

COMMONWEALTH OF KENTUCKY

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

Request For Proposals (RFP)



Project Name: Construction -- Jenny Wiley Marina Expansion
Proposal Number: #041216

IMPORTANT: PROPOSALS MUST BE RECEIVED BY:
Tuesday, April 12, 2016 @ 4:00 p.m.

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

TABLE OF CONTENTS

INTRODUCTION 4

LOCATION - EXISTING FACILITIES AND BACKGROUND 6

MARINA CONSTRUCTION REQUIREMENTS 7

Kentucky State Park Image 7

Existing Facility 7

Utilities 8

Liens Against the Premises 9

Conflict of Interest 9

Construction/Development (Plan Approval) 10

Protection of Work, Property, Employees & Public 11

Commencement of Construction 11

Design/Construction Considerations..... 13

Site Considerations 13

Payment and Performance Bonds 16

Warranty of Suitability..... 16

Mechanics and Materialmans' Liens 17

Title to Improvements & Additions 17

Insurance 17

KRS 45A.330-45A.340 or 45A.990 & KRS Chapter 11A..... 19

Access to Books..... 19

LICENSE AGREEMENTTERMS AND CONDITIONS 20

General 20

License Agreement Term 20

Rental Consideration 21

Rates and Prices 21

Records and Reports..... 21

Sub-Subleasing, Assignments, or Mortgages of Offeror's Interest 22

Boat Slip Agreements 22

Hold Harmless..... 23

Attorneys' Fees 23

Notices 23

Offer of Gratuities 23

Maintenance of Commonwealth's/Corps' Property 24

Employment Practices..... 24

Permits and Licenses 25

Right of Entry..... 25

Termination of License 26

Procedures on Termination 26

Force Majeure 27

Waiver..... 27

Disclosure of Financial Information..... 28

Severability Clause..... 28

Successors and Assigns 28

Public Use 28

Prohibition from Removal of Vegetation and Minerals 28

Parking.....	29
RFP GENERAL PROCEDURAL INFORMATION	29
Pre-Bid Conference	29
RFP Addenda.....	29
Offeror Responsibility for Proposal Submittal.....	29
Inquiries.....	30
No Prior Commitment or Obligation of the Commonwealth.....	30
Issuing Office.....	31
Proposal Guaranty.....	31
PROPOSAL	31
Evaluation of Proposals.....	31
Point Scoring of Proposals	32
Submission of Proposal.....	32
Withdrawal of Proposal.....	33
Proposal Subject to These Terms.....	33
Offeror's Proposal Shall Include	33
Transmittal Letter	33
Design and Construction Plan	34
Construction Costs	34
Financial Background of Offeror and Proposed Method of Financing Project	34
Corporate/Business Background and Experience.....	35
AUTHENTICATION OF BID AND AFFIDAVIT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST	37
SWORN STATEMENT PURSUANT TO KRS 45A.485.....	39
SWORN STATEMENT PURSUANT TO KRS 45A.110.....	40

I. INTRODUCTION

The Commonwealth of Kentucky desires to solicit expansion, with private funding, of the existing, state-owned marina facility, on Dewey Lake, at Jenny Wiley State Resort Park, Prestonsburg, Floyd County, Kentucky (Jenny Wiley). The Commonwealth has determined that the most feasible and responsible means for expansion of the existing marina facility at Jenny Wiley is by and with private participation. The desired objective is the construction of ten (10) additional boat slips (the sizes of which are detailed below), cabling/anchoring, relocation of existing head dock, and expansion of the parking lot to be incorporated into the existing marina facility by a private Offeror, who will design, finance, construct this project. In exchange for the Offeror designing, financing, constructing this project, the Offeror shall receive use of seven (7) of the ten (10) new boat slips for that period of time necessary to recoup the Offeror's total investment in the improvements plus a percentage to be provided by the respondent.

The ten slips and other improvements shall be owned by the Commonwealth, and the Commonwealth shall maintain, manage, and operate, in conjunction with furnishing a first class, high quality marina facility. Seven (7) of the newly constructed slips shall be assigned through a license agreement, rent-free, to the successful Offeror, for that period of time it takes to recoup the Offeror's investment (calculation shall be as follows: total cost of construction plus a percentage provided by the respondent divided by seven slips = total amount of investment per slip.) The Commonwealth's assessed annual slip rental will be 'deducted' from the total amount of investment per slip for the number of years it takes to recoup the investment of the slips. The Commonwealth's rental calculation (to be deducted from the Offeror's investment for each of the seven slips) shall be \$3.25/foot at 100 feet (Minimum) per month for Fiscal Year 2016). Although the per foot rental rate may be adjusted by the Commonwealth, the 100 foot slip (Minimum) measurement will remain constant.

