

COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
DEPARTMENT FOR FACILITIES MANAGEMENT
DIVISION OF REAL PROPERTIES

Request For Proposals (RFP)



Project Name: PAINTSVILLE LAKE MARINA FACILITY
Proposal Number: #110615

**IMPORTANT: PROPOSALS MUST BE RECEIVED BY: Friday,
November 6, 2015 @ 2:00 p.m.**

Return proposals to:
Division of Real Properties
Department for Facilities Management
Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601-2607

TABLE OF CONTENTS

INTRODUCTION 4

LOCATION - EXISTING FACILITIES AND BACKGROUND 5

RFP GENERAL PROCEDURAL INFORMATION..... 5

 Pre-Bid Conference 5

 Proposed Sublicense Site..... 5

 RFP Addenda..... 5

 Offeror Responsibility for Proposal Submittal..... 5

 Inquiries..... 6

 No Prior Commitment or Obligation of the Commonwealth 6

 Issuing Office 6

 Proposal Guaranty 6

MARINA FACILITY DEVELOPMENT..... 7

 Kentucky State Park Image 7

 Existing Facility 7

 Marina Operation Date 8

 Food, Bait, and Merchandise Sales Area..... 8

 Gasoline and Oil Sales Area..... 8

 Staffing 9

 Security 9

 Utilities..... 9

 Maintenance Responsibilities 11

 Advertising 12

 Signage 12

 Warranty of Suitability 13

TERMS AND CONDITIONS 13

 General..... 13

 Sublicense Agreement..... 13

 Rental Consideration 13

 Rates and Prices..... 13

 Records and Reports 13

 Taxes..... 15

 Liens Against the Sublicensed Premises 15

 Sub-Subleasing, Assignments, or Mortgages of Offeror’s Interest..... 15

 Alterations/Renovations of Premises..... 16

 Performance Bonds 16

 Protection of Work, Property, Employees and Public..... 17

 Construction/Development Plan 17

 Mechanic’s and Materialman’s Liens..... 18

 Title to Improvements and Additions and Removal of Equipment
 and Supplies Upon Expiration or Termination of Agreement..... 19

 Boat Slip Sublicense Agreements 19

 Hold Harmless..... 19

Attorney's Fees	19
Notices	19
Offer of Gratuities.....	20
Conflict of Interest	20
Maintenance of Commonwealth's/Corps' Property	20
Escrow Account	21
Protection of Work, Property, Employees, and Public.....	22
Insurance	22
Employment Practices	23
Permits and Licenses.....	24
Right of Entry.....	24
Termination of Sublicense	24
Termination for Default	24
Procedure on Termination	25
Force Majeure	26
Conflict of Law and Choice of Law Provision	26
Level of Asset.....	26
Waiver	26
Disclosure of Financial Information	26
Amendment to Agreement.....	27
Severability Clause	27
Successors and Assigns.....	27
Public Use	27
Prohibition from Removal of Vegetation and Minerals	27
PROPOSAL	28
Evaluation of Proposals	28
Point Scoring of Proposals	28
Submission of Proposal	28
Withdrawal of Proposal.....	29
Proposal Subject to These Terms	29
Offeror's Proposal Shall Include	29
Transmittal Letter	29
Marina Operational Plan	30
Financial Background of Offeror and Proposed Method of Financing Project.....	30
Corporate/Business Background and Experience	31
Definition of Gross Receipts	31
Revenue Payable to the Commonwealth	33
AUTHENTICATION OF BID AND AFFIDAVIT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST	34
SWORN STATEMENT PURSUANT TO KRS 45A.485.....	36
SWORN STATEMENT PURSUANT TO KRS 45A.110.....	37

I. INTRODUCTION

The Commonwealth of Kentucky (“COK”) desires to improve and upgrade existing amenities at Paintsville Lake State Park, Dewey Lake, Staffordsville, Kentucky (“Paintsville Lake”) in order to expand and enhance the range of recreational opportunities at this park facility. To that end, the Commonwealth solicits proposals from private, third-party, developers who will finance, design, construct, maintain, manage, operate, and furnish first class, high quality, marina operation (the “Project”) at the park.

The COK desires to sublicense out to a private concern a portion of the shoreline of Paintsville Lake (see attached Exhibit A) for the marina facilities. The Commonwealth has determined that perhaps the most feasible and responsible means for operating certain recreational facilities at the Paintsville Lake project area is by and with private participation. The desired objective is a sublicense agreement with a private Offeror, who will maintain, manage, operate, and furnish a first class, high quality marina facility utilizing the existing marina facility at Paintsville Lake (hereinafter “Marina”).

The current marina operation at Paintsville is licensed to a private entity. This license expires October 31, 2015 with no options for renewal. The current operator has sixty days from the expiration date to remove the facility from the licensed premises.

The land area that encompasses Paintsville Lake is managed by the Kentucky Department of Parks under the terms of a sublicense agreement (Sublicense No. DACW69-1-84-0144) with the United States Army Corps of Engineers, which began May 1, 1984 and ends April 30, 2034 (see attached Exhibit B). The successful Offeror shall abide by all the terms and conditions of the aforementioned prime COE lease with Parks, to include but not be limited to Title VI of the Civil Rights Act of 1964, as amended (r2 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7.

Based on the detailed requirements, plans and specifications, terms and conditions set forth in the Request for Proposals (RFP) document, the Commonwealth herewith solicits proposals from prospective operators who can demonstrate the necessary capability to successfully construct, maintain, operate, furnish, and manage the marina at optimum potential for an approximate nineteen (19) year period. The nineteen year term coincides with the expiration of the prime lease with the COE. Should Parks request/receive an extension of the prime lease, the COK may consider extending the marina agreement beyond the nineteen year term; however, prior to exercising any future options, the Commonwealth of Kentucky reserves the right to amend the current contract and any of the terms or conditions.

In consideration of the Offeror’s operation of the existing marina facility and revenues received, the Commonwealth is willing to sublicense to the successful Offeror the property described herein for a sublicense period beginning on date of execution of the sublicense between the Commonwealth of Kentucky and the successful Offeror or the date successful Offeror is granted written permission to begin operation of the marina, whichever date is earlier, and ending approximately nineteen (19) years thereafter, and subject to the terms and conditions of the sublicense agreement between the Commonwealth and the Corps.

II. LOCATION - EXISTING STATE PARK FACILITIES AND BACKGROUND

Paintsville Lake State Resort Park consists of approximately 242 acres of land, while Paintsville Lake consists of 1,140 acres of water. The park includes a 32-site RV campground with electricity, water, sewer hookups, 10 primitive sites, restrooms, shower, and laundry facilities. Two of the RV sites are adapted for the disabled. The park includes playgrounds, horseshoe pits, sand volleyball court and a basketball court. Two sheltered pavilions and two shelters are located in the campground area. Five picnic tables and grills are along the lake shoreline for smaller family cookouts. There is an existing full-service marina offering 84 open slips, 80 covered slips, a launching ramp and rental of fishing boats, houseboats, pontoons, and pedal boats. The award of this solicitation will replace the existing marina.

III. RFP GENERAL PROCEDURAL INFORMATION

A. Pre-Bid Conference

Should conditions dictate, a site meeting at the marina facility may be scheduled by this office. Should a site visit be scheduled, it is anticipated that representatives from the Department of Parks, the Department for Facilities Management, and the U.S. Corps of Engineers may be in attendance to answer questions from prospective Offerors.

Although a question and answer session may occur at the meeting, participants should understand that the final official answer or position of the Commonwealth of Kentucky on any material points will be one stated in writing and distributed to all Offerors. Offerors will be encouraged to submit written questions prior to any proposed on-site meeting. All inquiries should be directed to the Finance and Administration Cabinet, Division of Real Properties, Attention: Nancy E. Brownlee, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 564-2600.

B. RFP Agenda

This RFP may be supplemented or amended at any time by appropriate addenda, which will be mailed to all participants in the RFP process. Addenda may also be necessary after the receipt date and will be sent to all Offerors who have submitted a proposal at that time.

C. Offeror Responsibility for Proposal Submittal

All proposals submitted shall be deemed to have been made with the full knowledge of all of the terms, conditions, provisions, specifications, and requirements contained in this RFP and any addendum thereto, and those terms and conditions contained in Sublicense Agreement DACW DACW69-1-84-0144, dated May 1, 1984, between the U.S. Corps of Engineers and the Commonwealth of Kentucky (copy attached – Exhibit B).

Each Offeror has the responsibility of delivering his/her proposal by the time and the place prescribed in this RFP. Proposals received prior to the closing for receipt of proposals will remain unopened until the time set for opening proposals. Any proposal received after the date and time specified in this RFP may be rejected and returned unopened to the Offeror. No responsibility will attach to an officer of the Commonwealth for the premature opening of a proposal through inadvertence or one not properly addressed and marked. Neither the proposals nor their contents

will be made available for public information or inspection until such time as the determination of a successful Offeror has been made.

All proposals shall be deemed an offer acceptable within a period of one hundred and twenty (120) calendar days after the closing date for receipt of proposals (see proposal guaranty at Paragraph G, infra). All proposals submitted shall be deemed to have been made with full knowledge of all terms, conditions, provisions, specifications, and requirements contained in this RFP and any addenda and enclosures thereto.

Neither the proposals nor their contents shall be made available for public information or public inspection until such time as an award of a sublicense is made.

D. Inquiries

Contact with Commonwealth agents for information specific to bidding procedures and/or regulations, programmatic, technical, or site specifications or location shall be limited to the Division of Real Property, Attention: Nancy E. Brownlee, Assistant Director, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601. All inquiries must be submitted no later than twenty (20) days prior to receipt of proposals to allow sufficient time for written responses to be routed.

E. No Prior Commitment or Obligation of the Commonwealth

The issuance of this RFP in no way constitutes an expressed or implied commitment by the Commonwealth of Kentucky to award a sublicense or to pay for the costs incurred in the preparation of a response to this request.

