

AMENDMENT# 3

RFP 112816

**BEAVER DAM SERVICE AREA
approximately 9+- acres
OPERATION OF GENERAL MERCHANDISE AND FUEL SERVICE FACILITIES
OFF WENDELL H. FORD WESTERN KENTUCKY PARKWAY**

*****IMPORTANT*****

PURSUANT TO THIS AMENDMENT, ALL REFERENCES TO THE PROPOSAL DEADLINE OF NOVEMBER 28, 2016 IN RFP 112816, AMENDMENT #1, AND AMENDMENT #2 SHALL BE CHANGED TO DECEMBER 15, 2016.

Questions from RFP 112816 OFFEROR'S Conference held November 16, 2016 @ 2:30 p.m. EDST

1. Is the lease time period to execute set in stone?

RFP, Page 5, Paragraph II, Section H, #2 currently states:

“In the event a Offeror’s proposal is accepted and the Offeror fails to execute the contract documents, including ~~the deed and~~ the lease, 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 proposal security shall be forfeited to the Commonwealth as liquidated damages, and not as a penalty.”

ANSWER with Revision to RFP: Keep in mind that any contract will be negotiated with the successful Offeror and that the ten days would only come into play once the terms of a contract are agreed upon.

RFP, Page 5, Paragraph II, Section H, #2 Revised by this Amendment as follows:

In the event a Offeror’s proposal is accepted and the Offeror fails to execute the contract documents, including the lease, 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 proposal security shall be forfeited to the Commonwealth as liquidated damages, and not as a penalty.

2. **RFP, Page 9, Paragraph III, Section J:** Is the time period for construction (3 months from the date the lease is signed) set in stone?

Answer: This is the target date unless a longer time is approved in writing by the Finance Cabinet.

3. Is the 30-day cancellation clause required for the lease?

Termination for Convenience

The Commonwealth may terminate a contract for convenience, pursuant to 200 KAR 5:312, if the Commonwealth has determined that termination will be in the Commonwealth's best interests. The Commonwealth shall provide the ~~Lessor~~ **(this incorrectly states Lessor and should be Lessee and will be revised in the final lease)** thirty (30) calendar days written notice of termination of the lease, unless the secretary of the Finance and Administration Cabinet, or his designee, makes a written determination that a shorter notice of termination for convenience is in the best interest of the Commonwealth. Time shall be computed from date of mailing notice; termination under this paragraph shall not be considered until the last day of the month in which the notice period ends. Upon termination for convenience by the COK, the Lessee, in addition to the remedies set forth in 200 KAR 5:312, shall be authorized to remove all personal property, provided that the Lessee promptly repairs any damage to the Leased premises resulting from the removal.

Answer: Regardless if this language is in the lease or not, it is the law, but 200 KAR 5:312 provides for compensation to the Offeror in the event the Commonwealth terminates for convenience. Copy of 200 KAR 5:312 is Exhibit A to this Amendment.

4. RFP, Page 6, Paragraph II, Section J: Can the Commonwealth clarify the bond section? Are two bonds required? If so, is that one for labor and one for the overall project?

Answer: Payment and performance bonds per KRS 45A.190

5. RFP, Page 5, Paragraph II, Section H: What is the proposal security?

Answer: the proposal security is the same as the proposal guaranty amount of \$1000.00.

6. RFP, Page 8, Paragraph III, Section D: If there is contamination found on the site after the project is awarded, who is responsible?

RFP, Page 8, Paragraph III, Section D, Last Paragraph currently states:

The existing tanks are currently listed with DWM as record AI#58767. The successful Offeror, at its sole expense, shall be responsible for inspecting, evaluating and determining whether the existing tanks are viable and may be utilized by the successful Offeror or whether the tanks must be removed and replaced, by and at the sole expense of the successful Offeror, including any and all environmental remediation, if necessary. Compliance must meet all related state, local and administrative laws pertaining to underground petroleum storage tanks.