The land area that encompasses Dewey Lake within Jenny Wiley State Resort Park is managed by the Kentucky Department of Parks under the terms of an agreement (No. DACW 69-1-15-1060) with the United States Army Corps of Engineers, effective beginning January 1, 2015 and ends December 31, 2039 (see attached Exhibit A). The successful Offeror shall abide by all the terms and conditions of the aforementioned prime COE lease with Parks, as supplemented and amended, to include but not be limited to Title VI of the Civil Rights Act of 1964, as amended (42 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. The license agreement granted to the successful Offeror shall not extend beyond the Commonwealth's prime lease expiration of December 31, 2039.

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 Offerors who can demonstrate the necessary capability to successfully finance, design, construct:

- Ten (10) houseboat slips rated to hold a houseboat that is 130 feet long, similar in nature and construction materials as the existing slips at the marina, the design and impact of which must have the prior approval of the Corps of Engineers, as prime lessor. Each slip must be metered separately for electrical usage.
- Move the existing marina, head dock and attached boat slips to a new location as shown on Exhibit B.
- It shall be necessary to anchor the boat slips and the existing marina differently than what is now existing at the marina, possibly with a cable system. The currently utilized 'anchored arm system' is obsolete and will not work in the new area due to the distance from the bank.
- Expansion of existing parking lot. The area is from the existing gas tank to the end of the point where the expansion shall take place. Depending on how much soil is removed by the successful Offeror, parking can be increased from four to ten spaces. The Corps of Engineers, as prime lessor, must approve any soil disturbance prior to construction taking place. There will have to be some soil disturbance on the end of the point to install the walkway to the new slips. There may be a need for a retaining wall at this location, as this area has some erosion issues.

A COE resource for construction/renovation is: "EM 1110-1-400 Recreation Facility and Customer Service Standards". Purpose: This document provides general guidance for the rehabilitation of existing and the design and construction of new recreation areas and facilities, the provision of customer services, and recreation program evaluation activities at recreation areas managed by the U.S. Army Corps of Engineers (USACE). The overall purpose of this document is to establish a uniform level of quality nationwide by which Corps-managed parks will meet the needs of current and future park customers. The criterion herein applies to both new recreation areas and the rehabilitation of existing areas, and serves primarily as a conceptual design document for use by operations personnel when developing these public facilities. However, this document is not intended to circumvent the preparation of detailed final design plans for architectural/ engineering features in accordance with applicable engineering or technical manuals and design standards.

In consideration of the Offeror's construction of ten (10) boat slips and other improvements at the existing marina, the Commonwealth is willing to grant a license agreement to the successful Offeror for seven (7) of the newly constructed boat slips for a license period beginning on date of execution of the license between the

Commonwealth of Kentucky and the successful Offeror and ending the number of years thereafter to accomplish the Offeror's recoupment of investment (see calculation for length of license agreement), and subject to the terms and conditions of the prime lease agreement between the Commonwealth and the Corps. The Department of Parks must approve assignment of the Offeror's seven newly constructed boat slips. Occupants of the Offeror's boat slips during the term of the resulting license agreement must sign a boat slip agreement with the Department of Parks, annually. These agreements will be at no cost during the term of the resulting license agreement. However, occupants will be notified that rates will be charged by the Department of Parks upon the expiration of the license agreement between the Department of Parks and the successful Offeror.

II. LOCATION - EXISTING STATE PARK FACILITIES AND BACKGROUND

Jenny Wiley State Resort Park, located deep in the heart of the Appalachians, is accented by 1,100 acre Dewey Lake. Enjoy a variety of activities, from Broadway shows in the amphitheatre and hiking trails through the wilderness, to disc golf and boating. The park is named for Virginia Sellards Wiley, a brave pioneer woman.

May Lodge--Experience the secluded beauty of the 49-room May Lodge, surrounded by towering pines and peaceful mountains.

Browse the gift shop, offering a fine selection of Kentucky handcrafts. Rooms are available by late afternoon, check out by noon, Eastern Time.

Cottages--For private accommodations, enjoy a one or two-bedroom cottage. Tableware, cooking utensils, and linens are provided, with fresh linens available daily. Cottages are available by late afternoon, check out by 11 am.