The Commonwealth of Kentucky unconditionally reserves the right to withdraw or cancel this RFP and to reject any and all offers at any time and for any reason without recourse. Receipt of proposal materials by the Commonwealth or submission of a proposal to the Commonwealth confers no rights upon the Offeror nor obligates the Commonwealth in any manner.

No sublicense resulting from this RFP shall be binding on the Commonwealth until it has been approved by the Secretary, Finance and Administration Cabinet and the District Engineer, U.S. Corps of Engineers.

Where the Commonwealth may waive minor irregularities or technicalities, such waiver shall in no way modify the RFP requirements or provisions if the Offeror is awarded the sublicense.

This RFP is issued and the existing facilities are offered in an "as is, where is" condition. There is no warranty given as to any structural, electrical, mechanical components thereupon. The Offeror shall be responsible for any and all inspections to account for the condition of the facilities prior to bidding. Any and all repairs to the existing facilities shall be the sole responsibility of the Offeror from the date of award of this Request for Proposals throughout the resulting agreement.

F. Issuing Office

This RFP is being issued by the Finance and Administration Cabinet, Department for Facilities Management, on behalf of the Kentucky Department of Parks.

G. Proposal Guaranty

1. Offeror's proposal must be accompanied by a certified or cashier's check, made payable to the "Kentucky State Treasurer", in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00).
Upon award of a sublicense, the certified or cashier's check of the unsuccessful Offerors will be returned immediately. The certified or cashier's check of the successful Offeror will be returned upon receipt of the performance and payment bonds enumerated herein.
2. In the event a Offeror's proposal is accepted and the Offeror shall fail to execute the sublicense within ten (10) calendar days after its receipt by the successful Offeror, the Commonwealth may, at its option, determine that the Offeror has abandoned the project and the amount of the bid security shall be forfeited to the Commonwealth as liquidated damages, and not as a penalty.

IV. MARINA FACILITY

A. Kentucky State Park Image

The marina operation will be perceived by the general public as being a part of a system of state parks which over the years has created and presently enjoys a positive image and reputation. Offerors will be expected to position this operation as equal or superior to current Kentucky state park operations by offering customer service that will enhance the total tourism effort of the Commonwealth of Kentucky.

The Offeror shall be responsible for assuring that the marina operation provides services to the best standards prevailing for similar businesses and that the marina proper is maintained to a safe standard and remains in compliance with all codes laws and regulations.

B. Existing Facility

The existing marina is currently licensed to a private operator, whose license agreement expires without renewal options on October 31, 2015. The current Paintsville Lake Marina provides 52 open slips on Docks A, B, C, and 116 covered slips on Docks D and E, and rental of fishing boats, houseboats, pontoons and pedal boats. Docks A, B, c are covered slips for pontoons, bayliners, fishing boats; current price for those slips are \$1500.00/year. Docks D & E are for houseboats; price for these slips are \$50.00/foot, with a minimum charge of 50 feet per year. The Department of Parks maintains the boat ramp and the fishing pier. The successful Offeror shall be responsible for the existing gasoline tank and pumps, wastewater dump station, and must offer a small 'convenience' store, offering ice, fishing and boating supplies, snacks and miscellaneous items.

The Offeror shall be responsible for all janitorial services, stocking of public restrooms, and maintenance of the entire marina operation. The successful Offeror shall also carry and maintain insurance on the marina operation. The existing marina facility is owned by, and currently operated through a lease agreement with the private sector, which expires without renewal options **October 31, 2015.**

The successful Offeror shall construct facilities of at least a minimum size to promote continuity with/accommodate the existing slip renters. The successful Offeror shall operate as a marina concession and for no purpose other than outlined herein, except as may be authorized by the express prior written consent of the Department of Parks, upon the terms and conditions herein set forth, each and every day of the operating season. The existing area is displayed on the attached maps/plans, identified as Exhibit A. The operation of said marina facility shall, at a minimum, include the following business activities:

- Furnishing a facility for mooring and docking of privately owned boats
- Limited incidental sales of boats, motors, boat accessories by the successful Offeror
- Rental of boats
- Sale of light refreshments, prepared foods, groceries, fishing tackle, and fish bait
- Gasoline and oil sales
- Any other business activities, subject to the prior approval of the Department of Parks
- The Offeror shall, at its sole expense, physically relocate the houseboat pier prior to seasonal Winter Pool each year, at its sole expense, and at a location to be determined solely by the successful Offeror.

The successful Offeror agrees to keep the facilities open to the public and charge reasonable rates. Rates charged by the successful Offeror to its customers must be in line with similar rates for like items. All rates and prices charged for goods and services shall be reasonable and subject to prior review of the Corps of Engineers and the Department of Parks and prior written approval of the Department of Parks through the entire term of the resulting agreement.

Parks retains the right to negotiate with vendors for pouring rights, vending machines, etc. The successful Offeror shall be required to purchase products from whoever is the vendor with the State for beverages, and the successful Offeror will be required to purchase per the prices set forth in the beverage contract. The commission paid to the state for those sales will be determined by the master agreement between the state and the successful Offeror.

All current moorage agreements/slip rentals on A-Slip (10 houseboats) excluding 2 pontoons moored there; B-Slip (95 slips). If there are prepaid agreements/slip rentals at the time the successful Offeror is awarded the sublicense, the successful Offeror may be entitled to sublicense payment as of the date the sublicense takes effect.

NOTE: THE DEPARTMENT OF PARKS SHALL NOT PROVIDE ANY PERSONAL PROPERTY FOR THE OPERATION OF THE MARINA FACILITY. ALL NECESSARY PERSONAL PROPERTY SHALL BE THE RESPONSIBILITY AND AT THE SOLE EXPENSE OF THE OFFEROR.

The successful Offeror shall, at its sole expense, post signage, which shall be conspicuously displayed and must conform to existing Department of Parks' signage, on the sublicensed premises reflecting that the marina operation is privately owned and operated through an agreement with the Commonwealth of Kentucky.

C. Marina Operation Date

The Department of Parks prefers that the hours of operation for the marina are 7:00 a.m. to 9:00 p.m. At a minimum, the hours should be 7:00 a.m. to 7:00 p.m. The Department of Parks will require that the marina be open for those early risers, who wish to rent fishing boats, equipment, buy licenses, bait, and fuel, etc. Parks desires that the marina operation be open earlier than 8:00 a.m., in order to provide service to fishermen, tourists, etc. Any deviation from the terms and conditions,

specifications, requirements, or provisions of this RFP must be stated in writing in the Offeror's transmittal letter.

The Commonwealth has designated less an area of land, including improvements, and water ways, which is the Paintsville Lake marina site (see attached Exhibit A). The Offeror shall not be allowed to erect any improvements to the land or marina facility without prior approval of the U.S. Army Corps of Engineers and the Department of Parks, in accordance with Sublicense DACW69-1-84-0144 (copy attached – Exhibit B).

The existing above ground fuel tank is located on land across from the marina and shall become the sole responsibility of the successful Offeror. Should, at any time during the sublicense term or any renewal thereof, the existing fuel tank deteriorate to the point of replacement, fuel tank replacement shall be by and at the expense of the successful Offeror.

D. Food, Bait, and Merchandise Sales Area

The Offeror shall sell gasoline, oil, boat accessories, fishing supplies, and tackle, adequate for the needs of the public. Sandwiches and other goods shall be offered for sale only when the facilities comply with the standards required by the Department of Health. Staple items, breads, milk, meat, ice, and other supplies may be offered for sale, provided the public interest would be better served thereby. Items of merchandise not specified or inferred from the list above are acceptable upon the written consent of the Department of Parks.

E. Gasoline and Oil Sales Area

The Offeror shall sell gasoline and may sell other petroleum products, such as diesel fuel, if demand warrants. Offeror shall be responsible for maintaining, operating, and complying with Natural Resources and Environmental Protection Cabinet and Department of Agriculture regulations and with any and all state, local and federal regulations and taxes.

The fuel dispensing system must be an approved system, which meets current laws and regulations. The existing 4,000 gallon fuel tanks shall be declared as surplus to Parks and shall become the sole responsibility of the successful Offeror. Should, at any time during the lease term or any renewal thereof, the fuel tanks deteriorate to the point of replacement, fuel tanks replacement shall be by and at the expense of the successful Offeror. Construction of the new marina facility shall be in accordance with Section H, Alterations/Renovations of the Premises, page 16 herein.

Construction of the new marina facility shall also be in accordance with the following flotation requirements identified in Exhibit C, attached hereto and made a part hereof.

The successful Offeror shall provide to Parks documentation/reports on fuel systems and annual inspection letter from the KY Department of Agriculture on the gas pumps.

F. Staffing

The Offeror shall employ only competent and orderly employees who will keep themselves neat and clean and will accord courteous and competent treatment and service to all guests and patrons. The Offeror's employees shall be properly trained in their duties and must be adequate in number

and quality to provide prompt, courteous, and efficient service to the public. Offeror's employees shall wear attire similar in nature to Parks' employees.

The successful Offeror must comply with the Governor's Executive Order 2015-370, dated June 8, 2015, and entitled, "Minimum Wage for State Employees and the Commonwealth's Service Providers" copy attached hereto as Exhibit D.

G. Security

The successful Offeror shall provide security for its operation on the entire sublicensed premises and a full description of what that entails shall be submitted with the Offeror's proposal.

H. Utilities

It shall be the responsibility of the Offeror to provide and pay for all utilities for the operation of the marina facility. Currently, water and electric services are metered through the park system. Each month, the park shall bill the marina operator for usage. The Offeror shall also be responsible for all costs associated with utility upgrades, changes in utility providers, and all costs to provide rerouting.

Toilets go into holding tanks on individual boats and are emptied by the pump-a-head boat when full. The fee for this pump out is \$25.00 per tank. From the marina, it goes to the Paintsville sewer system (Paintsville Utilities).