Answer: Revise RFP, Page 8, Paragraph III, Section D, Last Paragraph to the following:

The existing tanks are currently listed with DWM as record AI#58767. The successful Offeror, at its sole expense, shall be responsible for inspecting, evaluating and determining whether the existing tanks are viable and may be utilized by the successful Offeror or whether the tanks must be removed and replaced, by and at the sole expense of the successful Offeror, including any and all environmental remediation, if necessary. The successful Offeror must meet all related state, local and administrative laws pertaining to underground

petroleum storage tanks. **The successful Offeror shall have 30 days after award to conduct any desired environmental tests on the site at its sole option and expense. If tests are conducted, Offeror shall provide test results to the Commonwealth within 45 days of award. If the results of the tests are unsatisfactory, the successful Offeror may request to cancel the award at the time the Offeror provides results to the Commonwealth. If the Offeror chooses not to perform tests within the first 30 days after award, Offeror must notify the Commonwealth in writing of this during that time frame. Additionally, the construction period will not begin for the project until either the Commonwealth is notified testing will not occur or the date the results are submitted, assuming the Offeror does not wish to cancel the project.**

7. RFP, Page 7, Paragraph III, Section C: As far as utilities, is there anything currently going on the site or being planned?

Answer: KYTC is not aware of anything pending but will check with the Madisonville office.

8. As far as the underground tanks, etc, do we know what will happen to them at the end of the lease?

Answer: KYTC is not aware of the current Lessee's (or Lessee's operator if applicable) plan pertaining to removing equipment. However, through January 2, 2017, the current Lessee has the option to remove inventory and personal property from the site as long as the removal does not cause damage to the site, and as of January 3, 2017, the Commonwealth will own all personal and real property located on the site.

9. Is twenty-four (24) hour access required for the public during construction/renovation period?

Answer: No, twenty-four hour public access is only required when construction/renovation is completed.

10. RFP, Page 16, Paragraph VI, Section B: Are detailed construction drawings required the date of RFP submittal?

Answer: Yes, pursuant to this section, detailed drawings are required with the Offeror's proposal.

11. What will the turnaround be for review of detailed drawings?

Answer: Upon receipt of proposals, the Buyer will promptly coordinate a desk review with the Division of Engineering. The successful Offeror will be responsible for all other permits and/or approvals required by state and local code officials.

12. There are two buildings currently located on this site that were built as a result of RFP ES-328-95 which is currently CLR 1430. Who will own those two buildings at the end of CLR 1430?

Answer: Through January 2, 2017, the current Lessee has the option to remove inventory and personal property from the site as long as the removal does not cause damage to the site, and as of January 3, 2017, the Commonwealth will own all personal and real property located on the site.

13. Draft Sample Lease, Page 2, SECTION 4. Rent: Is the 3% increase in rent set in stone?

Answer: Yes, pursuant to this language.

14. Is there a requirement for the successful Offeror to provide space in the general merchandise store for the local Tourism group?

Answer: KYTC has not set requirements to provide space, but it does encourage the successful Offeror offering Kentucky Lottery tickets, Kentucky Proud items, Kentucky Crafted items, and information for local and state tourism.

15. If Ohio County currently is or votes to be “wet” in the future, are there any restrictions on alcoholic sales on the site?

Answer: KYTC has not set a restriction for alcoholic beverage sales at this site; therefore, this would be subject to federal, state, or local laws pertain to alcoholic beverage sales.

AMENDMENT #3 EXHIBIT A RFP 112816

200 KAR 5:312. Termination of contracts.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.210(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.210(2) and (3) authorize the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the termination of contracts for the procurement of supplies or services, or both supplies and services. This administrative regulation establishes requirements for the termination of contracts.

Section 1. General Terms. (1) Any contractor who is determined in writing by the purchasing officer to be in breach of any of the terms and conditions of a contract with the commonwealth of Kentucky, shall be declared in default and the contract may be terminated.