Campground--Enjoy the great outdoors in the 117-site campground. Plenty of shade awaits you from the well-established sites. Utility hookups, two central service buildings with showers and rest rooms, a grocery store, and a dump station are available. Check out by 1 pm. Make reservations at reserveamerica.com or call 888-459-7275

Music City Grill--Relax and enjoy the scenery as well as delicious Kentucky cooking at the Music City Grill. This 224-seat restaurant serves breakfast, lunch and dinner. Two private dining rooms are available to accommodate up to 70 guests.

Wilkinson/Stumbo Conference Center & Meeting Rooms--This modern meeting facility may be divided into three, separate, rooms to accommodate from 500 - 800 guests, theater or banquet style. The lodge contains two meeting rooms that each accommodates 125 guests.

The Jenny Wiley Theatre--Jenny Wiley is a showplace for the performing arts! Experience a tour of the American landscape with exciting musicals performed in the park amphitheatre. – 1.606.886.9274

- **Buffalo Night (January)**
- **Hillbilly Night (April)**
- **Elk Night (September)**

Check our entire calendar of events at www.parks.ky.gov

SPECIAL EVENTS--Jenny Wiley State Resort Park 1.800.325.0142

Boating--Boat dock offers marine and fishing supplies, open boat slips, launching ramps and pontoon boat and canoe rentals.

Fishing--Dewey Lake has largemouth and hybrid striped bass, bluegill, catfish and crappie.

Swimming--Lodge pool for exclusive use of overnight guests.

Nature Trails & Interpretive Center--Many hiking trails of varying distances, 3-mile mountain bike trail. Displays of coal mining, native wildlife.

Recreation Opportunities--Planned activities with recreation staff, paddleboats, play grounds, picnic tables and shelters.

III. CONSTRUCTION REQUIREMENTS

A. Kentucky State Park Image

The improved 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 their construction services as equal or superior to current Kentucky state park facilities by offering quality materials and construction services that will enhance the total tourism effort of the Commonwealth of Kentucky.

The Offeror shall be responsible for all costs for assuring that the construction of the ten boat slips, relocating the existing marina building (head dock), providing necessary cabling/anchoring for the construction project and provide materials and 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 a small dock, currently owned and operated by the Department of Parks, with 166 slips; 70 house boat slips, 90 pontoon/fishing boat slips, 7 seasonal slips (boats must be removed in the winter), four launch ramps and four courtesy slips. A service or head dock with gasoline pumps, bait sewer pump out station and other items.

Rates charged by the Commonwealth to its marina customers are currently: house boats (70 slips) \$3.25 per foot per month, year round pontoon fishing boat slips (90 slips) \$750 per year, 7 seasonal slips \$500 per year.

In exchange for the marina improvements described herein, the successful Offeror shall be granted the use of seven (7) of the new slips through a license agreement with the Commonwealth. The successful Offeror agrees to keep the facilities open to the general public and shall not assign occupancy of any of the seven slips, without the prior written consent of the Department of Parks. If an assignment is approved by the Department of Parks, the offeror shall effectuate said assignment through the Commonwealth's boat slip agreement (see attached Exhibit C), a copy of which shall be presented to the Park Manager/Marina staff. The successful Offeror may only charge any approved assignee at the time of the approved assignment through the end of the term of the resulting license agreement with the Commonwealth. The successful Offeror shall NOT be allowed to charge more than the existing rates charged by the Commonwealth. All approved assignees of any of the seven licensed slips shall be required to adhere to the policies and procedures of the Commonwealth's marina operations. 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 through the entire term of the resulting agreement.

The Commonwealth has designated less than 4 +/- acres of land, including improvements, and waterways, which is the Dewey Lake marina site (see attached Exhibit B). The Offeror shall not 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 Lease DACW 69-1-15-1060 (copy attached as Exhibit A).

C. Utilities

All slips have individual electric meters and water. At present, water is not metered; it is included with the rent. Electrical meters are read monthly. The Commonwealth pays the electric, and then bills the slip renters on a monthly basis.

None of the slips have sewer hook ups; the boats have to pull into the head dock and pump out. It is anticipated that this will not increase the flow-rate. From time to time, it may increase the daily rate, but the same amount will be running through the lift stations because the Commonwealth has only one pump out station for the marina.

It shall be the responsibility of the Commonwealth to provide and pay for all utilities for the operation of the marina facility. Should the Offeror require additional utility capacity for the construction of the ten slips, cabling system and relocation of the head dock, then each month of construction, the Commonwealth shall bill the Offeror for usage.

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.