Only sanitary waste can be discharged (i.e., no oil, grease, cleaning chemicals, etc.). There will not be a sewer fee assessed to the successful Offeror.

The Offeror shall be responsible for obtaining all necessary regulatory agency approvals (federal, state and local). It shall also be the Offeror's responsibility to ensure adequate water service for the entire marina facility domestic use and necessary fire and safety usage.

The Offeror shall provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with federal, state, and local standards. (The annual inspection may be made by the Offeror and be a self certification.)

The Department of Parks shall require an electrical certification every five years (according to the Corps of Engineers' standards), or when modifications are made to the electrical system, or when the electrical system at the marina is damaged by weather or vandals. The electrical certification must be made by a certified electrician.

Any utility upgrades required to service the new marina facility shall be by and at the sole expense of the successful Operator.

The Offeror shall be responsible for obtaining all necessary regulatory agency approvals (federal, state and local). It shall also be the Offeror's responsibility to ensure adequate water service for the entire marina facility domestic use and necessary fire and safety usage.

The Offeror shall provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with federal, state, and local standards. (The annual inspection may be made by the Offeror and be a self certification.)

The Department of Parks shall require an electrical certification every five years (according to the Corps of Engineers' standards), or when modifications are made to the electrical system, or when the electrical system at the marina is damaged by weather or vandals. The electrical certification must be made by a certified electrician.

I. Maintenance Responsibilities

The Department of Parks divests itself of any and all maintenance to the facilities; consequently, Offeror shall be responsible for **all** maintenance duties, including but not limited to the following:

1. The Offeror, at its sole expense, shall be responsible for daily trash and garbage removal from the entire sublicensed premises year-round. Offeror shall be required to daily remove the refuse from the dumpster and parking lot; however, the Offeror will be required to police those sublicensed areas on a daily basis and remove on an 'as needed' basis or as reasonably directed by the Department of Parks.
2. The Offeror shall be responsible, at its own expense, for all repairs and maintenance of all existing facilities, both interior and exterior, (to include utilities, janitorial services, and supplies); painting, and daily restroom cleaning, as necessary (see #1 above); providing all supplies, cleanup after flooding, all utilities, etc.
3. Offeror, at its sole expense, shall be responsible for preventative maintenance of all equipment in accordance with manufacturer's recommendations, keeping maintenance records on equipment and providing such records to the Department of Parks upon request.
4. Offeror, at its sole expense, shall be responsible for all rebuilding, restoration and replacement of Department property necessitated by casualty resulting from the negligence or intentional act of the Offeror, its agents or employees.
5. The Offeror shall assume responsibility for all operation and maintenance of existing facilities, including grounds, parking, structures, ramp, walkways, and any labor, equipment, and supplies required thereto, at the time a sublicense is finalized.
6. The Offeror shall assume all responsibility and costs for the existing fuel storage tank, including any replacement or maintenance, labor, and costs to keep current with federal guidelines. Maintenance includes, but is not limited to: painting, pumping of sludge / water in bottom of tank, as well as if flooding conditions occur, water will have to be pumped out of tank.
7. The Offeror shall provide annually to Parks all documentation that the fuel storage tank has been maintained and is in compliance with all local, state, and federal laws and requirements and any other regulatory authorities.
8. In addition to the aforementioned maintenance responsibilities of the Offeror and during the original sublicense term or any renewal thereof, the Offeror shall:

Keep any and all existing and proposed buildings, structures, and other

improvements, located on the sublicensed premises, both interior and exterior, and all equipment and personal property within said buildings and structures in good repair, and not suffer or permit any waste to be committed or anything to be done on the sublicensed premises that would constitute a nuisance. The Offeror and the Commonwealth agree that the following described property shall be made subjects to the maintenance provisions of this Section, to wit: (i) all floating docks, gangways, piers, slips, and walkways, together with all appurtenances, equipment, and utility service components thereupon; and (ii) any and all marina buildings, gasoline tank, maintenance and storage sheds, and any and all other structures.

9. The successful Offeror shall be expected to annually provide the Department of Parks with an "Annual Checklist for the Safe Operation and Maintenance of Leased Marinas" (see Exhibit E).

J. Advertising

In order to promote both the Kentucky Department of Parks and the Offeror's operations in a more efficient manner, the parties hereto agree that any advertisement or promotional material, whether in print form or through the media, shall be submitted to the Commissioner of the Kentucky Department of Parks for his written approval, or his designee, prior to the publication or broadcast of such material. State "branding" may be incorporated and will be reviewed on a case-by-case basis. Any rejection of said material by the Commissioner or his designee shall be accompanied by a written explanation for said rejection. The parties hereto further agree that the sale of any souvenirs or similar material is subject to review by the Department of Parks' Customer Services Division and must also receive the written approval of the Commissioner of the Department of Parks prior to the sale of such item to the public. The denial of the sale of such item must also be accompanied by a written explanation for said denial.

K. Signage

Offeror, at its expense, will be required to install necessary promotion/advertisement sign(s) at appropriate locations subject to the prior written approval of the Department of Parks. Proposed highway signage and locations must be approved by the Transportation Cabinet and submitted to the Department of Parks for final approval prior to installation. Maintenance of signs will be the responsibility of the Offeror. The successful Offeror shall, at its sole expense, post signage on the sublicensed premises reflecting that the marina operation is privately owned and operated through an agreement with the Commonwealth of Kentucky. Signage will be required for all new construction, identifying the structures. Other signs required by regulatory agencies will be required for the marina. Size requirements will be dictated by the regulatory requirements. Color scheme and lettering will need to be consistent with Park signage. State "branding" may be incorporated and will be reviewed on a sign by sign basis.

L. Warranty of Suitability

The Commonwealth makes no guaranty or warranty, either expressed or implied, with respect to the property. **The Offeror is expected to have examined the property and to submit with Offeror's proposal his/her own formed conclusions as to its suitability of the property for the stated purposes.**

V. SUBLICENSE AGREEMENT TERMS AND CONDITIONS

A. General

The sublicense between the Commonwealth of Kentucky and the successful Offeror shall consist of: (1) the RFP (and any addenda thereto), and (2) the successful Offeror's proposal submitted in response to the RFP. The sublicense shall also be subject to the terms and conditions contained in Contract No. DACW69-1-84-0144, between the U.S. Army Corps of Engineers and the Commonwealth of Kentucky. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the RFP shall govern. All written addenda and supplements shall take precedence over the documents they modify.

In the event that an issue is addressed in one document that is not addressed in the other document, no conflict in language shall be deemed to occur. However, the Commonwealth reserves the right to clarify any sublicense relationship in writing with the concurrence of the successful Offeror, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the successful Offeror's proposal. In all other matters not affected by the written clarification, if any, the RFP shall govern.

The successful Offeror shall be responsible for assuring that the marina concession operations authorized by the resulting sublicense, provides services to the best standards prevailing for similar businesses.

No modification or change of any provision in the sublicense shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the successful Offeror and the Department of Parks and incorporated as a written amendment to the sublicense and processed through and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change. Memoranda of Understanding and correspondence shall not be construed as amendments to the sublicense.

The sublicense shall be construed and interpreted according to the laws of the Commonwealth of Kentucky. Any legal proceedings against the Commonwealth regarding this RFP or any resultant sublicense shall be brought in Commonwealth of Kentucky administrative or judicial forums. Venue will be in Franklin County, Commonwealth of Kentucky.

B. Sublicense Agreement Term

The sublicense agreement will be for a period commencing from the date the sublicense is fully executed between the successful Offeror and the Commonwealth or the date the successful Offeror is granted written permission to begin operation of the marina, whichever date is earlier, and ending April 30, 2034, which is the expiration date of the prime COE/Department of Parks' lease DACW69-1-84-0144. At the end of the initial term, if the COK has negotiated an extension of its prime lease with the COE, the COK will entertain an extension of the marina sublicense for an additional five (5) year term or the project will be rebid. Prior to exercising any future option, the Commonwealth of Kentucky reserves the right to amend the current contract and any of the terms and/or conditions.

Any sublicense between the Commonwealth of Kentucky and the successful Offeror arrived at

through this RFP shall be made subject to all rights of the U.S. Corps of Engineers under the sublicense agreement and contract number DACW69-1-84-0144, dated May 1, 1984, all documents between the U.S. Corps of Engineers and the Commonwealth of Kentucky. All the provisions of said sublicense agreement and contract shall be binding upon all parties. The successful Offeror shall abide by all rules and regulations, which may be promulgated by the U.S. Corps of Engineers in connection with the use of the premises.

C. Rental Consideration

As consideration for allowing the successful Offeror to finance, construct, operate, and maintain a marina facility at Paintsville Lake State Park, the successful Offeror shall pay to the Commonwealth of Kentucky a monthly percentage of revenue earned from the operation of the marina facility at Paintsville Lake State Resort Park (see page 33 of this RFP).

D. Rates and Prices

All rates and prices charged by the successful Offeror for goods and services shall be reasonable and subject to prior review by the U.S. Corps of Engineers and the Department of Parks and prior written approval by the Department of Parks throughout the entire term of the sublicense. The successful Offeror shall not be permitted to charge for entrance or admission to the concession areas, including that portion, if any, outside of the project boundaries. If a rate increase is approved by the Department of Parks for slip or moorage rental, then the base rental for the resulting sublicense shall be increased accordingly.

E. Records and Reports

The successful Offeror is required to keep complete and accurate financial records, pursuant to 304 KAR 1:010, and any and all other applicable laws or regulations, of all transactions relating to the marina facilities and to maintain such additional records as the Commonwealth deems necessary to adequately reflect the operations conducted on the sublicensed premises. The financial records will be subject to inspection or audit by designated representatives of the Commonwealth at all times during regular business hours and shall be made available at a convenient location for that purpose.

