the immediately preceding Transaction Month.

## **9. LIABILITY FOR NON-PERFORMANCE**

Seller shall use commercially reasonable efforts to inform Buyer as soon as practicable of any circumstances, including Uncontrollable Forces<sup>3</sup>, that seem likely to prevent Seller from delivering all or part of the services contracted for.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

If either Party fails to pay the other Party any amounts due under this Agreement, on the due date therefor, the aggrieved party shall have the right (i) to suspend performance until such amount plus interest on the outstanding amount computed in accordance with Section 4.4 has been paid and/or (ii) exercise any other remedy available at law or in equity to enforce payment of such amount.

To the extent that damages required to be paid under this Section are deemed to be liquidated damages, the Parties acknowledge that: (i) the damages are difficult or impossible to determine; (ii) obtaining an adequate remedy otherwise is inconvenient; and (iii) the liquidated damages constitute a reasonable approximation of the estimated harm or loss attributable to the breach.

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<sup>3</sup> Uncontrollable Force—an earthquake, storm, lightning, flood, backwater caused by flood, fire, epidemic, accident, failure of facilities, war, riot, civil disturbances, strike, labor disturbances, restraint by court or public authority, or other similar or dissimilar force or event reasonably beyond the control of the Party affected which such Party could not have avoided by exercise of reasonable diligence and care.

## **10. ASSIGNMENTS**

Except as provided for in this Section, neither Party may assign this Agreement or its rights hereunder without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed.

Either Party may, without consent of the other Party:

- (a) Assign this Agreement by way of pledge to a trustee under a mortgage or any similar arrangement to secure its indebtedness; or
- (b) Assign this Agreement to an affiliate owned or controlled by it or to any person succeeding to all or substantially all of the assigning Party's assets, provided that such person assumes all obligations of the assignor under this Agreement. No assignment under this Section shall relieve the assigning Party from liability under this Agreement except as otherwise agreed.

## **11. DISPUTE RESOLUTION**

In the event of a dispute between the Parties arising out of this Agreement, the Parties shall negotiate in good faith using best efforts to resolve the dispute amicably and promptly. If after such negotiations the Parties are unable to resolve the dispute, the Parties may: (i) by mutual agreement, submit the dispute to binding arbitration under rules and procedures to which both Parties agree; or (ii) pursue any legal or equitable remedies that may be available.

## **12. RECORDS AND AUDITS**

Seller shall keep (or as necessary cause to be kept by its Agents) such records as may be needed to afford a clear history of all deliveries of services.

Seller's records shall be available for inspection by Buyer upon reasonable notice during normal business hours. Subject to reasonable and customary protections for confidential or proprietary information, such records may be copied by Buyer at Buyer's expense.

Upon the request of either Party, the other Party shall account for all costs incurred under this Agreement. The cost of such accounting shall be borne by the requesting Party.

## **13. MISCELLANEOUS**

Notices—Written notices required by this Agreement shall be deemed properly sent if delivered in person or sent by registered or certified mail, or by overnight courier service, postage prepaid to the persons specified below:

(a) If to the Buyer:

[Buyer to insert its full company name]

Attention: [Buyer to insert its Agent's name]

[Buyer to insert its street address]

[Buyer to insert its city, state, and zip code]

(b) If to the Seller:

Blue Ridge Sand, Inc.

Attention: Contract Administration

P. O. Box 87

Mouth of Wilson, VA 24363

Necessary Authorization and Other Representations—Each Party represents and warrants, as of the date of this Agreement, that it has the necessary corporate and/or legal authority to enter into this Agreement and to perform all of its duties and obligations imposed by this Agreement. Each Party further represents that the individuals executing this Agreement on its behalf have been duly authorized to do so and that such execution creates a valid, binding and legally enforceable obligation of each Party.

Choice of Law— This Agreement shall be governed by and construed in accordance with the laws of Virginia without regard to its conflicts of law principles. The Parties hereby consent to the non-exclusive jurisdiction of the state and federal courts located in Charlottesville, Virginia in any action arising out of or relating to this Agreement.