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

D. Liens Against the Premises

No facility constructed shall be deemed a public improvement within the meaning of KRS 376.210 et. seq. Nothing in this RFP shall in any way be deemed or construed as constituting an order or request by the Commonwealth, expressed or implied, to any contractor, subcontractor, supplier, materialman or laborer, for the performance of any labor or the furnishing of any materials for the construction or maintenance of any improvements on, alterations to, or other improvements of the leased premises; nor as giving the Offeror any right, power or authority to grant for 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 Commonwealth's property or the Offeror's leasehold interest therein.

Furthermore, the Offeror shall not suffer or permit any mechanic's or materialman's lien to be filed against the Commonwealth's property or the Offeror's leasehold interest in the leased premises by reason of work, labor, services or materials supplied or claimed to be supplied to the Offeror. If a mechanic's or materialman's lien shall be filed against the leased premises or the Offeror's leasehold interest at any time, the Offeror shall cause the same to be discharged and released of record within thirty (30) days after the notice of filing competent jurisdiction or otherwise. If the 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 Offeror shall not be deemed to be in default under this RFP while such proceedings of litigation are being conducted in good faith by it. However, if the 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 Offeror shall be deemed to be in default of the lease which shall be a basis for termination of said lease.

E. Conflict of Interest

No official or employee of the Commonwealth or no other public official of the Commonwealth of Kentucky who exercises any functions or responsibilities in the review of 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 license.

F. 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, the Department of Parks, and the U.S. Army Corps of Engineers 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) Safeguards the health of occupants;
 - (c) Enhances satisfaction and productivity of workers through energy-efficient systems;
 - (d) Incorporates environmentally friendly materials and products; and
 - (e) Reduces waste;
3. Plan approval must be obtained from the state Department of Housing, Building and Construction. All fees 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 and the Department of Parks before commencement of construction. Upon completion, copies of all permits and certificates shall be submitted to the Department for Facilities and Support Services and the Department of Parks, along with "as built" plans.
4. The Department for Facilities and Support Services and the Department of Parks 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.

The inability of the Offeror to obtain proper financing, approved in advance by the Commonwealth, by the aforementioned deadlines for submission of a comprehensive work plan and project timeline shall not constitute a reasonable reason for an extension of time.

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

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

The Offeror shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the state's 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 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 architect by the Offeror.

The Offeror shall be responsible for the protection and subsequent repair of adjacent property during the course of construction from any potential damage caused by the construction and development of the property. The Offeror shall also be responsible for cleaning the adjacent State Park property and public roads and paved areas of mud and debris originating from the site.

H. Commencement of Construction

As soon as practicable, but no longer than thirty days (30) after award of a contract, subject to reasonable extensions for good cause shown, the successful Offeror shall submit a comprehensive work plan, including a detailed time line, for the development of all plans and specifications as well as the actual construction of the Project and to obtain all necessary approvals of all local, state and federal regulatory agencies.

Construction of the boat slips, cabling and relocation of the head dock and expansion of the parking lot project shall be commenced within forty-five (45) days after the comprehensive work plan is approved by the Department of Parks and the Department of Facilities and Support Services or the project will be deemed abandoned. The successful Offeror shall be required to obtain any and all regulatory approvals, by and at the sole expense of the successful Offeror. The Commonwealth will agree to a

reasonable extension of time for providing for the designated facilities and services when a delay in providing the facilities and services is beyond the control of the Offeror.

Substantial completion of the construction is expected to be achieved within eighteen (18) months from the date of the approval of the comprehensive work plan.

Construction of the Project must be commenced within the approved schedule, and which shall include review and approval by all local, state and federal governmental agencies. The Commonwealth will agree to a reasonable extension of time for providing the designated facilities and services when a delay in providing the facilities and services is beyond the control of the Offeror. The Offeror will not be authorized to construct, erect, or place any structure or other facility upon the premises, or to make any major alteration to an existing structure or facility without the prior written approval of the Department of Parks and the Department of Facilities and Support Services. Requests for same shall be made in writing to the Department of Parks and the Department of Facilities and Support Services.

Should the Offeror, after commencing the construction/development phase of the Project, abandon or for any reason fail to complete the facility, title to all materials or improvements on the premises shall immediately vest in and become the property of the Commonwealth. The Offeror may not remove the structures, improvements, and equipment erected or placed upon the leased premises without the approval of the Department of Parks. Upon approval from the Department of Parks to remove any structures, improvements, or equipment placed upon the premises, the Offeror must repair any damage to the premises resulting from the removal of the structures, improvements, or equipment.

The boat slips shall be "turn-key" building upon completion and must receive a Certificates of Occupancy from the state Department of Housing, Buildings, and Construction prior to occupancy.