The successful Offeror further covenants that, promptly after the close of each successful Offeror's fiscal year, it will, at its own expense, cause an audit to be made of its books and accounts relating to the operation of the facilities for the preceding fiscal year by an independent firm of certified public accountants of recognized ability and approved by the Department of Parks, and a copy of the audit shall be submitted to the Department of Parks no later than three (3) months after year's end. Distribution of the audit will be the responsibility of the Department of Parks. The Commonwealth shall approve the audit firm.

F. Taxes

The successful Offeror shall be responsible for paying all state, federal, and local, including but not limited to, ad valorem taxes assessed against the marina development and the operations conducted on the sublicensed premises.

G. Liens Against the Sublicensed Premises

Nothing in this agreement shall in any way be deemed or construed as constituting an order or request by the Commonwealth, expressed or implied, to any contractor, sub-contractor, supplier, materialman, or laborer for the performance of any labor or the furnishing of any materials for the

maintenance of any improvements on, alterations to, or other improvements of the sublicensed premises; nor as giving the successful Offeror any right, power, or authority to grant for or permit the rendering of any services or furnishings of any materials that would give rise to the filing of any mechanic's liens against the Commonwealth's/Corps' property or the successful Offeror's sublicense-hold interest therein.

Furthermore, the successful Offeror shall not suffer or permit any mechanic's or materialman lien to be filed against the Commonwealth's/Corps' property or the successful Offeror's sublicensehold interest in the sublicensed premises by reason of work, labor, services, or materials supplied to or claimed to be supplied to the successful Offeror. If a mechanic's or materialman's lien shall be filed against the sublicensed premises or the successful Offeror's sublicensehold interest at any time, the successful Offeror shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond, an Order of a Court of competent jurisdiction or otherwise. If the successful Offeror, in good faith, disputes the validity or correctness of any such lien, then it may refrain from paying or causing the same to be discharged of record, but it shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness or validity of such lien. The successful Offeror shall not be deemed to be in default under this agreement while such proceedings or litigation are being conducted in good faith by it. However, if the successful Offeror fails to cause any such lien to be discharged within the period aforesaid, or fails to contest the same as provided above, then the successful Offeror shall be deemed to be in default of this sublicense which shall be a basis for termination of said sublicense.

H. Sub-Sublicensing, Assignments, or Mortgages of Successful Offeror's Interest

During the course of the sublicense agreement, the successful Offeror shall not, with the exception of agreements relative to the storage and mooring of boats and boating equipment, as specified in Subsection O, voluntarily, involuntarily, or by operation of law assign, sublet, mortgage, or transfer the sublicense agreement or any interest created therein to any other person, partnership, corporation, or other entity without first notifying and obtaining the prior written consent of the Department of Parks. Any attempt to assign, sublet, mortgage, or transfer the sublicense agreement or any interest created therein without such consent shall be void. If an assignment, sublet, mortgage, or transfer of this agreement is made with the consent of the Commonwealth, the successful Offeror shall not be relieved from payment of all rent (revenues) according to the terms of the sublicense or from the performance of all other terms, covenants, and conditions of the sublicense. If consent is once given by the Department of Parks to any such assignment, mortgage, or subletting, such consent shall not operate as a waiver of the necessity for obtaining the Department of Parks' consent to any subsequent assignment, mortgage, or subletting. Furthermore, any change in the successful Offeror's business status (i.e., partnership, corporation) should be reported to the Commonwealth immediately.

No assignment, subletting, transfer, or mortgage of successful Offeror's interest in the property shall be effective or binding against the Commonwealth until such time as the assignee and the Commonwealth execute an amendment to this agreement reflecting such transfer.

I. Alterations/Renovations of the Premises

1. The parties hereto agree that the premises are to be utilized in their "as is" condition.
2. Any proposed construction, alterations, renovations, repairs to the premises shall be subject to all applicable building codes of the Commonwealth of Kentucky and the Americans with

Disabilities Act (ADA). This shall include any and all building inspections, which are required by law to be performed prior to commencement of the successful Offeror's operation of the marina facility.

3. Any alteration, renovation, major repair, or other improvements which the successful Offeror desires to make to the premises shall receive the prior written approval of the Department of Parks and the Finance and Administration Cabinet. Upon receiving a written request from the successful Offeror for permission to make alterations, renovations, major repairs, or other improvements to the premises, the Department of Parks and the Finance and Administration Cabinet, and the Commonwealth shall, within a reasonable amount of time of receipt thereof, either approve or disapprove said request in writing. This request must include copies of any and all stamped construction/renovation plans.
4. The Department of Parks shall routinely monitor all construction/renovation work performed by the successful Offeror or its agents under the terms of the resulting Agreement.
5. The successful Offeror shall obtain all occupancy permits required by state law prior to permitting the general public to enter the marina operation.

J. Performance Bonds

1. The successful Offeror or its assignee shall furnish separate performance and payment bonds to the Commonwealth and include the United States of America as an additional insured. The successful Offeror, or its designee, shall furnish a performance bond satisfactory to the Commonwealth in an amount equal to one hundred percent (100%) of an approved construction project for the marina as security for the faithful performance of the project. The successful Offeror or its designee shall also furnish a payment bond satisfactory to the Commonwealth in an amount equal to one hundred percent (100%) of the project construction contract for the protection of all persons performing labor or furnishing materials, equipment or supplies for the successful Offeror or its subcontractors for the performance of the work provided for in the project, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law.
2. Each bond furnished by the successful Offeror or its designee shall incorporate by reference the terms of the project as fully as though they were set forth verbatim in such bonds. In the event the project construction contract is adjusted by written document executed by both parties, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.
3. The performance and payment bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.
4. Unless the project is exempt from the prevailing wage requirements of KRS 337.505-337.550, the successful Offeror's bond(s), or contract secured by said bond, shall include a provision as will guarantee the faithful performance and payment of the prevailing hourly wage.

NOTE: The performance bond protects the Commonwealth in the event the successful Offeror defaults on the project. The payment bond assures payment of those supplying labor and materials to the successful Offeror. Unemployment compensation and workers compensation do not protect against these contingencies.

K. Protection of Work, Property, Employees, and Public

1. The successful Offeror shall continuously maintain adequate protection of all its work from damages and shall protect the successful Offeror's and the Commonwealth's property from injury or loss arising in connection with the resulting agreement. The successful Offeror shall make good any such damage, injury, or loss.
2. The successful Offeror shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the Kentucky workers compensation laws and all federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed. The successful Offeror shall designate a responsible member of its organization on the work as safety officer, whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the Department of Parks.

L. Construction/Development (Plan Approval)

(All approvals will meet the Project schedule contained within this RFP.)

1. All construction/development plans will be submitted to and must have prior approval of the Finance and Administration Cabinet, Department for Facilities and Support Services, before construction/development is commenced. Such approval will not be unreasonably withheld. Such approval is not intended to verify constructability or conformance with any applicable codes, but rather is intended to ensure that the design meets the Offeror's intent and program requirements. The drawings and the specifications shall be stamped with the registration seal of the professional involved in the design.
2. The Commonwealth encourages and prefers the construction of the project such that:
 - (a) Increases environmental performance and economic value over time;
 - (b) Enhances satisfaction and productivity of workers through energy-efficient systems;
 - (c) Incorporates environmentally friendly materials and products; and
 - (d) Reduces waste;
3. Plan approval must be obtained from the state Department of Housing, Building and Construction. All fees, state and local, shall be the responsibility of the successful Offeror. This regulatory agency will review drawings for plumbing, fire marshal compliance, ADA accessibility and Kentucky Building code regulations. Proof of this approval must be provided to the Department for Facilities and Support Services before commencement of construction and operation. Upon completion, copies of all permits and certificates shall be submitted to the Department for Facilities and Support Services, along with "as built" plans.
4. The COK may also make compliance inspections to ensure that the facility is being constructed, operated, and furnished in a manner that provides a safe and healthy environment for the public.

M. Mechanic's and Materialman's Lien

1. Nothing in the resulting Agreement shall in any way be deemed or construed as constituting

an order or request by the Commonwealth, expressed or implied, to any contractor, sub-contractor, supplier, materialman, or laborer for the performance of any labor or the furnishing of any materials for the construction of any improvement on, alterations to, or other improvements to the premises, nor as giving the successful Offeror any right, power, or authority to conduct or permit the rendering of any services or furnishing of any materials that would give rise to the filing of any mechanic's liens against the property, or the successful Offeror's sublicensehold interest in said property.

2. The successful Offeror and/or its contractors shall not suffer or permit any mechanic's or materialman's lien to be filed against the property or the successful Offeror's sublicensehold interest in the property at any time. Upon filing of such lien, then the successful Offeror and/or its contractors shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond or Order of Court of competent jurisdiction or otherwise. If the successful Offeror, in good faith, disputes the validity or correctness of any such lien, then they may refrain from paying or causing the same to be resublicensed of record and discharged of record, but they shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness or validity of such lien. The successful Offeror shall not be deemed to be in default under the resulting Agreement while such proceedings or litigation are being conducted in good faith by them. However, if the successful Offeror fails to cause any such lien to be discharged with the period aforesaid, or fails to contact the same as provided above, the successful Offeror shall be deemed to be in default of the resulting Agreement, which shall be a basis for termination of said agreement.