(2) Termination notice. The purchasing officer shall terminate a contract by written notice to the contractor. The notice to the contractor shall be sent certified mail, return receipt requested, and shall state:

(a) The contract is being terminated for the convenience of the commonwealth, for default by the contractor, or for nonappropriation, in accordance with Sections 2 to 4 this administrative regulation;

(b) The effective date of termination;

(c) The extent of termination; and

(d) Any special instructions.

Section 2. Termination for Default. (1) The commonwealth may terminate a contract because of the contractor's failure to perform its contractual duties.

(2) If a contractor is determined to be in default, the commonwealth shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. The commonwealth may proceed with termination if the contractor fails to cure the deficiencies within the specified time.

(3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:

(a) Failure to perform the contract according to its terms, conditions and specifications;

(b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;

(c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;

(d) Failure to diligently advance the work under a contract for construction services;

(e) The filing of a bankruptcy petition by or against the contractor; or

(f) Actions that endanger the health, safety or welfare of the commonwealth or its citizens.

(4) The commonwealth shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of termination as determined by the purchasing officer except for commodities, supplies, equipment or services delivered and accepted on or before the date of termination and for which payment had not been made as of that date. The commonwealth may require the contractor to transfer title and deliver to commonwealth completed supplies and manufacturing materials. The contractor, and his surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the commonwealth for all loss, cost or damage sustained by the commonwealth as a result of the contractor's default. A contractor's surety liability shall not exceed the final sum specified in the contractor's bond.

(5) The contractor shall be liable to the commonwealth for any excess costs incurred in acquiring supplies and services similar to those terminated for default, and for any other damages or remedies available either at law or in equity, whether or not repurchase is affected.

Section 3. Termination for Convenience of the commonwealth. (1) The commonwealth may terminate a contract for convenience if the purchasing officer has determined that termination will be in the commonwealth's best interests. The commonwealth shall provide the contractor thirty (30) calendar days written notice of termination of the contract, unless the secretary of the Finance and Administration Cabinet, or his designee, makes a written determination that a shorter notice of termination for convenience is in the best interest of the commonwealth.

(2) If a contract is terminated for the convenience of the commonwealth, the contractor shall have the burden of establishing the amount of compensation to which the contractor believes he is entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. The contractor shall specify and provide documentation of all revenues resulting from the contract, expenditures associated with the contract, and all profit or loss attributable to the contract. The purchasing officer may request the contractor submit additional documents and data, and may request appropriate accounting, investigations and audits.

(3) After issuing a notice of termination for convenience, the purchasing officer may negotiate a settlement with the contractor according to terms deemed just and equitable by the purchasing agency and in accordance with this administrative regulation. The settlement shall be subject to the prior approval of the Secretary of the Finance and Administration Cabinet, or his designee. If the contractor and the purchasing officer cannot negotiate a settlement, the Secretary of the Finance and Administration Cabinet shall issue a determination of the amount, if any, due the contractor.

(4) Contractor responsibilities. After receipt of the notice of termination, the contractor shall take all steps necessary to minimize waste, including:

(a) Stop work immediately on the terminated portion of the contract;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the purchasing office of any special circumstance precluding the stoppage of work;

(d) Perform the continued portion of the contract;

(e) Take action to protect and preserve property in the contractor's possession in which the commonwealth has or may acquire an interest, and, if directed by the purchasing officer, deliver the property to the commonwealth;

(f) Promptly notify the purchasing officer in writing of any legal proceedings resulting from any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle outstanding liabilities and proposals arising out of the termination; and

(h) If there is a terminated construction contract, ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other actions necessary to leave a safe and healthful site.

(5) Payment.

- (a) Payment of the sum agreed to in settlement of a contract terminated for convenience of the commonwealth shall be made from the same source of funds or account as the original contract.
- (b) The commonwealth shall not pay interest on the amount due under the settlement.

Section 4. Funding Out Provision. The commonwealth may terminate a contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The contracting agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract. (5 Ky.R. 578; Am. 951; eff. 7-17-79; 18 Ky.R. 1365; eff. 1-10-92; 30 Ky.R. 679; 1467; eff. 1-5-2004.)

**END OF AMENDMENT 3
RFP 112816**