The design and construction of all facilities shall be in full compliance with the Americans with Disabilities Act.

The site work for the expansion of the existing parking lot includes all grading required for balanced cuts and fills to construct new roadway/drives with industry standard slopes for vehicle access and parking and to provide access and connections to and from existing roadways.

The site work and utilities extensions and connections shall be constructed by and at the sole expense of the successful Offeror.

All mechanical, plumbing, electrical and physical security measures will be incorporated into the design.

I. Design/Construction Considerations

- a. Architectural and engineering design concepts, systems, and components shall be economical to operate, functional, serviceable and easy to maintain, commercially attractive, with colors and textures of building materials to match and/or be compatible with existing marina facilities on Dewey Lake at Jenny Wiley State Resort Park.
- b. All systems, components and materials shall be of the average type and quality normally expected in facilities of this type and shall match and/or be compatible with existing facilities at Jenny Wiley.

J. Site Considerations

- a. A total of 2.5 +/- acres of parking lot and 0.3 +/- acres of unimproved land will be used for expansion of the existing parking lot. Paved access roads to the site currently exist; additional construction staging areas will be provided by the Commonwealth.
- b. The Offeror shall be responsible for all costs associated with identification of known environmental hazards/issues to the expansion area, as well as adhering to any environmental inspections/reports required by the Corps of Engineers.
- c. Notice of Intent (NOI) for storm water management, erosion control, best management practices shall be submitted by Offeror. NOTE: The successful Offeror shall be responsible for providing and maintaining erosion control measures resulting from construction activities. Any and all existing erosion control measures found on the site before construction begins will be maintained; and, if disturbed, will be repaired or modified by the successful Offeror, at its sole expense, as needed.
- d. The successful Offeror, with prior approval from the Department of Parks and the Corps of Engineers, may dispose of all excess excavated materials (excess topsoil, footings, ditches, etc.) on Jenny Wiley State Resort Park property, as directed by its administrative officials. The Department of Parks and the Corps of Engineers must approve any acceptable borrow material available at Jenny Wiley State Resort Park property or the successful Offeror may bring acceptable fill material to the site, by and at its sole expense.

- e. There are existing trees at the site that will require removal; the successful Offeror, at its sole expense, is responsible for this removal/disposal. The Commonwealth will designate a disposal area within close proximity to the site.
- f. Geotechnical exploration: The geotechnical exploration, if required, shall be by and at the sole expense of the Offeror. Any additional engineering consulting services deemed necessary by the successful Offeror to construct the facilities shall be included in the Offeror's proposal.
- g. All staging areas required for construction shall be on the building site; alternate arrangements may be made by prior written request by the successful Offeror and prior approval of the Commonwealth.
- h. The construction site shall be policed daily and ALL debris shall be removed and containerized. All building materials, tools, portable equipment and other related items shall be secured daily to prevent any opportunity for those objects become airborne. Open dumpsters shall not be allowed.
- i. Keep roadways leading to and from the site free and clear of mud and debris at all times.
- j. Storm sewer service is not available – all storm water will be designed and constructed as part of the site and topography and be acceptable to the authorities having jurisdiction and shall not create any extreme run-off conditions.
- k. Portable sanitary facilities shall be provided by and at the expense of the Offeror.
- l. Temporary heat, as necessary, to maintain required temperatures for installation of finish materials and protection of construction that is affected by low temperatures or temperature swings shall be by and at the sole expense of the Offeror.
- m. Temporary power will be available through coordination with Department of Parks. Any portable electrical power that may be needed to outlying locations of the site shall be provided by and the expense of the Offeror.
- n. Coordination: The Offeror shall coordinate all design and construction procedures/activities in advance with the Jenny Wiley State Resort Park

Manager and/or other Points of Contact (POC), as identified by the Department of Parks.

o. Building Code Requirements and Compliance:

- All constructed elements of the project shall comply with the current edition of 'The Kentucky Building Code' (KBC) and all supplements including all other referenced applicable code requirements, and General Requirements of this RFP. The project shall also be constructed in accordance with contract documents prepared by architects and engineers registered to do business in the Commonwealth of Kentucky.
- Completion of the project shall be based on the receipt of a "Certificate of Occupancy" issued by:

Kentucky Department of Housing, Buildings, and Construction
Division of Building Codes Enforcement
101 Sea Hero Road, Suite 100
Frankfort, KY 40601
Phone: (502) 573-0373

- p. Provide minimum building code compliant ADA parking and all associated ramps, walks, horizontal and vertical signage in the asphalt paved expanded parking area.
- q. All parking spaces to include appropriate curbing and or wheel stops at each parking space.
- r. Waste Handling and Garbage Disposal: The Offeror, at its own expense, shall be responsible for providing for all construction trash and garbage disposal and removal from the entire project area. All waste handling, storage, and removal shall comply with state and national health and environmental requirements.