N. Title to Improvements and Additions and Removal of Equipment and Supplies Upon Expiration or Termination of Agreement

1. It is understood and agreed by the parties that the Offeror shall have the right, during the term of the resulting agreement, to erect structures and install equipment in or upon the premises, which structures and equipment so placed in or upon or attached to said premises shall be and remain the property of the Offeror and may be removed therefrom by the Offeror, at Offeror's sole expense, at any time prior to any termination or expiration of the resulting agreement, so long as Offeror has the written approval of the Commonwealth; provided, however, that no structures may be erected upon the premises until and unless the design and proposed location thereof have been approved by the Commonwealth and the U.S. Army Corps of Engineers; provided, further, the Offeror shall, upon the removal of said structures and equipment, or any part thereof, promptly repair any damage to the premises resulting from the installation or removal of said structures and equipment.
2. All structures and equipment of the Offeror placed in or upon or attached to the premises shall be at the sole risk of the Offeror. Nothing herein contained, however, shall be construed to confer any right upon the Offeror to construct, operate or maintain any structure without compliance with requirements of the U.S. Corps of Engineers and the Commonwealth of Kentucky.
3. Structures and equipment not removed from the premises within sixty (60) days after any termination or expiration of the resulting agreement shall become the property of the Commonwealth of Kentucky, Department of Parks to dispose of as it determines to be in the interest of the Commonwealth.

O. Boat Slip Sublicense Agreements

The successful Offeror shall annually maintain and keep a dockage license agreement for every slip

renter at the marina, which shall be a slip rental agreement between the successful Offeror and the boat owner. The agreement shall be updated annually, and a copy of the slip rental agreement shall be provided to the Department of Parks. The successful Offeror shall utilize a dockage license agreement similar or identical to the Department of Parks form (attached Exhibit F), which form shall hold harmless the Department of Parks and the U.S. Corps of Engineers from any negligent acts of the boat owner.

Pump-Out is required. Boat operators shall not discharge into the Lake.

P. Hold Harmless

The successful Offeror shall indemnify and hold harmless the Commonwealth, the U.S. Corps of Engineers, and any of their agents, employees, or representatives, from any and all claims, demands, damages, actions, costs (including attorney fees), and charges which the Commonwealth/Corps of Engineers or the successful Offeror may have to pay by reason of injury to any person or property or loss of life or property resulting from or in any way connected with the character, condition, or use of the sublicensed premises or any means of ingress thereto, or egress therefrom, or resulting from the successful Offeror's operations on the sublicensed premises, unless such injury or loss arises directly from the negligence of the Commonwealth, Corps of Engineers, or any of their departments or agencies, or officers or employees while acting within the scope of their employment.

The successful Offeror shall, at its own expense, assume defense of such claims and actions for damages arising out of such injuries or losses which may be brought against the Commonwealth or the U.S. Corps of Engineers by third person; and shall pay such judgments that may be rendered in such actions, unless such claims or actions for damages and/or judgments arise directly from the negligence of the Commonwealth, any of its departments or agencies, or any of its officers, agents, or employees while acting within the scope of their employment.

Q. Attorney's Fees

In the event that either party deems it necessary to take legal action to enforce any provision of the sublicense, and in the event the Commonwealth prevails, the successful Offeror agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer.

R. Notices

After sublicense award, all notices under this sublicense shall be either mailed by registered or certified mail addressed or hand-delivered to the receiving party. The customary receipt shall be conclusive evidence of such service.

S. Offer of Gratuities

By submission of a proposal, the successful Offeror certifies that no member or delegate of Congress, nor any elected or appointed official or employee of the Commonwealth of Kentucky has or will benefit financially or materially from this procurement. Any sublicense arising from this procurement may be terminated by the Commonwealth if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned officials or employees from the

successful Offeror, its agent, or employees.

T. Conflict of Interest

No official or employee of the Commonwealth, and no other public official of the Commonwealth of Kentucky or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the sublicense or proposed sublicense.

The successful Offeror covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The successful Offeror further covenants that in the performance of the sublicense no person having any such known interests shall be employed. By entering into the sublicense agreement, the successful Offeror covenants that it is not in violation of KRS Chapter 11A (Executive Branch Code of Ethics).

U. Maintenance of Commonwealth's/Corps' Property

In addition to Subsection I, Maintenance Responsibilities, page 8, the successful Offeror shall be responsible for the proper care and custody of any Commonwealth/Corps' property furnished for successful Offeror's use in connection with the performance of the sublicense. This responsibility includes the repair and/or replacement due to loss, damage, or negligence, normal wear and tear expected, and to cure deficiencies noted in regular inspection of the marina facilities by the Department of Parks marina inspection team, as depicted below. Failure to cure deficiencies outlined in the annual inspection report within the permitted time frame may result in the Commonwealth implementing default proceedings against the Offeror.

The successful Offeror shall do those acts necessary to (1) maintain the property in a reasonably attractive, clean, efficient, and safe condition; (2) prolong the useful life of the property, and (3) cause the property to be in conformity with all federal, state, and local regulatory standards. All damage or destruction by accident, fire, flood, hail, wind, or other casualty, not resulting from the negligence of the successful Offeror shall be excepted from the provisions of this section, except that all new construction pursuant to this Agreement and the successful Offeror's use of existing structure(s) shall become the sole responsibility of the successful Offeror for its repair and replacement.

The Commonwealth (representatives of the Finance and Administration Cabinet/Division of Engineering; Housing, Buildings and Construction/State Fire Marshal's office; and various representatives of the Department of Parks) and the successful Offeror shall annually inspect the property together each year to determine (1) whether the successful Offeror is in conformity with the provisions of this section, and (2) to specify what act or acts are necessary to conform with the provisions of this section. As soon thereafter as practicable, the Finance and Administration Cabinet shall provide to the successful Offeror a written inspection report detailing the findings and recommendations pertaining to maintenance. The successful Offeror shall have thirty (30) days following receipt of the Finance's report to either (1) complete the maintenance recommendations made by the Commonwealth's representatives or (2) present a written plan, for approval by the Commonwealth's representatives, which details the actions to be taken in order to correct any maintenance deficiencies including an anticipated completion date. In the event the successful Offeror fails either to (1) complete the maintenance recommendations made by the Commonwealth within thirty (30) days, or (2) submit a reasonable plan within thirty (30) days, together with a projected date of completion by which to accomplish those maintenance recommendations made by the Commonwealth's representatives, and to complete such plan of maintenance as agreed, unless

good cause be shown for delay, then the Commonwealth may enter upon the property and do that which is necessary to maintain or repair the property. The successful Offeror shall indemnify and hold harmless the Commonwealth from all costs and expenses of any such maintenance accomplished by the Commonwealth. Should the Commonwealth be required to do that which is necessary to maintain or repair the property, then the Commonwealth may, at its sole discretion, declare the successful Offeror in default of the agreement.

V. Escrow Account

In order to insure that the successful Offeror shall be sufficiently liquid to indemnify the Commonwealth against all those costs and expenses that may incur to maintain and repair the property, the successful Offeror agrees that, throughout the term of the Agreement, the successful Offeror shall deposit monthly in a demand deposit account in a Kentucky bank on the 10th business day of each month, a sum of money equal to TWENTY THOUSAND DOLLARS (\$20,000), for the purpose of providing to the successful Offeror a working maintenance account. The parties agree with respect to such demand account that:

The successful Offeror may withdraw from the escrow account at any time that funds are available on the condition that the Commissioner of Parks, or his designee, countersigns the check or other instrument to withdraw proceeds from the aforesaid account. The successful Offeror shall be deemed by the resulting agreement to be authorized to draw from the above account as needed for the reimbursement of maintenance expenses throughout the year, with the prior written approval of the Commissioner of Parks or his designee. Accompanying each request for reimbursement, the successful Offeror must provide legitimate estimates for repairs and/or maintenance to the facilities with proof of payment to each of the successful Offeror's contractors.

As to the operation of the escrow deposit account, the parties hereto agree:

- (a) That the account shall be an interest bearing account and that the amounts either deposited in or accruing upon said account shall be considered a cost or an expense of maintaining the sublicensehold;
- (b) That the account shall be maintained jointly in the names of the Commonwealth of Kentucky, Commissioner, Department of Parks or his designate, and successful Offeror;
- (b) Withdrawals from the account shall be made only upon the signatures of the representatives of parties, only to reimburse the successful Offeror during each calendar year for those maintenance costs accompanied by verifiable receipts for those maintenance costs, incurred during that year as agreed to by the Commonwealth, which agreement shall not be unreasonably withheld; or to reimburse Commonwealth for maintenance costs incurred as a result of the successful Offeror's failure to perform such maintenance. Refusal by the successful Offeror to authorize a withdrawal from the account to reimburse the Commonwealth for maintenance costs incurred under this section shall constitute a material breach of this Agreement;
- (d) Fund money shall not be utilized to pay salaries, overhead, or operating expenses;
- (e) That said escrow deposit account, and the requirement for same, shall exist during the entirety of the term of the agreement and any extensions thereof;

- (f) That it is the intention of the parties that distributions shall be made from the escrow deposit account for reimbursement to the Commonwealth for all costs and expenses it shall have incurred to maintain or repair the components of the facility at the failure of the successful Offeror to perform such necessary maintenance or repair;
- (g) At the expiration of the term of the sublicense and any extensions thereto, and after the fulfillment of the requirements of this section, the entirety of the contents of the account shall be returned to the successful Offeror.

W. Protection of Work, Property, Employees, and Public

The successful Offeror shall continuously maintain adequate protection of all his/her work from damage and shall protect the Commonwealth's/U.S. Corps of Engineers' property from injury or loss arising in connection with this sublicense. Successful Offeror shall make good any such damage, injury, or loss. Successful Offeror shall adequately protect adjacent property as provided by law and the sublicense documents.

The successful Offeror shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the Kentucky Worker's Compensation laws and all federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed. The successful Offeror shall designate a responsible member of his/her organization on the work as safety officer, whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the Department of Parks, upon the successful Offeror's written notification to begin operation of the marina or the date the sublicense is fully executed, whichever date is earlier.

X. Insurance

Liability Insurance. The successful Offeror will be required to obtain prior to commencement, from a reputable insurance company authorized to do business in the Commonwealth, and obtain and keep in force, at successful Offeror's own expense, a commercial general liability insurance policy providing minimum combined single limits coverage of \$5,000,000.00 per occurrence, and having an aggregate annual limit of not less than \$5,000,000.00, with an umbrella of \$5,000,000.00 per occurrence and an annual aggregate limit of \$5,000,000.00; and a commercial property insurance policy covering all marina facilities, including losses from theft and vandalism, owned by successful Offeror, for their full replacement costs, and premises contents and business inventory coverage for their full insurable costs.