Other Agreement— This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any other previous agreements or understandings, written or oral, between the Parties concerning such subject matter.

Binding Effect—The terms and provisions of this Agreement and the respective rights and obligations hereunder of each Party shall be binding upon and shall inure to the benefit of its successors and assigns.

Non-Waiver of Defaults—The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require performance of any of the provisions hereof, shall not be construed as a waiver of such provisions nor affect the validity of this

Agreement or any part hereof or affect the right of such Party thereafter to enforce each and every such provision, except as such waiver may be confirmed in writing.

Amendments—No modifications of this Agreement shall become effective except by written amendment executed by the Parties.

Severability—If any portion of this Agreement is declared invalid or unenforceable by any regulatory body or court of competent jurisdiction by final and non-appealable order, the remaining provisions of this Agreement shall not be affected and shall remain in full force and effect. In such event, the Parties shall use best efforts to promptly renegotiate to restore this Agreement as near as possible to its original intent and effect.

Heading Not to Affect Meaning—The descriptive headings of the various Sections of this Agreement are inserted for convenience only and shall not restrict or modify the terms and provisions hereof.

Survival—Any provision of this Agreement that expressly or by implication comes into or remains in force following the termination of this Agreement shall survive such termination.

Counterparts and Authority—this Agreement may be signed by facsimile and in counterparts, which together shall constitute one agreement. The person signing on behalf of each Party represents that he or she has the authority and power to execute this Agreement.

**SIGNATURES**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as specified above.

**Blue Ridge Sand, Inc.**

**By:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**Rivanna Water and Sewer Authority**

**By:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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**COMPETITIVELY SENSITIVE INFORMATION SUPPLEMENT**

**PROPOSED PROJECT AREA**

The proposed Project Area is approximately 4,000 feet long in the upper reaches of SFRR on both sides of the bridge carrying VA-660 (Reas Ford Road) across the reservoir. The Project Area is the area shaded red in Figure 1 between points "A" and "B". BRS believes this area is the only reach of SFRR where RWSA controls enough buffer area to support dredging operations without leasing or purchasing more buffer than it already owns. Points 1, 2, and 3 in Figure 1 are potential dewatering/classifying/loading areas.

**COST**

BRS shall invoice RWSA for a one time mobilization, site preparation, and setup charge of \$230,000 within 3 days of execution of this Agreement, which RWSA shall pay within 5 days of receipt of invoice. BRS shall begin mobilization upon receipt of this payment and shall begin maintenance and restoration dredging within 60 days of such receipt.

The unit cost for sediment removal is \$5.50 per dewatered ton. This amount is based on BRS's assumption that the cost of No. 2 Off-road Diesel Fuel shall not exceed \$1.39 per gallon. (BRS's current cost for such fuel is \$1.29 per gallon.) If the cost of such fuel exceeds \$1.39 per gallon, BRS shall add a charge to its monthly invoices for sediment removal that represents the difference between BRS's actual off-road fuel costs for the proposed work and the off-road fuel costs for the proposed work as they would have been had the costs for such fuel not exceeded \$1.39 per gallon.

BRS estimates that the total amount of sediment being dredged from the reservoir and removed from the work site will be approximately 11,583 yards (13,900 tons, 2.8 MG) per month which, at \$5.50 per dewatered ton, will cost RWSA \$76,450 per month.

BRS shall invoice RWSA for a one time demobilization charge of \$80,000 no earlier than 30 days prior to termination of this Agreement which RWSA shall pay within 5 days of receipt of invoice.

**TOTAL COST**

The total cost for the proposed 63-month project, assuming: 1) a one-time mobilization, site preparation, and setup charge of \$230,000; 2) a monthly removal rate of 11,583 yards (13,900 tons, 2.8 MG) per month; 3) a sediment removal charge of \$5.50 per dewatered ton; 4) 60 months of maintenance and restoration dredging; and 5) a one-time reclamation and demobilization charge of \$80,000, the total \$4,587,000.

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ATTACHMENT A.  
(FIGURE 1)