The successful Offeror is obligated to adhere to the prevailing wages laws for one hundred percent (100%) of the entire project and related facilities at Jenny Wiley. See attached wage rates, as Exhibit D; these are for informational purposes only. The attached wage rates are "not an official document."

Offeror is solely responsible for contacting the Labor Cabinet for official wage rates.

K. Payment and 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 alteration/renovation of the marina construction contract 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.

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.**

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 licensehold 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 licensehold 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 licensed 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

It is understood and agreed by the parties that as a part of the consideration given by the successful Offeror for the privilege of utilizing the property, all improvements and/or additions to the property shall become the sole property of the Commonwealth upon the completion of the construction project.

O. Insurance

1. Liability Insurance

During the construction phase of this project, the successful Offeror will be required to obtain, from a reputable insurance company authorized to do business in the Commonwealth, and carry liability of indemnity insurance providing as a minimum, a combined single limit of \$5,000,000 for any number of persons and/or claims. Said

insurance shall name the Commonwealth 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. Offeror must furnish a copy of its insurance policy to the Department of Parks prior to commencement of construction.

2. Casualty Insurance

During the construction project, the Offeror shall maintain, at the Offeror's sole expense, fire and extended coverage insurance, including theft and vandalism, covering the proposed development in an amount equal to its full replacement cost value.

Renewal or additional policies shall be obtained and maintained by the Commonwealth in like manner and to like extent. All policies of insurance must contain a provision that the company writing the policy will give the Offeror and the Department of Parks thirty (30) days advance written notice of any cancellation or lapse of the effective date or any reduction in the amounts of insurance.

After construction is completed, the Department of Parks shall carry and maintain, at Parks' sole cost and expense, fire and extended coverage excluding contents.

3. Builder's Risk Insurance

The Offeror shall furnish Builder's Risk Insurance, including the perils of fire, extended coverage, vandalism and malicious mischief in an amount of not less than one hundred percent (100%) of the insurable value of all the work and the coverage, written on the Completed Value Form 17-C, latest edition, including extended coverage endorsement form #61, latest edition, and malicious mischief endorsement form #205, latest edition, or on the "All Risk Completed Value Form". Such insurance shall be for the benefit of the Offeror and any subcontractor engaged on the project, as their respective interest may appear. The Builder's Risk Insurance must be dated and in force on the date indicated in the documentation to begin work. The insurance coverage required by the lease document shall be in compliance with the laws of the Commonwealth and shall be placed with a licensed resident local agent in Kentucky who represents insurance companies authorized to do business in Kentucky. The contract amount shall be insurable value unless otherwise noted in the contract documents. All insurance certificates shall be submitted in duplicate to the Offeror and Commonwealth and carry the provision that a 30-day written notice shall be given prior to cancellation by the company to the Offeror and the Commonwealth.

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 license and any renewals thereof.

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

P. KRS.45A.330 – 45A.340 or 45A.990 and KRS Chapter 11A

The successful Offeror certifies by his signature to the resulting agreement that he (“he” is construed to mean “they” if more than one person is involved; and, if a firm, partnership, corporation, business trust or other organization is involved, the “he” is construed to mean any person with an interest therein) is legally entitled to enter into contracts with the Commonwealth of Kentucky and that holding and performing such contract(s) will not be violating either any conflict of interest statute (KRS 45A.330 – 45A.990) of the Executive Branch Code of Ethics, KRS Chapter 11A, or any other applicable statute or principle by the performance of the resulting Lease, or will he realize any unlawful benefit or gain directly or indirectly from it. The successful Offeror further certifies that he has not knowingly violated any provisions of the campaign finance law of the Commonwealth, and that by entering into the resulting Lease Agreement he will not be in violation of the campaign finance laws of the Commonwealth.

Q. Access to Books

The contractor, as defined in KRS 45A.030 (9), 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 contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, which are directly pertinent to the contract shall be subject to public disclosure 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 contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency provides the service.

IV. LICENSE AGREEMENT TERMS AND CONDITIONS

A. General

The license agreement 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 license shall also be subject to the terms and conditions contained in Contract No. DACW 69-1-15-1060 between the U.S. Corps of Engineers and the Commonwealth of Kentucky dated November 2, 2015. 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 license 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.