After award of the sublicense, the minimum liability amounts of required coverage established under this Section may be subject to modification by the Commonwealth upon sixty (60) days notice to the Offeror.

Casualty Insurance. During the term of the subleasing arrangement, the Offeror shall maintain, at the Offeror's total expense, fire and extended coverage insurance, including theft and vandalism, covering the entire marina facility in an amount equal to its full replacement cost value. Offeror shall also carry and maintain during the term of the sublicense, at Offeror's sole cost and expense, fire and extended coverage insuring all contents and inventories in the premises to the extent of their full insurable value. In the event of a loss, the successful Offeror must repair/replace the marina facility within a twelve-month (12) period from the date of loss.

Said insurance policies shall name the Commonwealth and the U.S. Corps of Engineers as

additional insured and shall also provide that said policy shall not be subject to cancellation, termination, or change without at least thirty (30) days prior written notice to the Commonwealth. Successful Offeror must furnish a copy of its insurance policy to the Department of Parks prior to commencement of operations, and on an annual basis thereafter for the full term of the sublicense and any renewals thereof.

Property Insurance. The successful Offeror shall, at its sole expense, keep insured during the term hereof, and any extension thereof, the entire marina facility at successful Offeror's sole expense, against loss of damage by fire, lightning, wind storm, or other casualty in an amount not less than one hundred percent (100%) of the full insurable value thereof. The term "full insurable value" shall mean the actual replacement cost excluding foundation and excavation costs less physical depreciation, as mutually agreeable to both parties.

The successful Offeror shall be responsible for furnishing annually to the Department of Parks a copy of the certificate of renewal for each insurance policy provided pursuant to this Section.

Y. Employment Practices

The successful Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The successful Offeror must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. Such action shall include, but is not limited to, the following: employment, promotion, 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 successful Offeror agrees to post in conspicuous place available to employees and applicants for employment, notices setting forth the provisions of this clause.

The successful Offeror shall, in all solicitations or advertisements for employees placed by or on behalf of the successful Offeror, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability, except where it relates to a bona fide occupational qualification.

The successful Offeror shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of labor and with title 41, Code of Federal Regulations, Chapter 60. The successful Offeror shall comply with related Commonwealth laws and regulations.

The successful Offeror shall comply with regulations issued by the Secretary of Labor of the United States in Title 20, Code of Federal Regulations, part 741, pursuant to the provisions of Executive Order 11785 and the Federal Rehabilitation Act of 1973. The successful Offeror shall comply with the Civil Rights Act of 1964 and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973, as amended and the Kentucky Civil Rights Act.

Sublicense No. DACW69-1-84-0144 requires the Commonwealth of Kentucky, as lessee, to sign an assurance that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241) and the Department of Defense Directive 5500.11 issued pursuant thereto and published in part 300 of title 32, Code of Federal Regulations, and requires that all Offerors shall supply like assurance. An assurance will be attached to the resulting sublicense and must be signed by the successful Offeror pursuant to Paragraph 11 of Exhibit B of Sublicense No. DACW69-1-84-0144 between the United States of America and the Commonwealth of Kentucky.

Z. Permits and Licenses

The successful Offeror shall procure all necessary permits, licenses, and certificates which are required by state and local laws, and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments. Plans for electric, fire code, housing, etc. must be reviewed by the Department of Housing, Buildings and Construction, the Department of Parks, and the U.S. Corps of Engineers prior to any re/construction of the marina. The wastewater permit with the Department of Parks will be transferred upon execution of the resulting sublicense.

The successful Offeror shall conform to operational standards of the Department of Parks and to all bona fide rules, procedures pertaining to same as may be promulgated by the Department of Parks.

AA. Right of Entry

The right is hereby reserved to the Commonwealth of Kentucky, its officers, agents, and employees, and agents and employees of the U.S. Corps of Engineers, to enter upon the sublicensed premises at reasonable times to inspect the premises, operation, and equipment, or for any purposes in connection with work necessary to the benefit of the Commonwealth and the U.S. Government, including, if necessary, any ingress or egress in the form of an easement that shall not unreasonably interfere with the marina operation. There is located within the sublicensed premises an intake for the Commonwealth's golf course which must be protected from damage by the successful Offeror and to which the Commonwealth reserves access for maintenance/repair/replacement of the intake.

BB. Termination of Sublicense

The sublicense agreement resulting from the RFP shall be subject to the following termination provisions:

Termination for Default. If at any time during the period in which the proposed sublicense agreement is in effect, the successful Offeror, in the opinion of the Commonwealth, defaults on any obligation incurred hereunder, including, but not limited to, the payment of rental due the Commonwealth or the failure to maintain standards of service required or in any manner fails to provide adequate service to the public, then the agreement shall be subject to termination by the Commonwealth, with no right of recourse remaining in the successful Offeror. All rights and benefits herein conferred shall be deemed forfeited, and the successful Offeror shall quietly surrender possession of the demised premises to the Commonwealth; provided, however, that before any termination shall occur under this section, the successful Offeror shall be given written notice and be allowed thirty (30) days from receipt of notice in which to cure such default or non-compliance. If said default or non-compliance is cured within the above time period, then the agreement shall remain in full force and effect. In the event of termination for default, the successful Offeror shall be responsible for paying to the Commonwealth any monetary sum due, up to and including the date of

termination.

If, in a 12 month period, the successful Offeror has been notified three times or more by the Commonwealth that it is in default on its monetary obligation to be paid to the Commonwealth, then the Commonwealth may, at its sole option, declare the Sublicense in immediate default and the 30 day cure provision shall not apply.

The various rights, options, elections, powers, and remedies contained in the sublicense shall be construed as cumulative and not one of them shall be exclusive of any of the others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations upon the other party have been fully performed.

CC. Procedure on Termination

Upon delivery by certified mail to the successful Offeror of Notice of Termination specifying the nature of the termination, the extent to which performance of service under the agreement is terminated and the date upon which such termination becomes effective, the successful Offeror shall stop service under the agreement on the date indicated and to the extent specified in the Notice of Termination. Then, and in any of such cases, immediately or at any time thereafter, at its option, the Commonwealth shall have the right to immediately reenter and take possession of the properties, and, as the Commonwealth elects, either:

- (1) Declare this sublicense to be terminated, in which event this sublicense, all rights of the successful Offeror, and all duties of the Commonwealth shall immediately cease and terminate and the Commonwealth may possess and enjoy the properties as though this sublicense had never been made, without prejudice, however, to any and all rights of action against the successful Offeror the Commonwealth may have for rent, damages, or breach of covenant, in respect to which the concessionaire shall remain and continue liable notwithstanding such termination; or,
- (2) Re-let the properties or any part thereof, for such term or terms and on such conditions as the Commonwealth determines for and on behalf of the successful Offeror, for the highest rental reasonably obtainable in the judgment of the Commonwealth, which re-letting shall not be considered as a surrender or acceptance back of the properties or a termination of this sublicense, and recover from the successful Offeror any deficiency between the amount of rent, additional rent and all other charges payable under this sublicense, plus any expenses incurred by the Commonwealth in connection with repairs, or alterations the Commonwealth deems necessary or appropriate to make in connection with such re-letting, all costs incurred in actually re-letting the properties, and sums expended for reasonable attorney's fees; but the Commonwealth shall be under no duty to re-let the properties.

DD. Force Majeure

The successful Offeror shall not be liable to the Commonwealth if failure to perform the agreement arises out of causes beyond the control and without the fault or negligence of the successful Offeror.

Such causes may include, but are not restricted to, acts of God, fire, quarantine restrictions, strikes, and freight embargoes. In all cases, the failure to perform must be beyond the control and without fault or negligence of the successful Offeror. The successful Offeror shall take all possible steps to recover from such occurrences.

EE. Conflict of Law and Choice of Law Provision

It is agreed by the parties hereto that all questions as to the execution, validity, interpretation, construction, and performance of the resulting sublicense agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of said agreement shall be filed with the Franklin County Circuit Court of the Commonwealth of Kentucky.

FF. Level of Assets

The successful Offeror promises and commits to maintain its assets in the Paintsville Lake Marina operation for the purposes of providing and producing revenue, and for the purpose of providing security to the Commonwealth to ensure the successful Offeror's performance of its obligations under the resulting Agreement. For the purpose of the Agreement, the term "assets" shall be construed to mean: (1) physical properties to include, but not be limited to, houseboats, jet skis, docks, marina buildings, storage sheds, and physical inventory; and (2) accounts receivables in an amount equal to its expenses to operate, to pay the license fee(s) to the Commonwealth of Kentucky, and an amount equal to the sum necessary to pay its secured creditors. The Offeror's response to the "Marina Operation" section of this RFP will be incorporated into the resulting sublicense as a portion of the Offeror's "Level of Assets".

Further, the successful Offeror agrees to maintain its current level of "assets", as defined in above paragraph and as will be described in the resulting sublicense, as will be existing as of the effective date of the resulting agreement and, shall thereafter, not remove said "assets" from the marina operation, nor allow the current level of assets to diminish, without prior written approval from the Commonwealth.

GG. Waiver

The waiver by the Commonwealth of, or failure of the Commonwealth to take action with respect to any breach of any term, covenant, or condition herein contained or contained in the resulting Sublicense, shall not be deemed to be a waiver of the same or any other term, covenant, or condition contained herein.

HH. Disclosure of Financial Information

No official or employee of the Commonwealth and no other public official of the Commonwealth of Kentucky or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the agreement.