No modification or change of any provision in the license 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 license 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 license.

The license 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 license shall be brought in the Commonwealth of Kentucky administrative or judicial forums. Venue will be in Franklin County, Kentucky.

B. License Agreement Term

The license agreement will be for a period commencing from the date the license is fully executed between the successful Offeror and the Commonwealth, and ending on a date to be determined by both parties (see calculation of term, page 21). Prior to exercising any future options, the Commonwealth of Kentucky reserves the right to amend the current contract and any of the terms and/or conditions.

Any license 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 lease agreement and contract number DACW 69-1-15-1060, dated November 2, 2015. All the provisions of said license 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 construction of ten boat slips, restructuring of the cabling system, relocation of the head dock, and expansion of the existing parking lot, the successful Offeror shall be assigned rent-free use of seven of the newly constructed boat slips, through a license agreement, for that period of time it takes to recoup Offeror's investment. 'Rental' consideration shall be calculated as follows:

Offeror's total cost of construction plus interest divided by seven = total cost of improvements per slip. The offeror's total cost per slip will be deducted annually, until such time as the Offeror has recouped his total investment for the project. The rental 'assessed' for each of the seven slips shall be \$3.25 per foot per month for a 100 foot (Minimum) slip. Please note that regardless of the size of vessel Offeror places in each slip, the \$3.25 per foot rental rate shall be calculated on a 100' boat (Minimum). The Commonwealth reserves the right to increase the per square foot rental assessed to all slip renters at the marina; and at that time, the new slip rental shall be deducted from the total cost of improvements per slip.

D. Rates and Prices

The successful Offeror shall not be permitted to charge for entrance or admission to the dock, including that portion, if any, outside of the project boundaries. The successful Offeror shall not charge any slip renter of the seven slips a rental amount more than what is currently charged by the Department of Parks. However, if a rate increase is approved by the Department of Parks for slip or moorage rental, then the base rental for the resulting license 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 dock facilities and to maintain such additional records as the Commonwealth deems necessary to adequately reflect the operations conducted on the licensed 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. Sublicensing, Assignments, or Mortgages of Successful Offeror's Interest

During the course of the license 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 G, voluntarily, involuntarily, or by operation of law assign, sublet, mortgage, or transfer the license 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 license 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 license or from the performance of all other terms, covenants, and conditions of the license. 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.

G. Boat Slip Agreements

The Department of Parks 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 Department of Parks and the boat owner. The agreement shall be updated annually. For the seven slips provided to the successful Offeror under the resulting license agreement, the Department of Parks will not charge the boat owners for use of those slips. However, the successful Offeror may charge boat owners for those slips at a rate not to exceed what the Department of Parks charges for slip rentals.

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

H. 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 licensed premises or any means of ingress thereto, or egress therefrom, or resulting from the successful Offeror's operations on the licensed 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.

I. Attorney's Fees

In the event that either party deems it necessary to take legal action to enforce any provision of the license, 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.

J. Notices

After license award, all notices under this license 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.

K. 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 license 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.

L. Maintenance of Commonwealth's/Corps' Property

The Commonwealth 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 license. 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.

After construction is complete, the Department of Parks will be responsible for the maintenance of all improvements made to the marina facility as a result of this RFP.

M. 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.

Contract No. DACW 69-1-15-1060 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 license and must be signed by the successful Offeror pursuant to Section 18 of Exhibit A of Contract No. DACW 69-1-15-1060 between the United States of America and the Commonwealth of Kentucky.

N. 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 relocation of the marina and construction of new boat slips.

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.

O. 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 licensed 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 construction project.

P. Termination of License

The license 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 license 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 licensed 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 license in immediate default and the 30 day cure provision shall not apply.

The various rights, options, elections, powers, and remedies contained in the license 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.

Q. 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 license to be terminated, in which event this license, 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 license 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 license, and recover from the successful Offeror any deficiency between the amount of rent, additional rent and all other charges payable under this license, 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.

R. 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.

S. Waiver

The waiver by the Commonwealth of Kentucky, 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 license, shall not be deemed to be a waiver of the same or any other term, covenant, or condition contained herein.

T. 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 license 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 license agreement.

U. 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.

V. 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.

W. Public Use

In accordance with contract number DACW 69-1-15-1060 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.

X. 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.

Y. Parking

There shall be no reserved parking affiliated/associated/assigned with the seven boat slips assigned to the Offeror. Parking in the marina parking lot shall be on a 'first come-first serve' basis.