The successful Offeror certifies that by entering into this Sublicense resulting from this solicitation with the Commonwealth of Kentucky and that by holding and performing this Agreement, the successful Offeror will not be violating either any conflict of interest statute (KRS 45A.330 - 45A.340, 164.390), or KRS Chapter 11A, the Executive Branch Code of Ethics, or any other applicable statute or principle by the performance of this Agreement, nor will he realize any unlawful benefit or gain directly or indirectly from it. Non-compliance may result in termination of the resulting Sublicense Agreement.

The successful Offeror, as defined in KRS 45A.030(7), agrees that the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records or other evidence which are directly pertinent to this Sublicense for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records or other evidence provided to the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure pursuant to *200 KAR 5:314* regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the Sublicense. The Secretary of the Finance and Administration Cabinet shall not restrict the public resublicense of any information, which would otherwise be subject to public resublicense if a state government agency was providing the service.

II. Amendment to Agreement

It is agreed to by the parties to this Agreement that all prior negotiations have been merged into said Agreement, which may not be modified, altered, or amended except by a "Sublicense Agreement Amendment" signed by all parties to the agreement.

JJ. Severability Clause

If any provision of the resulting agreement is declared invalid or unenforceable, then the remainder of said agreement shall continue in full force and effect.

KK. Successors and Assigns

The covenants, conditions, and agreements made and entered into by the parties hereto are declared and agreed to be binding upon and to inure to the benefit of their respective successors and/or assigns.

LL. Public Use

In accordance with Sublicense Agreement DACW69-1-84-0144 between the U.S. Corps of Engineers and the Commonwealth of Kentucky, the successful Offeror agrees that no attempt shall be made by the successful Offeror, or any of its sublessees or concessionaires, to forbid the full use by the public of the premises subject, however, to the authority and responsibility of the Commonwealth to manage the premises and provide safety and security to the visiting public.

MM. Prohibition from Removal of Vegetation and Minerals

The successful Offeror agrees that no live trees will be cut, no vegetation dug, nor the landscape altered in any way without prior consultation and written approval of the Department of Parks, and where applicable, the Commonwealth. In no event shall the successful Offeror extract or remove any minerals, oil, or gas from the premises.

VI. PROPOSAL

A. Evaluation of Proposals

The Commonwealth will conduct a comprehensive evaluation of proposals received in response to the RFP. This evaluation will be conducted by a committee, which may be comprised of representatives from the Department of Parks, the Finance and Administration Cabinet, the Corps of Engineers, and other resource agencies' representatives, as appropriate. Items to be given specific attention during the evaluation process are as follows:

1. The Offeror's marina operational plan.
2. Financial background of Offeror including, but not limited to, the Offeror's ability to provide financial backing for the proposed operation marina facility.
3. Corporate background and experience.
4. Revenue payable to the Commonwealth.

The above criteria are explained in more detail in the following segments of this Proposal section of the RFP.

The successful Offeror's proposal documents will become a part of any final sublicense agreement. All items listed must be thoroughly addressed in your written proposal.

Please include six (6) complete copies of proposal document and all attachments.

B. Point Scoring of Proposals

The evaluation of proposals will involve the point scoring of each proposal into four (4) areas. A maximum of one hundred (100) points will be available for each proposal as follows:

- Marina operational plan 30 Points
- Financial background of Offeror and proposed method of financing project 20 Points
- Corporate/business background and experience 10 Points
- Revenue and percentage of gross receipts to be paid to the Commonwealth, supported by a market study provided by the Offeror 40 Points

The maximum number of points that can be received in any category or area is forty (40). The proposal receiving the highest point total will be awarded the sublicense contract.

C. Submission of Proposal

It will be the duty of each Offeror to see that his proposal is delivered by the time and at the place prescribed in this RFP. Proposals received prior to the closing of receipt of proposals will be securely kept, unopened, until the time set for opening proposals. The officer whose duty it is to open them shall decide when the specified time has arrived, and no proposal received thereafter will

be considered. No responsibility will attach to an officer for the premature opening of a proposal through inadvertence or one not properly addressed and marked. Telegraphic proposals will not be considered, but modifications by telegraph of proposals already submitted will be considered, if received prior to the time set for opening the proposals. There will not be a public bid opening.

Neither the proposals nor their contents shall be made available for public information or inspection until such time as an award of a sublicense is made.

D. Withdrawal of Proposal

Proposals may be withdrawn on written or telegraphic requests received from the Offeror prior to the time fixed for opening. Proposals may not be withdrawn for a period of one hundred and twenty (120) calendar days after the closing date for receipt of proposals. Negligence on the part of the Offeror in preparing his proposal confers no right to withdraw his proposal after it has been opened.

E. Proposal Subject to These Terms

All proposals submitted shall be deemed to have been made with full knowledge of all terms, conditions, and requirements contained in this RFP and enclosures thereto.

F. THE OFFEROR'S PROPOSAL SHALL INCLUDE THE FOLLOWING SECTIONS:

Transmittal Letter. The transmittal letter shall be in the form of a standard business letter and shall be signed by an individual authorized to legally bind the Offeror. This signed letter will legally bind the Offeror. It should include the name, address, and telephone number of the Offeror and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the Offeror during the course of the project. It shall include:

1. A statement indicating if the Offeror is a corporation, sole proprietorship, or partnership or other legal entity.
2. A statement that the Offeror is registered to do business in Kentucky or will obtain a Kentucky business license, as well as any other documents required by law and the regulations of the Commonwealth of Kentucky prior to commencement of work.
3. A statement from the Offeror, along with evidence from the Kentucky Secretary of State, that the Offeror is in good standing and duly authorized to transact business in Kentucky, as well as certification from the Offeror that the Offeror has verified from each of its proposed subcontractors and suppliers that each is a viable, ongoing business entity, and is capable of performing its obligations to the prime contractors and its subs, and that each has supplied the Offeror (or will supply prior to acceptance of a contract) evidence of "good standing" with the Kentucky Secretary of State.
4. A statement identifying all addenda to the RFP issued by the Commonwealth and received by the Offeror. If no addenda have been received, a statement to that effect should be included.
5. A statement that the Offeror's proposal meets all requirements, provisions, specifications, terms, and conditions set forth in the RFP and sample lease agreement, or in the alternative, an explanation of any deviation from such terms and conditions, specifications, requirements, or provisions. The Commonwealth

reserves the right to reject any proposal containing such deviations or as to require modifications before acceptance.

6. A statement that the Offeror's proposal shall remain valid for one hundred and twenty (120) days after the closing date for the receipt of proposals.

1. Marina Operational Plan.

1. A general narrative description of the proposed marina operation, including a time schedule, operation date, list of personal property inventory (i.e., type of rental boats, etc.), a plan view of the proposed marina facility layout (including slips, sizes, electric, water and cable locations), and itemized cost estimate. For example, indicate the number of rental houseboats, fishing boats, sail boats, jet skis, and etc., including rental fees to be assessed for all categories of boat slips and moorage (i.e., bays, covered and uncovered, and houseboat slips). The Offeror must also indicate the services to be offered, proposed area lighting, proposed area security, landscaping, proposed promotional plans, signage, preventative maintenance schedule, safety equipment replacement schedule, emergency procedures for fire and accidents, and any other information pertinent to the proposed operation of the existing marina facilities.
2. Offeror shall provide comprehensive and detailed specification material relative to all operation, materials, equipment, furnishings, etc. (i.e. make/model of equipment, boats for rental, etc.) for the proposed marina complex that will enable the Commonwealth to determine the quality of these items.
4. Describe management structure/organization proposed for the marina; identify management personnel by name, if selected, titles; and show how management staff will interact with each other in managing the facilities. Additionally, the Offeror is to indicate the number of staff and categories of work to be utilized in operation and maintenance of the facilities (i.e., housekeeping, maintenance, waitress, fuel dispensing operator, cashier, motor repairman, etc.).
5. Provide an initial five-year business plan for operation and development of the sublicensed premises. The plan must show goals and objectives for each year showing the estimated cost of any development.

NOTE: THE OFFEROR SHOULD CAREFULLY COMPLETE ITS RESPONSE TO THE ABOVE CATEGORY, AS OFFEROR'S PROPOSAL WILL BE INCORPORATED INTO THE RESULTING SUBLICENSE AS A PORTION OF THE OFFEROR'S "LEVEL OF ASSETS" (SEE SUBSECTION EE – PAGE ____).

2. Financial Background of Offeror and Proposed Method of Financing Project. The Offeror shall provide:

1. Corporations – Audited Balance Sheet and Income Statement, Cash Flows (prior 5 years), Off-Balance Sheet Liabilities
Individuals – Tax returns for prior 5 years, FICO credit score from 3 credit bureaus and

details (terms of loan) on all outstanding debt.

2. List of Representative Material Changes

- An event of default or bankruptcy involving the affected entity, or the parent corporation of the affected entity;
- A change in tangible net worth of 10% of shareholder equity;
- A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
- A change in credit rating for the affected entity or parent corporation of the affected entity.
- Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- In the current and five (5) most recent completed fiscal years, the affected entity or the parent corporation of the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting policies directed charges to equity, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity;
- Contingent liabilities disclosed in the notes to the financial statements;
- Other events known to the affected entity which represents a material change in financial condition over the past five (5) years, or may be pending for the next reporting period.

3. Bank references for the Offeror shall be provided, including name, address, and current telephone number of the given financial institution. This should include a signed authorization for release of financial information from each bank listed.

4. Except for governmental agencies, provide the names, addresses, and telephone numbers of at least two commercial or institutional credit references from which the Offeror has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the government.

5. A description of the proposed financing plan for the first three years, including, but not limited to, source of credit, terms of credit, and repayment schedule. Source of credit will identify credit for construction, as well as long-term financing of the structures.

6. Provide a preliminary budget, projected cash flow, estimated operating costs, and detailed plans of financing including identity of proposed lenders. Identify all interim and permanent sources of funds and include copies of loan documents used to implement the assignment.

7. Provide an annual estimated gross income from the marina operations.

3. Corporate/Business Background and Experience. The corporate background and experience section shall include from the Offeror details of the background of the company, date established, ownership (public company, partnership, subsidiary, etc.), company resources, and details of company experience relevant to the proposed development. List, if any, current or past marina facilities managed by the company. (Note: If the proposal is submitted by an individual, the same type of information will be required.)

Should the proposal be submitted by a corporation or business venture formed solely for the purpose of responding to this RFP, the above information shall be submitted for each individual within the said corporation, business venture, or partnership.

DEFINITION OF GROSS RECEIPTS

“Gross Receipts” shall be the total amount of cash or credits received by the Offeror from all business, including receipts from sale of food/grocery items; gasoline sales; servicing of private boats; rental of motors, ski boats, houseboats, fishing boats, jet skis, and any other marina rental equipment; and any and all other incidental income, including the total sale amount of consigned items, resulting from the term of the resulting sublicense. Gross receipts shall also include, for the purposes of the resulting sublicense agreement, boat slip and moorage rental. Kentucky Tax, writing fees for licenses (hunting, fishing, water craft) and Federal Excise tax on those items subject to it, are exempt from the gross receipts for fee purposes.

Fees for utilities should be exempt from commission rate.

Gross receipts as defined in reference to revenue derived from any and all consigned items, such as vending machines, located on or about the properties, shall mean total dollar sales derived from the sale of said items, as opposed to commissions received by the Offeror.

When items such as boats or vending machine products are sold on consignment, the Offeror shall pay rent on the total price of that sale, not just on the Offeror’s consignment fee; i.e., the share of the total sale price which the Offeror receives. Revenue from boat sales by the Offeror shall be counted as a gross receipt whether or not it occurs on the sublicensed marina facility.

**NOTE: THIS SECTION MUST BE FILLED OUT
AND RETURNED WITH THE PROPOSAL PACKAGE**

4. **Revenue Payable to the Commonwealth.** Offerors are to indicate (on line below) the percentage of gross receipts Offeror will pay to the Commonwealth for the term of the corresponding sublicense. **Offeror must identify the anticipated, estimated amount of gross receipts derived from the operation of the marina facility for the first five years of the sublicense period, with a detailed description of all revenue streams. The estimated amount of gross receipts must be supported by a reliable/justifiable market analysis and feasibility study, completed by the Offeror and included with the Offeror's submitted proposal. The market analysis and feasibility study shall be based on actual market data and shall be critiqued by both the Corps of Engineers, the Finance and Administration Cabinet, and the Department of Parks.**

Rental payable to the Commonwealth shall be made monthly and shall be due on or before the close of business ten (10) working days after the end of the preceding month. Should the Offeror be late on concession payment to the Commonwealth, then the Offeror is subject to a penalty of one and one-half percent per month or eighteen percent per annum for each month the concession payment is late.

THE SUCCESSFUL OFFEROR SHALL PAY TO THE COMMONWEALTH A MONTHLY PERCENTAGE ON REVENUE EARNED FROM THE OPERATION OF THE MARINA FACILITY AT PAINTSVILLE LAKE STATE RESORT PARK.

OFFEROR FILL IN BLANK AND RETURN:

For the sublicense and operation of the existing marina facility at Paintsville Lake State Resort Park, I propose to pay the Commonwealth of Kentucky _____% of Gross Receipts per month for revenue earned from Offeror's financing, construction, operation, and maintenance of the marina facility at Paintsville Lake.

NOTE: THE MINIMUM ACCEPTABLE BID IS FIVE PERCENT (5%) OF GROSS RECEIPTS DERIVED FROM THE OPERATION OF THE MARINA FACILITY.

(Offeror's Signature)

(Offeror's Name - Printed)

**VII. AUTHENTICATION OF BID AND AFFIDAVIT OF
NON-COLLUSION AND NON-CONFLICT OF INTEREST**

Solicitation/Contract #:110615

REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS
PAGE 1 OF 2

FOR BIDS AND CONTRACTS IN GENERAL:

- I. Each bidder or offeror swears and affirms under penalty of perjury, that:
 - a. In accordance with KRS 45A.110 and KRS 45A.115, neither the bidder or offeror as defined in KRS 45A.070(6), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
 - b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in KRS 45A.485; have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.
 - c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, is duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and will remain registered for the duration of any contract awarded.
 - d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.

**FOR “NON-BID” CONTRACTS (I.E. SOLE-SOURCE; NOT-PRACTICAL OR FEASIBLE TO BID;
OR EMERGENCY CONTRACTS, ETC):**

- II. Each contractor further swears and affirms under penalty of perjury, that:
 - a. In accordance with KRS 121.056, and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in KRS 121.150 to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award.
 - b. In accordance with KRS 121.330(1) and (2), and if this is a non-bid contract, neither the contractor, nor officers or employees of the contractor or any entity affiliated with the contractor, nor the spouses of officers or employees of the contractor or any entity affiliated with the contractor, have knowingly contributed more than \$5,000 in aggregate to the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract award.

**IMPORTANT - THIS SECTION MUST BE READ, FILLED OUT,
AND RETURNED WITH THE PROPOSAL PACKAGE:**

**VIII. STATEMENT OF FINAL DETERMINATION
OF VIOLATIONS PURSUANT TO KRS 45A.485**

Pursuant to KRS 45A.485, the Offeror shall reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Offeror within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342.

For the purpose of complying with the provisions of KRS 45A.485, please list any final determination(s) of violation(s) of KRS Chapters 136, 139, 141, 337, 338, 341, and 342, which have been rendered against the Offeror within the five (5) years preceding the award of this contract. Please include the date of the determination and the state agency issuing the determination. (Please use extra sheets if necessary.)

<u>KRS Violation</u>	<u>Date</u>	<u>State Agency</u>
----------------------	-------------	---------------------

The Offeror is further notified that KRS 45A.485 requires that for the duration of this contract, the Offeror shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342, which apply to the Offeror's operations. KRS 45A.485 further provides that the Offeror's failure to reveal a final determination of a violation of KRS Chapters 136, 139, 141, 337, 338, 341, and 342, or failure to comply with the above-cited statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract, and the Offeror's disqualification from eligibility to bid or submit proposals to the Commonwealth for a period of two (2) years.

**IMPORTANT - THIS SECTION MUST BE READ, SIGNED,
NOTARIZED, AND RETURNED WITH THE PROPOSAL PACKAGE:**

**IX. SWORN STATEMENT REGARDING CAMPAIGN FINANCE LAWS
PURSUANT TO KRS 45A.110 AND KRS 45A.115**

All persons having ownership in the offered property shall provide a sworn statement regarding campaign finance laws pursuant to KRS 45A.110 and KRS 45A.115. If the property owner is a corporation or business trust, a duly designated and authorized agent shall complete this required statement. (Please use extra sheets if necessary.)

The undersigned hereby swears or affirms, under the penalty prescribed by law for perjury, that neither he/she, individually, nor, to the best of his/her knowledge and belief, the corporation, partnership, or other business entity which he/she represents, has knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky, and that the award of a contract to him/her, individually, or to the corporation, partnership or other business entity which he/she represents, will not violate any campaign finance laws of the Commonwealth.

FOR BIDS AND CONTRACTS IN GENERAL:

- I. Each bidder or offeror swears and affirms under penalty of perjury, that:
 - a. In accordance with [KRS 45A.110](#) and [KRS 45A.115](#), neither the bidder or offeror as defined in [KRS 45A.070\(6\)](#), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
 - b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in [KRS 45A.485](#); have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.
 - c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, is duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by [KRS Chapter 139](#), and will remain registered for the duration of any contract awarded.
 - d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.
 - e. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding, and all subcontractors therein, are aware of the requirements of Executive Order 2015-370 and will pay all workers working on or in connection with any contract awarded a minimum of \$10.10 per hour for all regular, hourly employees and a minimum of \$4.90 per hour for all tipped employees for the duration of any contract awarded.

FOR “NON-BID” CONTRACTS (I.E. SOLE-SOURCE; NOT-PRACTICAL OR FEASIBLE TO BID; OR EMERGENCY CONTRACTS, ETC):

- II. Each contractor further swears and affirms under penalty of perjury, that:
 - a. In accordance with [KRS 121.056](#), and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in [KRS 121.150](#) to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award.

- b. In accordance with [KRS 121.330\(1\) and \(2\)](#), and if this is a non-bid contract, neither the contractor, nor officers or employees of the contractor or any entity affiliated with the contractor, nor the spouses of officers or employees of the contractor or any entity affiliated with the contractor, have knowingly contributed more than \$5,000 in aggregate to the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract award.

- c. In accordance with [KRS 121.330\(3\) and \(4\)](#), and if this is a non-bid contract, to the best of his/her knowledge, neither the contractor, nor any member of his/her immediate family, his/her employer, or his/her employees, or any entity affiliated with any of these entities or individuals, have directly solicited contributions in excess of \$30,000 in the aggregate for the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract.

As a duly authorized representative for the bidder, offeror, or contractor, I have fully informed myself regarding the accuracy of all statements made in this affidavit, and acknowledge that the Commonwealth is reasonably relying upon these statements, in making a decision for contract award and any failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law.

Signature

Printed Name

Title

Date

Company Name _____

Address _____

Subscribed and sworn to before me by _____
(Affiant) (Title)

of _____ this _____ day of _____, 20____.
(Company Name)

Notary Public

[seal of notary]

My commission expires: _____

EXHIBITS

- A. Paintsville Marina Licensed Area**
- B. Corps of Engineers Prime Agreement # DACW69-1-84-0144**
- C. Flotation Requirements**
- D. Executive Order 2015-370 “Minimum Wage for State Employees and Commonwealth Service Providers”**
- E. Annual Checklist for Leased Marina Operations**
- F. Sample Slip Rental Agreement – SAMPLE**
- G. Minority Business Enterprise (MBE) Participation**