V. 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 and Support Services, 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: Scott Aubrey, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 564-2014.

B. RFP Addenda

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 contract number DACW 69-1-15-1060, dated November 2, 2015, between the U.S. Corps of Engineers and the Commonwealth of Kentucky (copy attached – Exhibit A).

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. 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 license 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 Properties, Attention: Scott Aubrey, 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 license 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 license 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 license.

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 and Support Services, 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). 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 an Offeror's proposal is accepted and the Offeror shall fail to execute the license 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.

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, and other resource agencies' representatives, as appropriate. Items to be given specific attention during the evaluation process are as follows:

1. The Offeror's construction plan for the construction of ten (10) additional boat slips, cabling/anchoring, relocation of existing head dock, and expansion of the parking lot.

2. The construction costs plus interest.
3. Financial background of Offeror including, but not limited to, the Offeror's ability to provide financial backing for the proposed construction of the ten (10) additional boat slips, cabling/anchoring, relocation of existing head dock, and expansion of the parking lot.
4. Corporate background and experience.

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 license 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 three hundred (300) points will be available for each proposal as follows:

- | | |
|--|-------------------|
| • Approach to design and construction plan | <u>100 Points</u> |
| • Construction costs plus interest | <u>50 Points</u> |
| • Financial background of Offeror and proposed method of financing project | <u>50 Points</u> |
| • Corporate/business background and experience | <u>100 Points</u> |

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. 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 license is made.

D. Withdrawal of Proposal

Proposals may be withdrawn by written request 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, 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.

Design and Construction Plan

1. A general narrative description of the proposed design and construction plan of ten (10) additional boat slips, cabling/anchoring, relocation of existing head dock, and expansion of the parking lot, a time schedule, a plan view of the proposed dock facility layout (including slips, sizes, electric, water and cable locations).
2. Offeror shall provide comprehensive and detailed specification material relative to all construction materials for the construction plan including the construction of ten (10) additional boat slips, cabling/anchoring, relocation of existing head dock, and expansion of the parking lot that will enable the Commonwealth to determine the quality of these items.
3. Describe management structure/organization proposed for the project; identify management personnel by name, if selected, titles; and show how management staff will interact with each other.

Construction Costs

Offeror shall provide an itemized cost estimate for the project including a rate of return required by the Offeror.

Financial Background of Offeror and Proposed Method of Financing Project

The Offeror shall provide:

1. An audited financial statement for each of the last five (5) years must be provided for the applicable legal entity submitting a proposal. This statement should, at a minimum, include:

- a. For corporations - Audited Balance Sheet & Income Statement, Cash Flows (prior 5 years), Off-Balance Sheet Liabilities and be certified by a registered Certified Public Accountant (CPA) who is not an officer of the company.
- b. For individuals - Tax returns for prior 5 years, FICO credit score from 3 credit bureaus and details (terms of loan) on all outstanding debt.

Offeror should also include a statement of changes in financial position of the business entity within the last three (3) years. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail. Include discussion of how the change is anticipated to affect the organizational and financial capacity of the business entity.

2. A current (unaudited) financial statement.
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, including, but not limited to, source of credit, terms of credit, and repayment schedule. Source of credit will identify credit for the construction of ten (10) additional boat slips, cabling/anchoring, relocation of existing head dock, and expansion of the parking lot.
6. Provide a preliminary budget, projected cash flow, estimated construction costs, and detailed plans of financing including identity of proposed lenders.

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, details of company experience relevant to the proposed development. List, if any, current or past boat dock construction projects completed 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.

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

Solicitation/Contract #: 041216

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, are 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, license 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. License include the date of the determination and the state agency issuing the determination. (license 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. (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.

OFFEROR/OFFEROR:

OFFEROR/OFFEROR:

(Signature)

(Signature)

(Title, if applicable)

(Title, if applicable)

(Name of Company, if applicable)

(Name of Company, if applicable)

OFFEROR/OFFEROR:

OFFEROR/OFFEROR:

(Signature)

(Signature)

(Title, if applicable)

(Title, if applicable)

(Name of Company, if applicable)

(Name of Company, if applicable)

State of _____)

) SS

County of _____)

The foregoing statement was sworn to me this _____ day
of _____, 20_____, by _____.

Notary Public

My Commission expires: _____ .

EXHIBITS

- A. Corps of Engineers Lease # DACW 69-1-15-1060**
- B. Dewey Lake Marina Site Maps & Plans**
- C. Slip Rental Agreement – SAMPLE**
- D. Wage Rates**